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Presidential Documents

Title 3—

The President

Proclamation 9946 of October 8, 2019

Leif Erikson Day, 2019

By the President of the United States of America

A Proclamation

On Leif Erikson Day, we honor the spirit of exploration, courage, and faith that led this legendary Viking and his crew to sail across the Atlantic in search of new lands and opportunities more than a thousand years ago. His dream—to venture beyond the known horizon and redefine the impossible—still defines and inspires Americans today.

Leif Erikson's undaunted life of exploration began in Iceland—the same location where the Apollo 11 crew trained for its historic journey to the surface of the Moon. The bold spirit that propelled Erikson and his fellow mariners across an unknown ocean is the same spirit that carried our brave astronauts into space 50 years ago, and it is what continues to fuel our desire to unlock the mysteries of the universe and pursue the exploration of Mars.

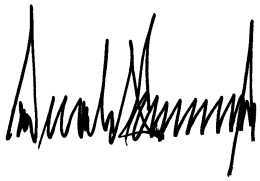
Americans share strong bonds with the homelands of the Vikings. Millions of Americans proudly trace their ancestry to Denmark, Finland, Iceland, Norway, and Sweden. All of these nations help keep our transatlantic community strong. They stand shoulder to shoulder with us as North Atlantic Treaty Organization Allies or partners to enhance regional peace and stability. And as members of the Arctic Council, we work together to promote sustainable growth, scientific research, and environmental protection in the High North while maintaining the region as an area of low tensions.

Nordic Americans contribute each day to the rich tapestry of our country by their self-reliance, drive, spirit of adventure, and cultural traditions. On this day, we pay tribute to the remarkable achievements of Leif Erikson, and we celebrate the daring dreams, big vision, and passion for discovery of all people of Scandinavian heritage.

To honor Leif Erikson, son of Iceland and grandson of Norway, and to celebrate our Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9 of each year as ''Leif Erikson Day.''

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 9, 2019, as Leif Erikson Day. I call upon all Americans to celebrate the achievements and contributions of Nordic Americans to our Nation with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of October, in the year of our Lord two thousand nineteen, and of the Independence of the United States of America the two hundred and forty-fourth.



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Rules and Regulations

Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0715; Product Identifier 2019–NM–151–AD; Amendment 39–19760; AD 2019–20–07]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting an airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This AD requires repetitive operational checks of the leading edge (LE) outboard (OB) slats and applicable on-condition actions. This AD also requires revising the airplane flight manual (AFM) to prohibit flap retraction under icing conditions and revising the existing maintenance or inspection program, as applicable, to incorporate a new operation check. This AD was prompted by a determination that the LE OB slat system could be out of position without flight deck annunciation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 11, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 11, 2019.

The FAA must receive comments on this AD by November 25, 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 AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0715.

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–2019–0715; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, 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: Kelly McGuckin, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3546; email: *Kelly.McGuckin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report indicating that five LE OB slat geared rotary actuators (GRA) failed during taxi, causing the associated slats to be out of the commanded position with flight deck annunciation. However, a subsequent review of the Boeing Model 787 high lift system identified a potential condition in which the LE OB slat system could be out of position without flight deck annunciation. This condition, if not addressed, could result in insufficient lift, resulting in inability to maintain continued safe flight and landing.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019. This service information describes procedures for repetitive operational checks of the LE OB slats and applicable on-condition actions. On-condition actions include making sure fault messages are cleared (using fault isolation manual (FIM) procedures), making sure LE OB slats extend and fully retract, and operational checks of the LE OB slats in primary, secondary, and alternate modes. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

AD Requirements

This AD requires accomplishment of the actions identified in Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this AD. This AD also requires revising the AFM to prohibit flap retraction under icing conditions and revising the existing maintenance or inspection program, as applicable, to incorporate a new operation check.

For information on the procedures and compliance times, see Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019, at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0715.

Explanation of Requirements Bulletin

The FAA worked in conjunction with industry, under the Airworthiness Directive Implementation Aviation

Rulemaking Committee (AD ARC), to enhance the AD system. One enhancement is a process for annotating which steps in the service information are ''required for compliance'' (RC) with an AD. Boeing has implemented this RC concept into Boeing service bulletins.

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

Interim Action

The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA might consider additional rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of a potential condition in which the LE OB slat system could be out of position without flight deck annunciation. This condition, if not addressed, could result in insufficient lift, resulting in inability to maintain continued safe flight and landing. The compliance time for the required action is shorter than the time necessary for the public to comment and for publication of the final rule.

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

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2019–0715 and Product Identifier 2019–NM–151–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule 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 final rule.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 118 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive operational checks	8 work-hours × $85 per hour = $680 per operational check.	$0	$680 per operational check	$80,240 per operational check.
AFM revision	1 work-hour × $85 per hour = $85	0	$85	$10,030.

*Table does not include estimated costs for revising the existing maintenance or inspection program.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition actions specified in this AD.

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 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

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–20–07 The Boeing Company: Amendment 39–19760; Docket No. FAA–2019–0715; Product Identifier 2019–NM–151–AD.

(a) Effective Date

This AD is effective October 11, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a determination that the leading edge (LE) outboard (OB) slat system could be out of position without flight deck annunciation. The FAA is issuing this AD to address a potential condition in which the LE OB slat system could be out of position without flight deck annunciation. This condition, if not addressed, could result in insufficient lift, resulting in inability to maintain continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB270051–00, Issue 001, dated July 5, 2019, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019.

(h) Exception to Service Information Specifications

For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB270051–00 RB,'' this AD requires using ''the effective date of this AD.''

(i) Airplane Flight Manual (AFM) Revision To Prohibit Flap Retraction Under Icing Conditions

Within 60 days after the effective date of this AD, revise the Limitations Section of the existing AFM to include the information in figure 1 to paragraph (i) of this AD. This may be done by inserting a copy of figure 1 to paragraph (i) of this AD into the Limitations Section of the existing AFM.

Figure 1 to paragraph (i): *AFM revision*

Flap Operation After Landing (Required by AD 2019-20-07)

In order to prevent failure of the slat drive system after landing, flaps must not be retracted if:

- Operating on the ground with ice, snow, slush, or standing water in icing conditions, or;
- An accumulation of airframe ice is observed or suspected.

Under circumstances where the flight crew deems it necessary to retract the flaps for safety reasons, they must notify maintenance via an approved means.

(j) Maintenance or Inspection Program Revision To Incorporate a New Operation Check

Within 60 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in figure 2 to paragraph (j) of this AD. This may be done by inserting a copy of figure 2 to paragraph (j) of this AD into the existing maintenance or inspection program.

Figure 2 to paragraph (j): *Maintenance or inspection program revision*

1. Cold Weather Maintenance Procedure – Handling

A. General

(3) After an airplane lands in icing conditions, do the OPERATION CHECKS - SLAT/FLAP INSPECTION in this task before retracting the slats/flaps.

NOTE: Icing conditions exist when OAT (on the ground) or TAT (in-flight only) is 50°F (10°C) or below, and any of the following exist:

- When visible moisture (clouds, fog with visibility of one statute mile (1600 m) or less, rain, snow, sleet, ice crystals, and so on) is present.
- When ice, snow, slush or standing water is present on the taxiways, or runways.

(a) Do this inspection to make sure that contaminants (ice, snow, slush) are not present which can either obstruct retraction of the LE slats or TE flaps, or freeze the slats to the fixed leading edge after retraction.

(b) The type and area of inspection is as follows:

1) Do an examination of the entire leading edge slats and trailing edge flaps areas.

G. Operation Checks

(1) **SLAT/FLAP INSPECTION**

After any landing in icing conditions, do this inspection with the slats/flaps (flaps 25 detent) fully extended (Figure 2):

WARNING: MAKE SURE THAT YOU USE THE NECESSARY PRECAUTIONS IF PERSONNEL ARE NEAR THE FLIGHT CONTROL SURFACES. THE FLIGHT CONTROL SURFACES CAN MOVE QUICKLY. THIS CAN CAUSE INJURIES TO PERSONNEL AND DAMAGE TO EQUIPMENT.

(a) Examine these areas for contaminants (ice, snow, slush):

1) Slats/flaps surfaces
2) Leading edge contact surfaces

NOTE: "Contact surfaces" refers to the areas of the slat and the fixed wing that will be in contact after slat retraction.

3) Slat actuation areas, including exposed areas of the slat track cavity, and slat cove
4) Flap tracks, hinges, seals

(b) Remove the contamination that you find.

Figure 2 to paragraph (j): *Maintenance or inspection program revision continued*

(c) Confirm a contaminant-free condition in these areas immediately prior to retraction of the slats/flaps surfaces.
1) Slats/flaps surfaces
2) Leading edge contact surfaces
NOTE: "Contact surfaces" refers to the areas of the slat and the fixed wing that will be in contact after slat retraction.
3) Slat actuation areas, including exposed areas of the slat track cavity, and slat cove
4) Flap tracks, hinges, seals

(d) When the inspection is complete, do these steps:
NOTE: These steps make sure that the leading edge slat system is functional.
NOTE: Two persons are necessary to do these steps. One person will move the flap control lever in the flight compartment, and the other will confirm slat position from the ground.
1) Do not use Alternate mode to operate the surfaces.
NOTE: The Alternate mode only allows extension of slats to the Middle (sealed) position and not to the Extended (gapped) position.

WARNING: MAKE SURE THAT YOU USE THE NECESSARY PRECAUTIONS IF PERSONNEL ARE NEAR THE FLIGHT CONTROL SURFACES. THE FLIGHT CONTROL SURFACES CAN MOVE QUICKLY. THIS CAN CAUSE INJURIES TO PERSONNEL AND DAMAGE TO EQUIPMENT.

2) Retract the leading edge slats to the full up position (Flaps UP detent).
a) Make sure that you visually confirm from the ground that the slats have retracted to the Retracted (up) position.
3) Extend the leading edge slats to the full extend position (Flaps 25 detent).
a) Make sure that you visually confirm from the ground that the slats have extended to the Extended (gapped) position.
4) Retract the leading edge slats to the full up position (Flaps UP detent).
a) Make sure that you visually confirm from the ground that the slats have retracted to the Retracted (up) position.

(e) When all of the above steps are completed, the OPERATION CHECKS - SLAT/FLAP INSPECTION is complete.

Figure 2 to paragraph (j): *Maintenance or inspection program revision continued*

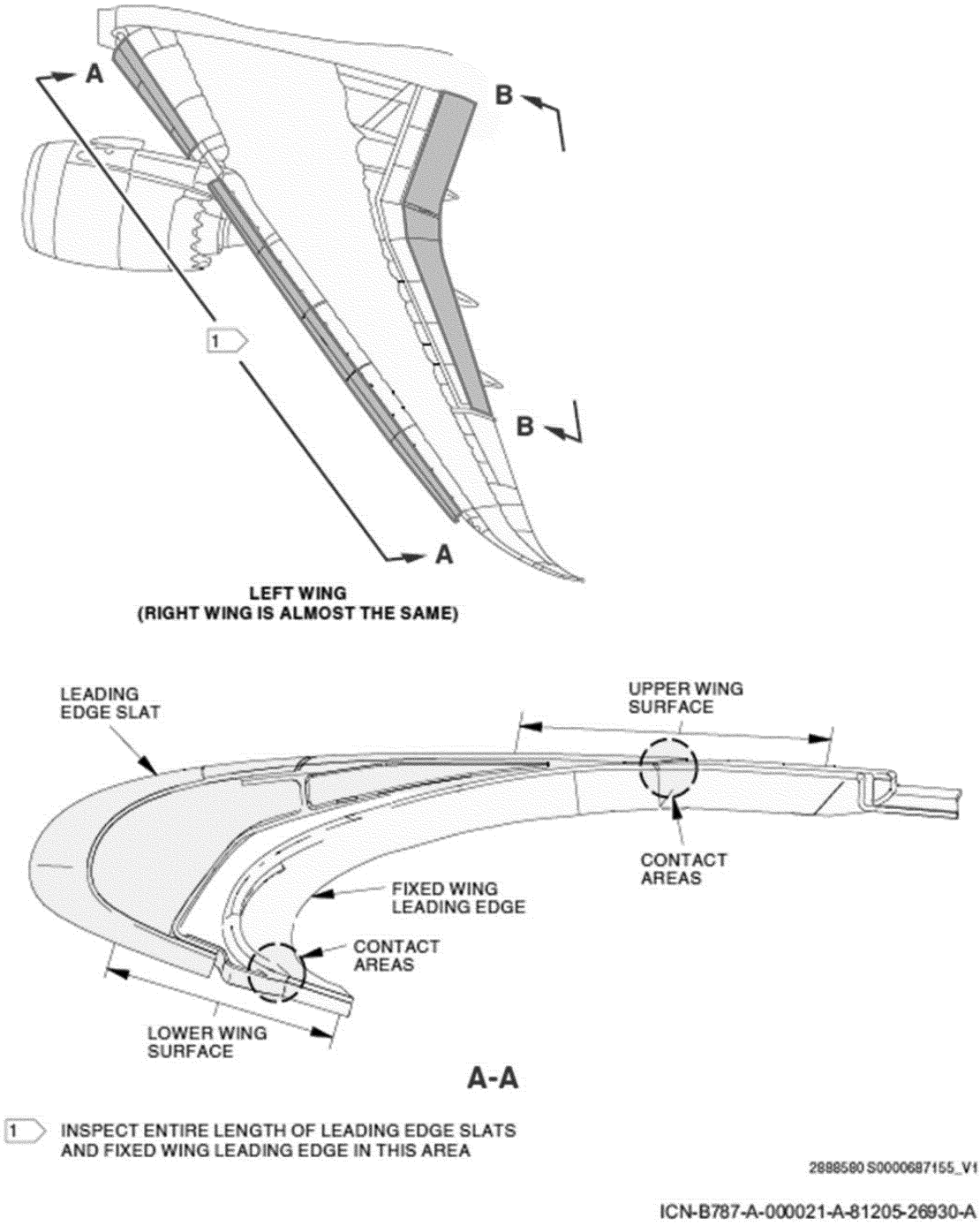
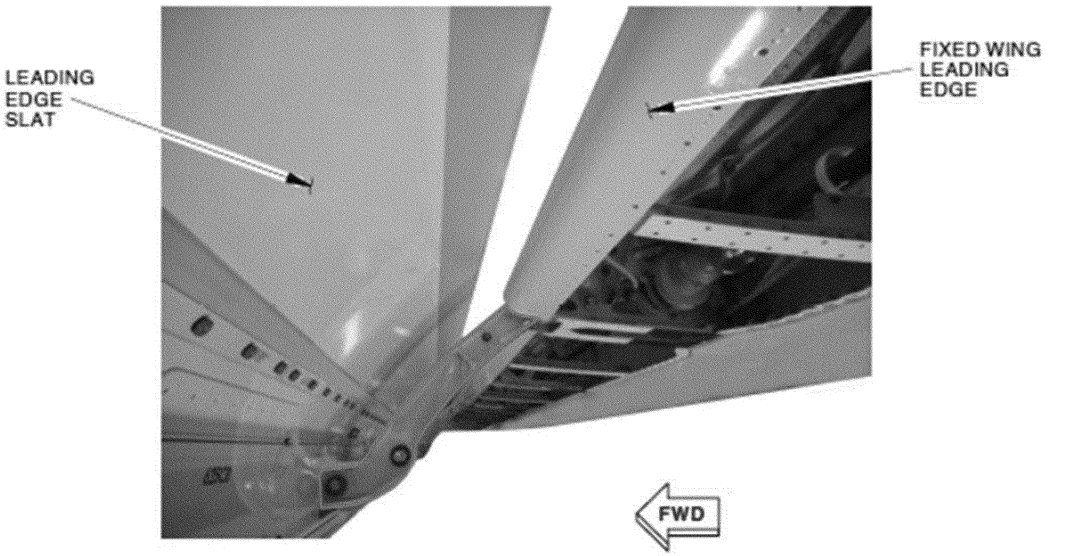
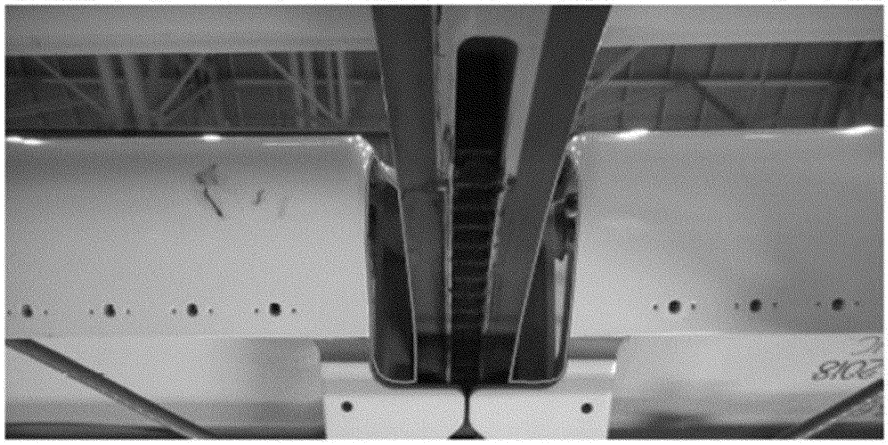


Figure 2 (Sheet 1 of 3) Slat and Flap Inspection

Figure 2 to paragraph (j): *Maintenance or inspection program revision continued*



ACTUATION AREAS
(TYPICAL)
A-A



SLAT TRACK CAVITY
(TYPICAL)
(VIEW IN THE AFT DIRECTION)
A-A

2896941 S0000691106_V1

ICN-B787-A-000021-A-81205-27016-A

Figure 2 (Sheet 2 of 3) Slat and Flap Inspection

Figure 2 to paragraph (j): *Maintenance or inspection program revision continued*

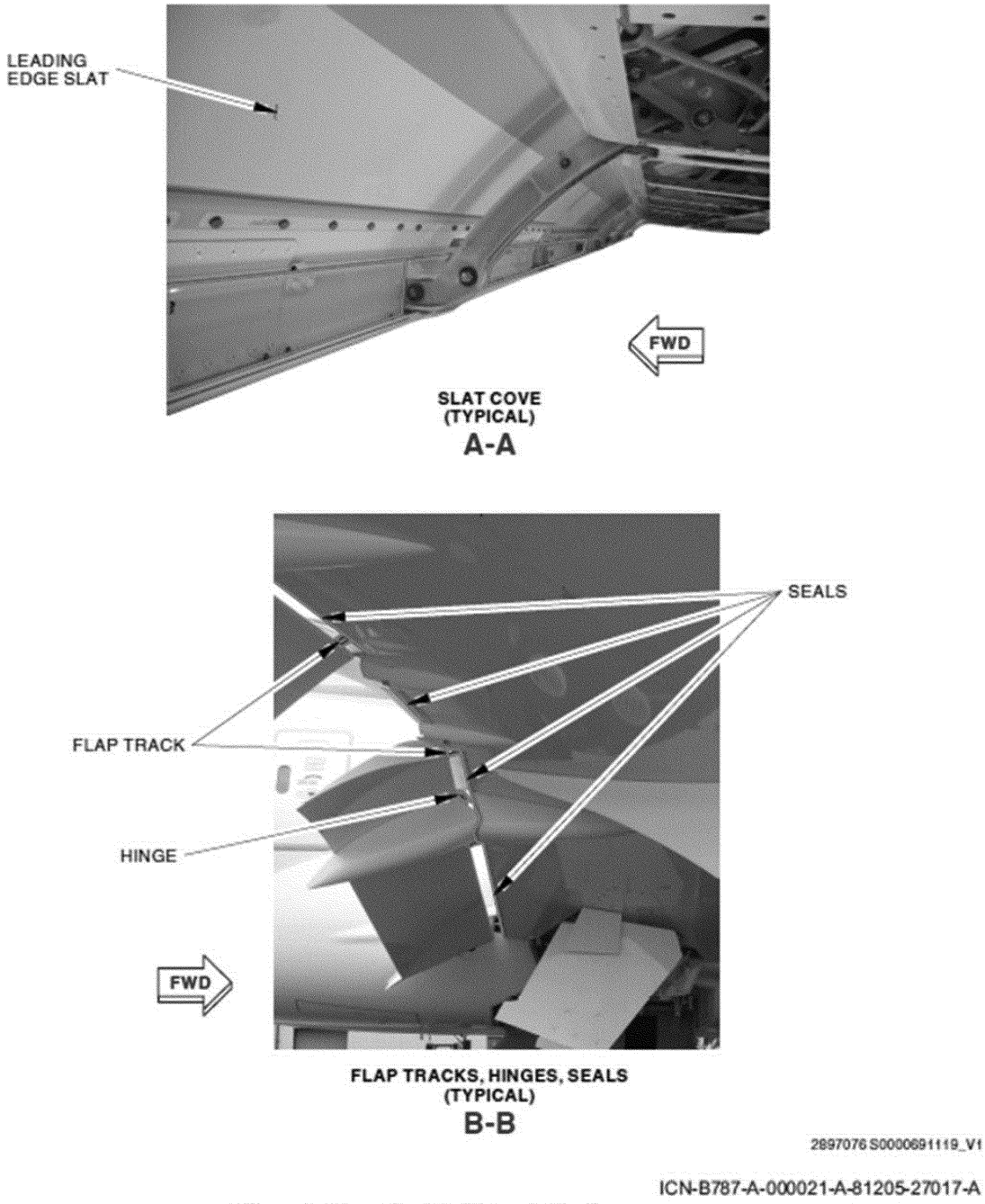


Figure 2 (Sheet 3 of 3) Slat and Flap Inspection

(k) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair,

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

(m) Related Information

For more information about this AD, contact Kelly McGuckin, Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3546; email: *Kelly.McGuckin@faa.gov.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin B787–81205–SB270051–00 RB, Issue 001, dated July 5, 2019.

(ii) [Reserved]

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.*

(4) 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.

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

Issued in Des Moines, Washington, on October 7, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–22390 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1206

[Document Number NASA–19–150; Docket Number NASA–2019–0005]

RIN 2700–AE47

Procedures for Disclosure of Records Under the Freedom of Information Act (FOIA)

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is finalizing its Freedom of Information Act (FOIA) regulations, in accordance with the FOIA Improvement Act of 2016.

DATES: Effective October 11, 2019.

FOR FURTHER INFORMATION CONTACT: Nikki Gramian, (202) 358–0625, *nikki.n.gramian@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule for its FOIA regulations in the **Federal Register** at 84 FR 14628, April 11, 2019, to implement the following requirements of the 2016 FOIA Improvement Act of 2016 (Act) that will be beneficial to requesters:

- Notify requesters for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services.
- Make records that have been both released previously and requested three or more times available to the public in electronic format.
- Establish a minimum of ninety days for requesters to appeal an adverse determination.
- Provide, or direct requesters to, dispute resolution services at various times throughout the FOIA process.

II. Expected Impact of the Final Rule

NASA actively works to make certain its FOIA system operates as efficiently as possible. NASA's website provides explicit instructions for those who wish to submit a FOIA request and has an electronic library listing categories of documents or information specifically identified for inclusion under FOIA as well as documents or links to information for which NASA has received multiple FOIA requests.

NASA's FOIA requesters are a diverse community, including lawyers, industry professionals, reporters, and members of the public. Costs for these requesters can include the time required to research NASA's current FOIA rule and the time and preparation required to submit a request/appeal.

The Agency receives about 900 FOIA requests per year. Half of these requests are from commercial entities seeking information about NASA contracts awarded to winning contractors for services or technology used in a center mission related activity. Other requests are from members of the general public for items such as an image or video, a NASA study or mission activity, or records about an individual associated with NASA.

NASA believes these amendments will primarily impact the 450 requesters who are members of the general public. In addition to making it easier to research and review NASA's FOIA rule before submitting a request, the ''housekeeping measures'' should facilitate FOIA requests and production. Although NASA is unable to quantify these savings, the Agency does believe it is deregulatory in nature in that it provides relief to requesters.

III. Discussion and Analysis

NASA received two substantive comments from Cause of Action (CoA) and Reporters Committee for Freedom of the Press (RCFP). NASA also received a few non-substantive comments from members of the public. The following is a discussion of the substantive Comments from CoA and RCFP:

Comment 1: Commenter CoA suggested that NASA remove any reference to the outdated OMB fee guidelines from § 1206.504, because the OMB Guidelines conflict with current law and also contain an outdated definition of a ''representative of the news media.''

Response: As a general matter, NASA notes conformity with the OMB Guidelines is required by the FOIA. *See* 5 U.S.C. 552(a)(4)(A)(i). However, as the commenter explained in his next comment, NASA has adopted the current statutory definition of a ''representative of the news media'' and has eliminated the outdated ''organized and operated'' standard referenced in OMB Guidelines from the regulation. For this reason, NASA declines to delete the reference to OMB because the regulation conforms to the statutory requirement.

Comment 2: Commenters CoA and RCFP both commented on the proposed rule's definition of ''representative of the news media.'' Both commenters suggested that paragraphs (c)(3)(i)(A) through (C) in § 1206.507 and the final sentence in § 1206.507(c)(3)(ii) be rejected and eliminated from the final rule.

Response: NASA accepts these comments and has revised § 1206.507 to remove paragraphs (c)(3)(i)(A) through (C) and § 1206.507(c)(3)(ii) to remove the last sentence.

Comment 3: Both the CoA and RCFP commenters also took issue with NASA's proposal to grant news media status ''on a case-by-case basis based upon . . . intended use. CoA commenter explained that this review should be limited to those rare cases when NASA either is determining the eligibility of a nascent news media requester or clarifying whether a request has been filed for a commercial use.'' (84 FR at 14633, § 1206.507(c)(3)(i)(A)–(C).

Response: NASA accepts these comments and has removed the last sentence in § 1206.507(c)(3)(ii).

Comment 4: The commenter CoA made an additional fee category suggestion by stating that NASA should add additional details from a court decision with respect to the requirement that a news media requester use ''editorial skills'' to turn ''raw materials'' into a ''distinct work,'' by accepting ''a simple press release commenting on records would satisfy this criterion.''

Response: NASA declines to add additional language to § 1206.507(c)(3)(ii) because this section tracks the language of the statute and Department of Justice FOIA regulation template.

Comment 5: The commenter CoA also suggested to better clarify the definition of ''representative of the news media'' to capture ''alternative media'' in § 1206.507(c)(3)(ii).

Response: Although NASA has done that in its example of news media and has included news organizations that disseminate *solely on the internet,* NASA accepts these comments and has added language in § 1206.507(c)(3)(ii) to clarify the definition of ''representatives of the news media'' and to capture ''alternative media.''

Comment 6: The commenter CoA also made a statement in reference to § 1206.307(a)(2)—''Records Under Agency Control.'' The commenter explained that in describing the contents of an adverse determination letter—that is, the denial of a request—NASA proposes that it will ''advise the requester in writing,'' when applicable, if ''[r]ecords do not exist, cannot be located, or are not in the Agency's *possession*[.]'' The word ''possession'' misstates the law and should be replaced with the word ''control.''

Response: NASA accepts this comment and has replaced the word ''possession'' with the word ''control'' in § 1206.307(a)(2).

Comment 7: Lastly, both CoA and RCFP commented to add the ''foreseeable harm'' standard to NASA's FOIA regulations. Commenter CoA suggested additions to § 1206.307—Denying a request. The CoA commenter suggested to add a sentence to § 1206.307(b)(2).

Response: NASA accepts this comment and has added ''foreseeable harm'' language at the beginning of § 1206.307 right below the section's title.

IV. Regulatory Procedures

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule is not a significant regulatory action under E.O. 12866.

Executive Order 13771—Reducing Regulations and Controlling Regulatory Costs

This rule is expected to be an E.O. 13771 deregulatory action. Details can be found in Section II—Expected Impact of the Rule.

Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

List of Subjects in 14 CFR Part 1206

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

For reasons set forth in the preamble, NASA amends 14 CFR part 1206 as follows:

PART 1206—PROCEDURES FOR DISCLOSURE OF RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

■ 1. The authority citation for part 1206 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 51 U.S.C. 20113(a)

Subpart A—Basic Policy

■ 2. Amend § 1206.100 by revising the section heading to read as follows:

§ 1206.100 Scope.

* * * * *

■ 3. Amend § 1206.101 by adding paragraph (c) to read as follows:

§ 1206.101 General policy.

* * * * *

(c) The disclosure of exempt records, without authorization by the appropriate NASA official, is not an official release of information; accordingly, it is not a FOIA release. Such a release does not waive the authority of NASA to assert FOIA exemptions to withhold the same records in response to a FOIA request. In addition, while the authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

Subpart B—Types of Records To Be Made Available

§ 1206.200 [Amended]

■ 4. Amend § 1206.200 by:

■ a. Removing ''and copying'' and adding in its place ''in an electronic format'' in paragraph (b)(1) introductory text.

■ b. Removing ''Subpart C herein'' and ''which'' and adding in their place ''subpart C of this part'' and ''that'', respectively, and adding ''or documents that have been requested 3 or more times'' after ''documents'' in paragraph (b)(1)(iv).

■ c. Removing ''1997'' and adding in its place ''1996'' and removing ''paragraph (b)(l)(i) through (b)(l)(iv)'' and adding in its place ''paragraphs (b)(1)(i) through (iv)'' in paragraph (b)(2)(i).

■ d. Removing ''1997'' and adding in its place ''1996'' and removing ''paragraphs

(b)(1)(iv)'' and adding in its place ''paragraph (b)(1)(iv) of this section'' in paragraph (c)(2).

§ 1206.201 [Amended]

■ 5. Amend § 1206.201 by adding ''in an electronic format'' after the word ''copying'' in the first sentence.

Subpart C—Procedures

■ 6. Amend § 1206.300 by revising paragraphs (a), (b), (d), and (e)(1) to read as follows:

§ 1206.300 How to make a request for Agency records.

(a) A requester submitting a request for records must include his/her name, and an email or mailing address in order for the Agency to be able to send responsive records and/or to be able to contact the requester to obtain additional information or clarification of the request sought (see § 1206.301). The request must also address fees or provide justification for a fee waiver (see § 1206.302) as well as address the fee category in accordance with § 1206.507. The request should also include a telephone number in case the FOIA office needs to contact the requester regarding the request; however, this information is optional when submitting a request if an email or mailing address is provided. A requester may also submit a request online via the NASA FOIA website, *https://www.nasa.gov/FOIA/Contacts.html.* Do not include a social security number on any correspondence with the FOIA office. If the FOIA unit determines processing fees will exceed the fee category entitlement, the unit will require a personal mailing address for billing purposes or for commercial use requesters, a business mailing address.

(b) NASA does not have a central location for submitting FOIA requests and it does not maintain a central index or database of records in its possession. Instead, Agency records are decentralized and maintained by various Centers and offices throughout the country. All NASA Centers have the capability to receive requests electronically, either through email or a Web portal. To make a request for any of the NASA Center records, a requester should write directly to the FOIA office of the Center that maintains the records being sought. A request will receive the quickest possible response if it is addressed to the FOIA office of the Center that maintains the records requested. If a requester does not know which Center(s) may have the requested records, he/she may send his/her request(s) to the NASA's Headquarters (HQ) FOIA Public Liaison, 300 E Street SW, Room 5L19, Washington, DC 20546, Fax number: (202) 358–4332, email address: *hq-foia@nasa.gov,* and the HQ FOIA unit will forward the request to the Center(s) that it determines to be most likely to maintain the records that are sought.

* * * * *

(d) A member of the public may submit a FOIA request for an Agency record by mail, facsimile (FAX), electronic mail (email), or by submitting a written request in person to the FOIA office having responsibility over the record requested or to the NASA Headquarters (HQ) FOIA Office. A requester may also submit a request online via the NASA FOIA website.

(e) * * *

(1) For locations, mailing/email addresses of NASA FOIA Centers, visit our website at *https://www.nasa.gov/FOIA/Contacts.html.*

* * * * *

■ 7. Amend § 1206.301 by revising paragraphs (c) and (d) to read as follows:

§ 1206.301 Describing records sought.

* * * * *

(c) If NASA, after receiving a request, determines that the request does not reasonably describe the records sought, it shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the NASA's designated FOIA contact or the Principal Agency FOIA Officer, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the Agency's response to the request may be delayed or NASA may at its discretion close the request administratively.

(d) Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. mail or by electronic mail regardless of the method used by NASA to transmit the request for additional information. In order to be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within twenty (20) working days of the postmark date or date of the electronic mail request for additional information or received by electronic mail by 11:59:59 p.m. ET on the 20th working day. If the requester does not respond to a request for additional information within the 20 working days, the request may be administratively closed at NASA's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

* * * * *

■ 8. Amend § 1206.302 by revising paragraph (c) to read as follows:

§ 1206.302 Fee agreements.

* * * * *

(c) If the FOIA office does not receive a written response within 20 working days after requesting the information, it will presume the requester is no longer interested in the records requested and will administratively close the request without further notification.

* * * * *

■ 9. Amend § 1206.305 by revising paragraph (a) to read as follows:

§ 1206.305 Responding to requests.

(a) Except in the instances described in paragraphs (e) and (f) of this section, the FOIA office that first receives a request for a record and maintains that record is the FOIA office responsible for responding to the request. The office shall acknowledge the request and assign it an individualized tracking number if it will take longer than ten (10) working days to process. The NASA office responding to the request shall include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their requests.

* * * * *

■ 10. Amend § 1206.306 by revising paragraph (a) to read as follows:

§ 1206.306 Granting a request.

(a) Ordinarily, NASA shall have twenty (20) working days from when a request is received to determine whether to grant or deny the request unless there are unusual or exceptional circumstances. The FOIA office will not begin processing a request until all issues regarding scope and fees have been resolved. NASA will notify the requester of the availability of the FOIA Public Liaison to offer assistance in resolving these issues.

* * * * *

■ 11. Amend § 1206.307 by adding introductory text, revising paragraph (a)(2), adding the word ''and'' at the end of paragraph (b)(3), and revising paragraph (b)(4) to read as follows:

§ 1206.307 Denying a request.

NASA shall withhold records only when it reasonably foresees that disclosure would harm an interest

protected by an exemption or disclosure is prohibited by law.

(a) * * *

(2) Records do not exist, cannot be located, are not in the Agency's control, or the request does not reasonably describe the records sought; or

(b) * * *

(4) A statement that the denial may be appealed under subpart G of this part and a description of the requirements set forth therein. NASA shall also inform the requester of the availability of its FOIA Public Liaison to offer assistance and include a statement notifying the requester of the dispute resolution services offered by the Office of Government Information Services (OGIS). Should the requester elect to mediate any dispute related to the FOIA request with OGIS, NASA will participate in the mediation process in good faith.

* * * * *

Subpart D—Procedures and Time Limits for Responding to Requests

■ 12. Amend § 1206.401 by revising paragraph (e) to read as follows:

§ 1206.401 Procedures and time limits for acknowledgement letters and initial determinations.

* * * * *

(e) Any notification of an initial determination that does not comply fully with the request for an Agency record, including those searches that produce no responsive documents, shall include a statement of the reasons for the adverse determination, include the name and title of the person making the initial determination, and notify the requester of the right to appeal to the Administrator or the Inspector General, as appropriate, pursuant to subpart G of this part, and the right to seek dispute resolution services from the NASA FOIA Public Liaison or Office of Government Information Services.

■ 13. Amend § 1206.403 by revising paragraph (c) to read as follows:

§ 1206.403 Time extensions.

* * * * *

(c) If initial processing time will exceed or is expected to exceed 30 working days, the FOIA office will notify the requester of the delay in processing and:

(1) Provide the opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the Agency an alternative time frame for processing the request or a modified request;

(2) Provide contact information for the NASA FOIA Public Liaison;

(3) Offer the right of the requester to seek dispute resolution services from the OGIS;

(4) Provide information regarding the intended determination; and

(5) Shall make available its designated FOIA contact and its FOIA Public Liaison for the purpose of this paragraph (c).

* * * * *

Subpart E—Fees Associated With Processing Requests

■ 14. Amend § 1206.502 by revising paragraphs (d) and (f) to read as follows:

§ 1206.502 Duplication.

* * * * *

(d) For copies of records produced on tapes, disks, or other electronic media, FOIA offices will charge the direct costs of producing the copy in the form or format requested, including the time spent by personnel duplicating the requested records. For each quarter hour spent by personnel duplicating the requested records, the fees will be the same as those charged for a search under this subpart.

* * * * *

(f) For other forms of duplication, FOIA offices will charge the direct costs as well as any associated personnel costs. For standard-sized copies of documents such as letters, memoranda, statements, reports, contracts, etc., $0.15 per copy of each page; charges for double-sided copies will be $0.30. For copies of oversized documents, such as maps, charts, etc., fees will be assessed as direct costs. Charges for copies (and scanning) include the time spent in duplicating the documents. For copies of computer disks, still photographs, blueprints, videotapes, engineering drawings, hard copies of aperture cards, etc., the fee charged will reflect the direct cost to NASA of reproducing, copying, or scanning the record. In circumstances where a request for a videotape or other outdated media is requested, and NASA does not have the capability to readily reproduce the record in the form or format requested and which requires the Agency to enlist the services of a private contractor to fulfill the request, the direct costs of any services by the private contractor will be charged to the requester. Specific charges will be provided upon request.

* * * * *

■ 15. Revise § 1206.503 to read as follows:

§ 1206.503 Restrictions on charging fees.

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

(b) If NASA fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (a) of this section, may not charge duplication fees, except as described in paragraphs (b)(1) through (3) of this section.

(1) If a NASA component has determined that unusual circumstances as defined by the FOIA apply, and the component provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(2) If NASA has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Agency may charge search fees, or, in the case of requesters described in paragraph (a) of this section, may charge duplication fees, if the following steps are taken. The Agency must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the component must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii). If the exception in this paragraph (b)(2) is satisfied, the Agency may charge all applicable fees incurred in the processing of the request.

(3) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

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

(d) Except for requesters seeking records for a commercial use, NASA will provide without charge:

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

(2) The first two hours of search.

(e) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under § 1206.504 is less than $50.00 for any request, no fee will be charged.

■ 16. Amend § 1206.504 by revising paragraphs (a) through (c) to read as follows:

§ 1206.504 Charging fees.

(a) NASA shall charge for processing requests under the FOIA in accordance with the provisions of this section and the OMB Guidelines. NASA will ordinarily use the most efficient and least expensive method for processing requested records. In order to resolve any fee issues that arise under this section, NASA may contact a requester for additional information. A component ordinarily will collect all applicable fees before sending copies of records to a requester. The submission of a FOIA request shall be considered a firm commitment by the requester to pay all applicable fees charged under this section, up to $50.00, unless the requester seeks a waiver of fees. Requesters must pay fees by check or money order made payable to the Treasury of the United States. When a FOIA office determines or estimates the fees to be assessed in accordance with this section will amount to or exceed $50.00, the FOIA office shall notify the requester unless the requester has indicated a willingness to pay fees as high as those anticipated. If a portion of the fees can be readily estimated, the FOIA office shall advise the requester accordingly.

(b) In cases in which a requester has been notified that actual or estimated fees are in excess of $50.00, the request shall be placed on hold and further work will not be completed until the requester commits in writing to pay the actual or estimated fees. Such a commitment must be made by the requester in writing, must indicate a given dollar amount or a willingness to pay all processing fees, and must be received by the FOIA office within 20 working days from the date of the letter providing notification of the fee estimate. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(c) After the FOIA office begins processing a request, if it finds that the actual cost will exceed the amount the requester previously agreed to pay, the FOIA office will stop processing the request and promptly notify the requester of the higher amount. The request will be placed on hold until the fee issue has been resolved. If the issue is not resolved within 20 working days from the date of the notification letter, NASA will provide the requester, if the requester is a non-commercial use requester, the statutory entitlements of 100 pages of duplication at no charge and shall advise the requester that his statutory entitlements have been provided before closing the request.

* * * * *

■ 17. Amend § 1206.505 by revising paragraph (e) to read as follows:

§ 1206.505 Advance payments.

* * * * *

(e) In cases in which a FOIA office requires advance payment, the request shall not be considered received, and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 20 working days after the date of the FOIA office's letter, the request will be closed without further notification.

* * * * *

■ 18. Amend § 1206.506 by revising paragraphs (d) and (e) to read as follows:

§ 1206.506 Requirements for a waiver or reduction of fees.

* * * * *

(d) In deciding whether the standards of paragraph (c)(1) of this section are satisfied, the Agency must consider the factors described in paragraphs (d)(1) through (3) of this section:

(1) Disclosure of the requested information would shed light on the operations or activities of the Government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information would be likely to contribute significantly to public understanding of those operations or activities. The factor in this paragraph (d)(2) is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about Government operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. NASA will presume that a representative of the news media will satisfy the consideration in this paragraph (d)(2)(ii).

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components will consider the following criteria:

(i) NASA, and its Centers processing requests, must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding the consideration in this paragraph (d)(3)(i).

(ii) If there is an identified commercial interest, NASA must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (d)(1) and (2) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. NASA ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (d)(1) and (2) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

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

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

(e) FOIA offices may make available their FOIA Public Liaison or other FOIA professional to assist any requester in reformulating a request in an effort to reduce fees; however, the FOIA staff may not assist a requester in composing a request, advising what specific records

to request, or how to write a request to qualify for a fee waiver.

* * * * *

■ 19. Amend § 1206.507 by revising paragraphs (c)(1) through (4) to read as follows:

§ 1206.507 Categories of requesters.

* * * * *

(c) * * *

(1) *Commercial use requesters.* When NASA receives a request for documents appearing to be for commercial use, meaning a request from or on behalf of one whom seeks information for a use or purpose that furthers the commercial, trade, or profit interests, which can include furthering those interests through litigation, of either the requester or the person on whose behalf the request is made, it will assess charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. NASA will not consider a commercial-use request for a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. A request from a corporation (not a news media corporation) may be presumed to be for commercial use unless the requester demonstrates that it qualifies for a different fee category. Commercial use requesters are not entitled to two (2) hours of search time or to 100 pages of duplication of documents without charge.

(2) *Education and non-commercial scientific institution requesters.* To be eligible for inclusion in the category in this paragraph (c)(2), requesters must show that the request being made is authorized by and under the auspices of a qualifying institution and that the records are not being sought for a commercial use (not operated for commerce, trade, or profit), but are being sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(i) Educational institution is any school that operates a program of scholarly research. A requester in the fee category in this paragraph (c)(2) must show that the request is made in connection with the requester's role at the educational institution. NASA may seek assurance from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in the category in this paragraph (c)(2). A request for educational purposes may be presumed if submitted on the Institution's letterhead and signed by the Dean of the School or Department.

(A) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(B) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(C) *Example 3.* A student, who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of the fee category in this paragraph (c)(2).

(ii) For the purposes of a non-commercial scientific institution, it must be solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. Requests must be sent on the letterhead of the scientific institution and signed by the responsible official-in-charge of the project/program associated with the subject of the documents that are being requested.

(3) *Representative of the news media.* (i) NASA shall provide documents to requesters in the category in this paragraph (c)(3) for the cost of duplication alone, excluding charges for the first 100 pages.

(ii) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of new media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. These examples are not all inclusive. As methods of news delivery evolve, alternative news media entities may come into existence. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, agencies can also consider a requester's past publication record in making this determination. Agencies will advise requesters of their placement in the category in this paragraph (c)(3).

(iii) Requesters seeking the fee category in this paragraph (c)(3) who do not articulate sufficient information to support their request will not be included in the fee category in this paragraph (c)(3). Additionally, FOIA staff may grant a reduction of fees if the requester can articulate the information of this section for some of the documents.

(4) *All other requesters.* NASA shall charge requesters who do not fit into any of the categories mentioned in this section fees in accordance with the fee table in paragraph (b) of this section.

Subpart G—Appeals

§ 1206.700 [Amended]

■ 20. Amend § 1206.700 by:

■ a. Removing the number ''30'' and adding in its place the number ''90'' in paragraph (a);

■ b. Adding ''Room 8U71, 300 E Street, SW,'' after the second occurrence of the word ''Headquarters,'' in paragraph (b)(2); and

■ c. Removing the number ''30'' and adding in its place the number ''90'' in paragraph (b)(6).

Subpart H—Responsibilities

■ 22. Amend § 1206.801 by revising paragraphs (b)(1) and (6) and (c) to read as follows:

§ 1206.801 Chief FOIA Officer.

* * * * *

(b) * * *

(1) Developing regulations in consultation with the Office of General Counsel, providing guidelines, procedures, and standards for the Agency's FOIA program;

* * * * *

(6) Preparing all other reports as required to DOJ, OGIS, and Congress or within the Agency;

* * * * *

(c) The Chief FOIA Officer is responsible for ensuring NASA has appointed FOIA Public Liaisons, who are responsible for and able to assist in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes at each Center or Component.

■ 23. Amend § 1206.804 by revising paragraphs (b) and (c) to read as follows:

§ 1206.804 NASA Centers and Components.

* * * * *

(b) This delegated authority has further been delegated to the FOIA Officers who are designated to work at NASA Centers and supervised by the Director of Public Affairs or Head of the Public Affairs Office for that Center. If a FOIA Officer working at a particular NASA Center vacates the position, the Deputy Associate Administrator for Communications will designate a new FOIA Officer, supervised by the Principal Chief FOIA Officer, to process FOIA requests for that particular Center.

(c) When denying records in whole or in part, the FOIA Officer designated to process records for the Center will consult with the Chief Counsel or the Counsel charged with providing legal advice to that FOIA office before releasing an initial determination under § 1206.307.

§ 1206.805 [Amended]

■ 24. Amend § 1206.805 by adding a comma after the second occurrence of the word ''General'' in paragraph (a).

Cheryl E. Parker,

Federal Register Liaison Officer.

[FR Doc. 2019–21710 Filed 10–10–19; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2018–0010; T.D. TTB–157; Ref: Notice No. 179]

RIN 1513–AC41

Establishment of the Eastern Connecticut Highlands Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 1,246 square-mile ''Eastern Connecticut Highlands'' viticultural area in all or portions of Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut. The Eastern Connecticut Highlands viticultural area is not located within any other established viticultural area and does not overlap any other established AVA. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective November 12, 2019.

FOR FURTHER INFORMATION CONTACT: Kate M. Bresnahan, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 151.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Order 120–01, dated December 10, 2013 (superseding Treasury Order 120–01, dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes the establishment of definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Eastern Connecticut Highlands Petition

TTB received a petition from Steven Vollweiler, president of Sharpe Hill Vineyard, proposing the establishment of the ''Eastern Connecticut Highlands'' AVA in all or portions of Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut. The proposed Eastern Connecticut Highlands AVA covers approximately 1,246 square-miles and is not located within nor overlaps any other AVA. There are 16 commercially-producing vineyards covering a total of approximately 114.75 acres within the proposed AVA, as well as 6 bonded wineries. According to the petition, an additional 20.5 acres of commercial vineyards are planned for planting in the next few years. According to the petition, the distinguishing features of

the proposed AVA are its geology, topography, soils, and climate.

The petition states that the proposed Eastern Connecticut Highlands AVA is underlain by Paleozoic formation called Iapetus Terrane, which is comprised mostly of metamorphic rocks that are difficult to erode, resulting in the hills and mountains that characterize the proposed AVA. To the west of the proposed AVA, the Central Valley is comprised of younger, more easily eroded sandstone, shale, and basalt lava flows that have a significantly different chemical composition than that of the proposed AVA. The regions to the east and south of the proposed AVA are part of the Avalonia Terrane, which consists of older, Pre-Cambrian rocks.

According to the petition, the proposed Eastern Connecticut Highlands AVA is characterized by hilly-to-mountainous terrain, with elevations ranging from 200 to 1,000 feet in elevation. The eastern and western edges of the proposed AVA are characterized by sharp ridgelines and high elevations, while the central portion of the proposed AVA is comprised of rounded hills. By contrast, the region to the west of the proposed AVA is a broad, flat valley with low elevations. The coastal region to the south of the proposed AVA also contains generally lower elevations than those within the proposed AVA. The terrain of the proposed AVA extends north into Massachusetts and east into Rhode Island, however, the elevations differ in those locations. The petition adds that the topography of the proposed AVA affects viticulture because topography affects climate. Regions with higher elevations, such as the proposed AVA, generally have a colder climate than regions with lower elevations, such as the region to the west of the proposed AVA. Additionally, regions that are closer to the coast, such as the region to the south of the proposed AVA and the lower elevations of region to the east, are more significantly affected by maritime climate than higher inland regions like the proposed AVA.

The petition states that the soils in the proposed AVA developed on lodgement till, which is material deposited by glaciers as they move across the landscape. The soils are thick sandy-to-silty loams and range from well to poorly drained. In contrast, the region to the south of the proposed AVA contains only a small amount of lodgement till. The regions to the south and west of the proposed AVA formed on ablation till, which is material deposited as a stagnant or slow-moving glacier melts. The petition also provided information on the concentrations of seven elements found in the soils of the proposed AVA and the regions to the east, south, and west that play vital roles in vine nutrition: Calcium, iron, magnesium, potassium, phosphorous, sulfur, and zinc. When compared to the soils in the region to the west of the proposed AVA, the proposed AVA has higher levels of calcium, iron, magnesium, and sulfur, and lower levels of potassium, phosphorous, and zinc. Compared to the soils to the east and south, the proposed AVA has similar levels of calcium, phosphorous, and sulfur, higher levels of iron, magnesium, and zinc, and lower levels of potassium. The petition also shows these element levels give soil in the proposed AVA conditions that provide for grapevine growth, as well as prevent chlorosis in the vines.

The petition included information of the average annual temperatures, growing degree days (GDD),[1] coldest recorded temperature, average date of the latest spring frost, and average date of the earliest fall frost for the Eastern Connecticut Highlands AVA and the surrounding regions. The data was collected from 1996 to 2015. While the proposed AVA has average annual temperatures that are generally similar to the surrounding regions, the data shows more pronounced differences in other climate measurements. The proposed AVA has significantly higher GDD accumulations than the region to its north, indicating warmer growing season temperatures. The proposed AVA also has a shorter growing season than most of the areas to the north, as indicated by a later last-spring-frost date and earlier first-fall-frost date for the proposed AVA. The proposed AVA has lower GDD accumulations and a shorter growing season than the regions to the south and east. Finally, the proposed AVA has lower GDD accumulations and a shorter growing season than the region to its west.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 179 in the **Federal Register** on December 13, 2018 (83 FR 64,047), proposing to establish the Eastern Connecticut Highlands AVA. In the notice, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The notice also compared the distinguishing features of the proposed AVA to the surrounding areas. For a detailed description of the evidence relating to the name, boundary, and distinguishing features of the proposed AVA, and for a detailed comparison of the distinguishing features of the proposed AVA to the surrounding areas, see Notice No. 179. In Notice No. 179, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. The comment period closed on February 11, 2019.

In response to Notice No. 179, TTB received one comment from a member of the public. The commenter supported the establishment of the Eastern Connecticut Highlands viticultural area due to the climate and soil differences between the Eastern Connecticut Highlands AVA and in the regions surrounding it.

TTB Determination

After careful review of the petition and the comment received in response to Notice No. 179, TTB finds that the evidence provided by the petitioner supports the establishment of the Eastern Connecticut Highlands AVA. Accordingly, under the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, and parts 4 and 9 of the TTB regulations, TTB establishes the ''Eastern Connecticut Highlands'' AVA in all or portions of Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut, effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Eastern Connecticut Highlands AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for

[1] See Albert J. Winkler et al., General Viticulture 61–64 (Berkeley: University of California Press, 2nd ed. 1974). In the Winkler climate classification system, annual heat accumulation during the growing season, measured in annual growing degree days (GDD), defines climatic regions. One GDD accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, the minimum temperature required for grapevine growth.

labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, ''Eastern Connecticut Highlands,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name ''Eastern Connecticut Highlands'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the AVA name as an appellation of origin. The establishment of the Eastern Connecticut Highlands AVA will not affect any existing AVA. The establishment of the Eastern Connecticut Highlands AVA will allow vintners to use ''Eastern Connecticut Highlands'' as an appellation of origin for wines made primarily from grapes grown within the Eastern Connecticut Highlands AVA if the wines meet the eligibility requirements for the appellation.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Kate M. Bresnahan of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.267 to read as follows:

§ 9.267 Eastern Connecticut Highlands.

(a) *Name.* The name of the viticultural area described in this section is ''Eastern Connecticut Highlands''. For purposes of part 4 of this chapter, ''Eastern Connecticut Highlands'' is a term of viticultural significance.

(b) *Approved maps.* The one United States Geological Survey (USGS) 1:125,000 scale topographic map used to determine the boundary of the Eastern Connecticut Highlands viticultural area is titled ''State of Connecticut.''

(c) *Boundary.* The Eastern Connecticut Highlands viticultural area is located in Hartford, New Haven, Tolland, Windham, New London, and Middlesex Counties in Connecticut. The boundary of the Eastern Connecticut Highlands viticultural area is as described below:

(1) The beginning point is on the State of Connecticut map at the intersection of State Highway 83 and the Massachusetts-Connecticut State line in Somers. From the beginning point, proceed east along the Massachusetts-Connecticut State line approximately 33 miles to the intersection of the shared State line and an unnamed road, known locally as Bonnette Avenue, in Thompson; then

(2) Proceed southeast along Bonnette Avenue approximately 0.38 mile to its intersection with an unnamed road known locally as Sand Dam Road; then

(3) Proceed southeast along Sand Dam Road approximately 1.5 miles to its intersection with an unnamed road known locally as Thompson Road; then

(4) Proceed south along Thompson Road approximately 1,000 feet to its intersection with an unnamed road known locally as Quaddick Town Farm Road; then

(5) Proceed east then south along Quaddick Town Farm Road approximately 5.5 miles into the town of Putnam, where the road becomes known as East Putnam Road, and continuing south along East Putnam Road approximately 1 mile to its intersection with U.S. Highway 44; then

(6) Proceed west along U.S. Highway 44 approximately 1 mile to its intersection with an unnamed road known locally as Tucker Hill Road; then

(7) Proceed south along Tucker Hill Road approximately 0.38 mile to its intersection with an unnamed road known locally as Five Mile River Road; then

(8) Proceed southwest then west along Five Mile River Road 1.75 miles to its intersection with State Highway 21; then

(9) Proceed south along State Highway 21 approximately 2 miles to its intersection with State Highway 12; then

(10) Proceed south along State Highway 12 approximately 1 mile to its intersection with Five Mile River; then

(11) Proceed west along Five Mile River approximately 0.13 mile to its intersection with the highway marked on the map State Highway 52 (also known as Interstate 395); then

(12) Proceed south along State Highway 52/Interstate 395 approximately 14.5 miles to its intersection with State Highway 201; then

(13) Proceed southeast along State Highway 201 approximately 5.25 miles to its intersection with State Highway 165; then

(14) Proceed southwest along State Highway 165 approximately 10 miles to its intersection with State Highway 2; then

(15) Proceed west along State Highway 2 approximately 1 mile to its intersection with State Highway 82; then

(16) Proceed southwest, then northwest, then southwest along State Highway 82 approximately 27.72 miles to its intersection with State Highway 9; then

(17) Proceed southeast along State Highway 9 approximately 3.7 miles to its intersection with State Highway 80; then

(18) Proceed west along State Highway 80 approximately 15.7 miles to its intersection with State Highway 77; then

(19) Proceed north along State Highway 77 approximately 8.3 miles to its intersection with State Highway 17; then

(20) Proceed northeast along State Highway 17 approximately 6.8 miles to the point where it becomes concurrent with State Highway 9; then

(21) Proceed north along concurrent State Highway 17–State Highway 9 approximately 0.75 mile the point

where State Highway 17 departs from State Highway 9; then

(22) Proceed east along State Highway 17 approximately 0.25 mile, crossing over the Connecticut River, to the highway's intersection with State Highway 17A; then

(23) Proceed north along State Highway 17A approximately 3 miles to its intersection with State Highway 17; then

(24) Proceed north along State Highway 17 approximately 8 miles to its intersection with State Highway 94; then

(25) Proceed east along State Highway 94 approximately 4 miles to its intersection with State Highway 83; then

(26) Proceed north along State Highway 83 approximately 25 miles, returning to the beginning point.

Signed: July 9, 2019.

Mary G. Ryan,

Acting Administrator.

Approved: September 23, 2019.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2019–22265 Filed 10–10–19; 8:45 am]

BILLING CODE 4810–31–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Simplified Proceedings

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Direct final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (the ''Commission'') is an independent adjudicatory agency that provides hearings and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977. On December 28, 2010, the Commission published a final rule which set forth procedures for simplified proceedings. The Commission implemented the simplified proceedings rule as a pilot program. After evaluating the pilot program, the Commission has determined that withdrawal of the simplified proceedings rule is necessary at this time.

DATES: This final rule is effective November 25, 2019 without further action, unless adverse comment is received by November 12, 2019. If adverse comment is received, the Commission will publish a timely withdrawal of this direct final rule in the **Federal Register** while the Commission considers appropriate action with respect to its simplified proceedings rule.

ADDRESSES: Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Ave. NW, Suite 520N, Washington, DC 20004–1710. Electronic comments should state ''Comments on Simplified Proceedings'' in the subject line and be sent to *RulesComments@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Stewart, Deputy General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434–9935.

SUPPLEMENTARY INFORMATION:

A. Background

On December 28, 2010 (75 FR 81459), the Commission published in the **Federal Register** a final rule to simplify the procedures for handling certain civil penalty proceedings. The Commission explained that since 2006, the number of new cases filed with the Commission had dramatically increased. The simplified procedures were intended to help the Commission manage its burgeoning caseload by streamlining the administrative process for the Commission's simplest cases. The Commission implemented the rule as a pilot program.

In evaluating the efficacy of the pilot, the Commission determined that the simplified proceedings rule has not operated as intended. The Commission had anticipated that streamlined procedures would better support settlement. For instance, discovery is not permitted under the simplified proceedings rule, except as ordered by a Judge. 29 CFR 2700.107. Rather, the simplified procedures require a mandatory disclosure of information by parties (29 CFR 2700.105), followed by a mandatory pre-hearing conference that requires in part a discussion of settlement of the case. 29 CFR 2700.106. It appears, however, that simplified proceedings settle at essentially the same rate as other civil penalty proceedings governed by conventional procedures.

Moreover, the Commission determined that the compressed timeframes set forth in the simplified proceedings rule had unintended negative consequences. The simplified proceedings rule sets forth timeframes that are more abbreviated than those set forth in conventional proceedings for such matters as the disclosure of information by the parties, the conducting of a pre-hearing conference, and the conducting of a hearing. As a consequence of meeting these requirements, the Commission's simplest cases, which were designated as simplified proceedings, were often given priority over more complex cases, which were not designated as simplified proceedings. In addition, the Commission's resources were disproportionately diverted to its simplest cases.

Based upon its evaluation of the simplified proceedings pilot program, the Commission has reconsidered the utility of a special set of procedures for its simplest cases at the present time. The Commission's overall caseload has significantly decreased since the simplified proceedings rule was promulgated. Moreover, parties may request on a case-by-case basis that the Commission adapt the Commission's conventional procedures as necessary to expedite or simplify the processing of a case.

B. Notice and Public Procedure

1. Executive Orders

The Commission is an independent regulatory agency under section 3(b) of Executive Order (''E.O.'') 12866 (Sept. 30, 1993), 58 FR 51735 (Oct. 4, 1993); E.O. 13563 (Jan. 18, 2011), 76 FR 3821 (Jan. 21, 2011); E.O. 13771 (Jan. 30, 2017), 82 FR 9339 (Feb. 3, 2017); E.O. 13777 (Feb. 24, 2017), 82 FR 12285 (Mar. 1, 2017); and E.O. 13132 (Aug. 4, 1999), 64 FR 43255 (Aug. 10, 1999).

The Commission has determined that this rulemaking does not have ''takings implications'' under E.O. 12630 (Mar. 15, 1988), 53 FR 8859 (Mar. 18, 1988).

The Commission has determined that these regulations meet all applicable standards set forth in E.O. 12988 (Feb. 5, 1996), 61 FR 4729 (Feb. 7, 1996).

2. Statutory Requirements

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (''APA'') do not apply to rules of agency procedure (5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until November 12, 2019.

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (''RFA'') (5 U.S.C. 601 *et seq.*), because the proposed rule would not have a significant economic impact on a substantial number of small entities.

The Commission has determined that this rule is not a ''major rule'' under the Small Business Regulatory Enforcement Fairness Act (''SBREFA'') (5 U.S.C. 804(2)).

The Commission has determined that the Paperwork Reduction Act (''PRA'') (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the OMB.

The Commission has determined that the Congressional Review Act (''CRA'') (5 U.S.C. 801 *et seq.*) does not apply because, pursuant to 5 U.S.C. 804(3)(C), these rules are rules of agency procedure or practice that do not substantially affect the rights or obligations of non-agency parties.

The Commission has determined that this rulemaking is not a major Federal action significantly affecting the quality of the human environment requiring an environmental assessment under the National Environmental Policy Act (''NEPA'') (42 U.S.C. 4321 *et seq.*).

The Commission is an independent regulatory agency, and as such, is not subject to the requirements of the Unfunded Mandates Reform Act (''UMRA'') (2 U.S.C. 1532 *et seq.*).

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

Accordingly, 29 CFR part 2700 is amended as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

Subpart J—[Removed and Reserved]

■ 2. Subpart J, consisting of §§ 2700.100 through 2700.110, is removed and reserved.

Dated: October 7, 2019.

Marco M. Rajkovich, Jr.,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 2019–22257 Filed 10–10–19; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2019–0819]

RIN 1625–AA00

Safety Zone; Monte Foundation Fireworks Display, Soquel Cove, Capitola, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the navigable waters of Soquel Cove near the Capitola Wharf in support of the Monte Foundation Fireworks Display on October 13, 2019. This safety zone is necessary to protect personnel, vessels, and the marine environment from the dangers associated with pyrotechnics. Unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone without permission of the Captain of the Port San Francisco or a designated representative.

DATES: This rule is effective from 7:30 p.m. to 8:50 p.m. on October 13, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0819 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 Lieutenant Jennae Cotton, Waterways Management, U.S. Coast Guard; telephone (415) 399–3585, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port San Francisco
DHS Department of Homeland Security
§ 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 with respect to this rule because it is impracticable. The Coast Guard did not receive final details for this event until September 23, 2019. It is impracticable to go through the entire notice of proposed rulemaking process because the Coast Guard must establish this temporary safety zone by October 13, 2019 and lacks sufficient time to provide a reasonable comment period and consider those comments before issuing the 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**. For similar reasons as stated above, notice and comment procedures would be impracticable in this instance due to the short notice provided for this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port San Francisco has determined that potential hazards associated with the Monte Foundation Fireworks Display on October 13, 2019, will be a safety concern for anyone within a 350-foot radius of the fireworks display site starting 30 minutes before the fireworks display is scheduled to commence and ending 30 minutes after the conclusion of the fireworks display. For this reason, this temporary safety zone is needed to protect personnel, vessels, and the marine environment in the navigable waters around the fireworks firing site during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone around the fireworks firing site for the Monte Foundation Fireworks Display. At 7:30 p.m. on October 13, 2019, 30 minutes prior to the commencement of the 20-minute fireworks display, the safety zone will encompass the navigable waters of Soquel Cove, from surface to bottom, within a circle formed by connecting all points 350 feet out from the fireworks firing site located on the Capitola Wharf at approximate position 36°58′10″ N, 121°57′12″ W (NAD 83). The safety zone will terminate at 8:50 p.m. on October 13, 2019.

This regulation is needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing site to ensure the safety of

participants, spectators, and transiting vessels. Except for persons or vessels authorized by the COTP or the COTP's designated representative, no person or vessel may enter or remain in the restricted areas. A ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the COTP in the enforcement of the safety zone.

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, limited duration, and narrowly tailored geographic area of the safety zone. This safety zone impacts a 350-foot-radius area of Soquel Cove in Capitola, CA for a limited duration of one hour and 20 minutes. The vessels desiring to transit through or around the temporary safety zone may do so upon express permission from the COTP or the COTP's designated representative.

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 U.S. Coast Guard Environmental Planning Policy, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have 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 one hour and 20 minutes that prevents entry to a 350-foot-radius area of Soquel Cove in Capitola, CA. It is categorically excluded from further review under paragraph L60(a) in Table 3–1 of Department of Homeland Security Directive 023–01. 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.T11–999 to read as follows:

§ 165.T11–999 Safety Zone; Monte Foundation Fireworks Display, Soquel Cove, Capitola, CA.

(a) *Location.* The following area is a safety zone: All navigable waters of Soquel Cove, from surface to bottom, within a circle formed by connecting all points 350 feet out from the fireworks firing site on Capitola Wharf in approximate position 36°58′10″ N, 121°57′12″ W (NAD 83).

(b) *Definitions.* As used in this section, ''designated representative'' means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel or a Federal, State, or local officer designated by or assisting the Captain of the Port San Francisco (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart B of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or the COTP's designated representative.

(3) Vessel operators desiring to enter or operate within the safety zone must contact the COTP or the COTP's designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative. Persons and vessels may request permission to enter the safety zone on VHF–23A or through the 24-hour Command Center at telephone (415) 399–3547.

(d) *Enforcement period.* This section will be enforced from 7:30 p.m. until 8:50 p.m. on October 13, 2019.

(e) *Information broadcasts.* The COTP or the COTP's designated representative will notify the maritime community of periods during which this zone will be enforced in accordance with 33 CFR 165.7.

Dated: October 7, 2019.

Marie B. Byrd,

Captain, U.S. Coast Guard, Captain of the Port, San Francisco.

[FR Doc. 2019–22307 Filed 10–10–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2018–0621, FRL–10000–91–Region 2]

Approval of Source-Specific Air Quality Implementation Plans; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the source-specific revisions to the New Jersey State Implementation Plan (SIP) for 8-hour ozone for Paulsboro Refining, Buckeye Port Reading Terminal, Buckeye Pennsauken Terminal, and Phillips 66 Company's Linden facility. The current source-specific SIP revision addresses the Reasonably Available Control Technology for volatile organic compounds (VOC) for external floating roof tanks. The intended effect of this revision is to address the Federal and state regulatory obligations for external floating roof tanks that store VOC with vapor pressure three (3) or more pounds per square inch absolute to be equipped with a domed roof.

DATES: This final rule is effective on November 12, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2018–0621. All documents in the docket are listed on the *http://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 electronically through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Longo, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3565, or by email at *longo.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

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II. The EPA's Evaluation of New Jersey's Submittals
III. Comments Received in Response to EPA's Proposed Action
IV. Summary of EPA Final Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background

The EPA is approving the revision to the New Jersey SIP for attainment and maintenance of the 8-hour ozone National Ambient Air Quality Standards (NAAQS) for the following major VOC facilities: Paulsboro Refining, Buckeye Port Reading Terminal, Buckeye Pennsauken Terminal, and Phillips 66 Company's Linden facility. Specifically, under New Jersey Administrative Code (NJAC), Title 7, Chapter 27, Subchapter 16 (''Control and Prohibition of Air Pollution by Volatile Organic Compounds''), Section 2 (''VOC Stationary Storage Tanks''), all external floating roof tanks (EFRT) in Range III with vapor pressure three (3) or more pounds per square inch absolute (psia) and that were in existence on May 18, 2009 must be equipped with a domed roof the first time the tank is degassed after May 19, 2009, and by no later than May 1, 2020. *See* NJAC 7:27–16.2(*l*)(4). However, NJAC 7:27–16.17(a–q) sets forth procedures and standards for establishing alternative and facility-specific VOC control requirements for situations in which, among other things, a facility can demonstrate that the control requirements pursuant to NJAC 7:27–16.2 are not economically or technologically feasible as applied to its operations. The EPA approved NJAC 7:27–16.17(a–q) into the New Jersey SIP in 2010 (*See* 75 FR 45483 (August 3, 2010)) and is utilizing its functions in this current action.

As was discussed in EPA's October 29, 2018 (83 FR 54300) proposal, the EPA reviewed the four facilities' alternative VOC control plans and Reasonably Available Control Technology (RACT) analyses submitted with New Jersey's SIP revision. The New Jersey Department of Environmental Protection (NJDEP) concluded and the RACT analyses concluded that: (1) Installing domes on 25 out of the 51 EFRT currently lacking them in accordance with the proposed schedule which identifies the doming dates for some tanks beyond the 2020 compliance date as authorized under NJAC 7:27–16.17, is economically and technologically feasible and therefore RACT and (2) doming the remaining 26 EFRT currently without domes is not

economically and technologically feasible and therefore not RACT. A full summary, including RACT requirements, is included in the technical support document (TSD) that is contained in the EPA's docket assigned to this **Federal Register** document.

II. The EPA's Evaluation of New Jersey's Submittals

The four facilities' source-specific SIP revisions found that the doming of the total inventory of EFRT was not RACT, but the doming of 25 out of 51 EFRT on a delayed proposed schedule was technologically and economically feasible pursuant to the New Jersey SIP and found that doming the remaining 26 was not economically feasible. The EPA has determined that the economic analyses regarding doming identified in the source-specific SIP revisions are consistent with the NJDEP's VOC RACT regulation and the EPA's rules and guidance. A detailed discussion of the doming requirements, schedules and EPA's evaluation can be found in the October 29, 2018 proposal and will not be restated here. *See* 83 FR 54300 (October 29, 2018).

III. Comments Received in Response to EPA's Proposed Action

In response to EPA's October 29, 2018 proposed approval of the source-specific revisions to the New Jersey State Implementation Plan (SIP) for 8-hour ozone for Paulsboro Refining, Buckeye Port Reading Terminal, Buckeye Pennsauken Terminal, and Phillips 66 Company's Linden facility, the EPA received public comments from five Commenters during the 30-day public comment period. After reviewing the comments, the EPA has determined that two Commenters provided feedback that is outside the scope of our proposed action or fails to identify any material issue necessitating a response. The comments do not raise issues relevant to the EPA's proposed action, therefore, the EPA will not provide a specific response to these comments. The EPA did, however, receive comments from three Commenters that are relevant and significant to the EPA's proposed action, warranting a response from the EPA. The relevant comments are summarized below and followed by an EPA response. All comments submitted may be viewed under Docket ID Number EPA–R02–OAR–2018–0621 on the *http://www.regulations.gov* website.

Comment: According to the Paulsboro RACT analysis the cost estimate to dome all 21 of the facility's ERFTs is in the range of $19,000–149,000 per ton VOC reduced. The lower limit of $19,000 is within the State's definition of what is economically feasible. The EPA should reverse the NJDEP's decision to allow this facility not to dome eleven of its 21 EFRT, furthermore, the EFRT should be domed six months ahead of what is expected under the source-specific SIP revision.

Response: The EPA disagrees that the cost of doming Paulsboro's total inventory of 21 ERFT is economically feasible and that the timeline for completing the doming requirement should be six months sooner than in the source-specific SIP revision. EPA disagrees $19,000 is within New Jersey's range of economically feasible RACT control. The commenter did not provide any documentation to support the statement that the lower limit of $19,000 is within the State's definition of what is economically feasible. On the contrary, New Jersey's SIP revision specifically states the Paulsboro RACT analysis estimates the cost to dome all 21 of the facility's ERFTs is in the range of $19,000–149,000 per ton VOC reduced, and that this is not cost-effective for meeting RACT. Therefore, as authorized in the New Jersey SIP, the facility developed a cost-effective alternative plan to reduce VOC emissions (*i.e.,* the alternative VOC control plan).

As for doming considered to be RACT, the EPA recognizes the doming provision in NJAC 7:27–16.2 is intended to cover situations in which doming an EFRT is RACT (that is, when implementation of the action is both economically and technologically feasible) and that facilities are allowed, under NJAC 7:27–16.17 to submit an alternative VOC control plan where implementation of the prescribed RACT is demonstrated by the facilities to be economically or technologically infeasible as applied to their specific operations. This alternative VOC control plan provision is intended to cover case-by-case circumstances for facilities to explore cost effective options for VOC emission reduction techniques. The EPA also takes notice of the fact that the facilities' calculated lower limit of $19,000 per ton VOC emission reduced, is well above what EPA has historically defined as economically feasible (*i.e.,* $160–1300).[1] Furthermore, contrary to the statement by the comment, the 2007 New Jersey RACT Plan (*i.e.,* State RACT rules) approved by the EPA and discussed in the EPA's October 29, 2018 (83 FR 54300) proposal, do not include a specific dollar amount. Thus, the four facilities submitted an alternative VOC control plan and NJDEP has approved, pursuant to the New Jersey ozone SIP, which is the subject of this rulemaking.

Paulsboro, and the other facilities under this rulemaking, considered the Federal and state RACT requirements, determining that the cost of doming the total inventory of EFRT by the compliance deadline is beyond the range of what traditionally EPA and the State would consider RACT. The intent of the alternative VOC control plan, as authorized under NJAC 7:27–16.17, is to create an alternative to the requirement to dome the facility's total inventory of EFRT that are subject to the doming requirement under NJAC 7:27–16.2 (''doming requirement''), because the facility has demonstrated that doming the tanks by the compliance date is not economically feasible under the State's RACT Plan. Under the alternative VOC control plan, the facility will follow an alternative implementation schedule (''Alternative Implementation Schedule'') in complying with the doming requirement on the identified tanks, as authorized under NJAC 7:27–16.17(d)(2)(x). Under NJAC 7:27–16.2(p)(2)(ii), the facility can submit a facility-wide VOC control plan with an implementation schedule that, among other requirements, ''shall be consistent with the facility's schedule for tank removal from service for normal inspection and maintenance.'' The facility's Alternative Implementation Schedule, as set forth in its alternative VOC control plan, is based on the facility's 15–20-year maintenance schedule for removing tanks from service for inspection and maintenance; the Alternative Implementation Schedule will allow the facility to achieve compliance in a cost reasonable manner. *See www.regulations.gov* EPA–R02–OAR–2018–0621, Final TSD Paulsboro Buckeye Phillips. According to the facility's RACT analysis cost table, (*see www.regulations.gov* EPA–R02–OAR–2018–0621, Paulsboro SIP revision EFRT domes 12 10 2015, Enclosure 7, Attachment 1), doming the set of tanks that are designated for compliance by the 2020 compliance date is economically feasible for those tanks because the annualized costs of installation and maintenance of the domes are within the State's RACT Plan considering the facility's business model. By contrast, the annualized costs of installation and maintenance of the domes for tanks that are following the Alternative Implementation Schedule to comply after the default 2020 compliance date are beyond RACT

[1] EPA guidance in 1994 indicated States should consider in their RACT determinations technologies that achieve 30–50 percent reduction within a cost range of $160–1300 per ton of NO_X emissions reduced. *See* 70 FR 71652.

because it is not economically feasible to dome them by compliance date. Doming these tanks would be too costly and unreasonable to dome tanks that are not out-of-service. According to the facility's RACT analysis cost table, generally, the group of tanks following the Alternative Implementation Schedule has higher total costs (*i.e.,* maintenance, administrative, and annualized) than the tanks being domed by the default compliance date, a difference of approximately $119,000 more. The facility's costs for doming are based on the EPA Control Cost Manual (*see https://www.epa.gov/economic-and-cost-analysis-air-pollution-regulations/cost-reports-and-guidance-air-pollution*) using a 7% interest over a 20-year useful life for each dome. The proposed Alternative Implementation Schedule in the alternative VOC control plan allows for the facility to spread the cost of installing and maintaining the domes over a more reasonable timeline; this phased approach allows the facility to minimize interference with normal operation while achieving sufficient VOC emission reductions to support the State's Ozone NAAQS attainment goals.

With respect to the comment to require doming on the EFRT to be completed six months ahead of the proposed dates, EPA believes this is unwarranted. Installing the domes on a schedule earlier than what the facilities provided in their analyses is not economically feasible and therefore not RACT. Ideally, domes should be installed after the tank is completely empty and out of service with ideal environmental weather conditions, which makes timing important. The schedules outlined in the facilities' alternative VOC control plans allow them flexibility to schedule installation of the domes during ideal conditions and allow for continuation of normal operating procedures. New Jersey has exercised its authority under NJAC 7:27–16.17(d) and has considered the facilities' proposed schedule for completion as a criterion in determining that the alternative control plans are sufficient.

Comment: The EPA cannot approve the EFRT dome deadline extensions as they exceed the regulatory and statutory mandate that RACT must be implemented ''as expeditiously as practicable but no later than 3 years.'' Title 40 CFR 51.1112(a)(3) requires ''The state shall provide for implementation of RACT as expeditiously as practicable but no later than January 1 of the 5th year after the effective date of designation for the 2008 ozone NAAQS.''

Response: The current action is approval of a source-specific SIP, not the overall State RACT SIP. Given that, the overall State 2008 RACT effective date is March 12, 2008, and the EPA approved the overall State's RACT SIP revision to address the 2008 8-hour ozone NAAQS on May 15, 2009, within the statutory 24-month deadline for implementing RACT 40 CFR 51.1112(a)(3) applies to the overall implementation of the State's RACT SIP. RACT compliance for a source-specific RACT determination submitted as a SIP revision, as we have in this rule making, is largely based on when the State submits and EPA acts on the SIP revision.

As stated in the previous response, installing the domes on a schedule earlier than what the facilities provided in their analyses is not economically feasible and therefore not RACT. Therefore, installation of the domes by 2017 for the 2008 Ozone NAAQS and earlier for the 1997 Ozone NAAQS, as the commenter suggests, would not be RACT because it is not economically feasible.

Comment: The EPA cannot approve this source-specific SIP revision because New Jersey failed to provide an anti-backsliding analysis as required under sections 110 and 172 of the CAA. As the Subchapter 16 is approved into the ozone SIP and requires all EFRT in Range III to be domed by no later than 2020, any exemption to this rule must consider anti-backsliding. Furthermore, New Jersey is part of both the New York non-attainment area and the ozone transport area where VOCs from tanks like these can impede area's ability to attain the ozone standard.

Response: The EPA recognizes the applicability of section 110(l) of the CAA for source-specific SIP revisions, but in this instance, EPA disagrees there is a cause for disapproval. Section 110(l) of the CAA prohibits the EPA from approving revisions to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other requirement of the CAA. In a circumstance such as that presented here, where approval of the RACT alternative (*i.e.,* the source-specific determination) would impact air quality in a nonattainment area that is required to have an attainment demonstration, any attainment demonstration for the area must account for the source-specific RACT, and may do so: (1) By showing that the attainment demonstration, in fact, accounts for the source-specific RACT alternative; or (2) where the attainment demonstration has not yet been approved, by showing (*e.g.,* by presenting information to be included in a forthcoming attainment demonstration) that the attainment demonstration will be able to properly account for emissions attributable to the proposed RACT alternative. For example, the information could show that the forthcoming attainment demonstration will not rely on emission reductions for the source category as a whole, or that it will reduce the emissions decreases credited to the source category by the estimated amount of increases associated with source-specific RACT determinations.

The EPA has determined that this SIP revision does not interfere with any applicable New Jersey ozone plan concerning attainment and reasonable further progress of the NAAQS, or any applicable requirement of the CAA. The ''applicable New Jersey ozone plan concerning attainment and reasonable further progress'' for purposes of this SIP revision is New Jersey's attainment demonstration SIP for the 2008 ozone standard. Two of the four facilities addressed in this SIP revision are located in the northern portion of the State as part of the New York-Northern New Jersey-Long Island, NY–NJ–CT (also referred to as the New York Metropolitan Area or NYMA) moderate nonattainment area. The comment is correct that Subchapter 16 (NJAC 7:27–16.2) is approved into the New Jersey ozone SIP and the requirement for all EFRT in Range III to be domed by 2020 is part of the SIP. While projected emission controls in the New Jersey 2008 ozone attainment modeling [2] included ozone projections to 2017 for bulk petroleum storage degassing, cleaning, landing, and slotted guide poles, the emission controls for placing domes on EFRT were not part of the modeling and no VOC emission reduction credits (neither for all of the EFRT being domed nor a percentage of them being domed) were relied upon for attainment nor reasonable further progress of the ozone NAAQS. The ozone attainment date for 1997 and 2008 ozone NAAQS for the NYMA are June 15, 2010 and June 20, 2018, respectively, but the doming requirement under NJAC 7:27–16 has a future compliance date that is beyond this current action, and beyond the attainment date for both the 1997 and 2008 ozone NAAQS. New Jersey

[2] NJDEP State Implementation Plan Revision for Attainment and Maintenance of the 75 ppb and 85 ppb Ozone National Ambient Air Quality Standards, Ozone Attainment Demonstrations for the Northern New Jersey-New York-Connecticut Nonattainment Area, *https://www.state.nj.us/dep/baqp/ozoneppb.html.*

recognized that (1) requiring doming of EFRT is an aggressive VOC emission reduction requirement, and (2) when promulgating these aggressive VOC emission reduction requirements to require doming of EFRT, individual facilities may demonstrate, consistent with the SIP approved provisions of NJAC 7:27–16.2 and 16.17, that these requirements are not technologically and economically feasible or RACT as applied to their operations, and therefore, New Jersey did not rely on the maximum benefit of all, nor a percentage of the EFRT being domed in the applicable New Jersey ozone attainment plan. There can be no threat of backsliding of the NAAQS for these two source-specific SIP revisions.

The other two facilities addressed in this revision are located in the southern area of the State, Paulsboro and Pennsauken, and part of the Philadelphia-Wilmington-Atlantic City (PA–NJ–MD–DE) ozone nonattainment area that is classified as marginal nonattainment for both the 2008 and 2015 ozone NAAQS so the State has no requirement to conduct attainment modeling nor to submit an attainment or reasonable further progress plan. Therefore, a comparison of the VOC emissions from the combined 12 EFRT (11 EFRT in Paulsboro and 1 EFRT in Pennsauken) not being domed to the EPA approved 2011 VOC emissions (*See,* 82 FR 44099 (September 21, 2017)) for the New Jersey portion of Philadelphia-Wilmington-Atlantic City ozone nonattainment area to show that the difference in emissions between the presumptive RACT and source-specific RACT is so small that it should not interfere with attainment or maintenance of the NAAQS or any other applicable requirement. The combined VOC emissions by not doming the 12 EFRT is approximately 14.98 tons per year (see the TSD for this action) or 0.041 tons per day compared to the total VOC emissions for the PA–NJ–MD–DE area of 199.09 tons per day which correlates to approximately 0.021 percentage change in VOC emissions. Based on this minimal VOC emissions change, EPA has determined there to be no threat of backsliding of the NAAQS for these two source-specific SIP revisions.

EPA also notes that New Jersey will have to account for the air quality benefits achieved from the doming of any EFRT in any future applicable ozone attainment or reasonable further progress plans where the planning milestones (*i.e.,* attainment date or projection year emissions inventory) are beyond the applicable compliance date for doming the EFRT. Specifically, New Jersey will have to account for the doming of any EFRT in the ozone attainment plan for the 2008 serious nonattainment NYMA area which is due August 3, 2020 and must show attainment by July 20, 2021. *See* 84 FR 44238, August 23, 2019.

Lastly, section 172(e) of the CAA provides that when the Administrator relaxes a NAAQS, the EPA must ensure that all areas which have not attained that NAAQS maintain ''controls which are no less stringent than the controls applicable to areas designated nonattainment before such relaxation.'' Although section 172(e) has never applied directly to EPA's ozone standards, because those ozone standards have only increased in stringency over time, the EPA has applied the principles of section 172(e) to develop anti-backsliding regulations following revocation of the 1-hour and 1997 ozone standards. For this action, the procedure for approving alternatives pursuant to NJAC 7:27–16.2 and 16.17 has already been approved by the EPA (*See,* 75 FR 45483 (August 3, 2010)) and is in the New Jersey SIP, so for the purposes of 172(e) the EPA is not altering the RACT provision and is executing it as approved.

IV. Summary of EPA's Final Action

The NJDEP determined that the four facilities discussed above could avoid doming 26 EFRT, because requiring the four facilities' total inventory of 51 EFRT to be domed by the default compliance date under NJAC 7:27–16 would be economically infeasible and not RACT. Specifically, the EPA is approving the NJDEP SIP revisions for 8-hour ozone to allow the Paulsboro facility not to dome eleven EFRT; the Buckeye facilities not to dome five EFRT; and the Phillips 66 Company facility not to dome ten EFRT. The EPA is also approving the requirement to dome the remaining 25 EFRT in accordance with the schedule set out in the facilities' alternative control plan. This SIP revision would require the facilities to dome eight of the 25 EFRT on a delayed timeline due to the economic infeasibility of doming the tanks by 2020 (and convert one EFRT to an internal floating roof tank).

As stated in EPA's October 29, 2018 proposal, NJAC 7:27–16.17 establishes procedures and standards for alternative, facility-specific VOC control requirements. Under NJAC 7:27–16.17(*l*)(2), a source seeking approval for facility-specific controls must modify its Title V operating permit to incorporate the approved alternative control plan and comply with the plan's requirements in order to comply with NJAC 7:27–16.

V. 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, the EPA is finalizing the incorporation by reference of the provisions described above in Section IV. Final Action. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region 2 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 Clean Air Act 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. *See* 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 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 Order 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 (Public Law 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, this rule does not have tribal implications as specified by Executive Order 13175, because the SIP is not approved to apply in Indian country located in the state, and the EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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 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 December 10, 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 40 CFR Part 52

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

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

Dated: September 23, 2019.

Peter D. Lopez,

Regional Administrator, Region 2.

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 FF—New Jersey

■ 2. Section 52.1570(d) is amended by adding entries for ''Paulsboro Refinery,'' ''Buckeye Port Reading Terminal,'' ''Buckeye Pennsauken Terminal,'' and ''Phillips 66 Company Linden'' to the end of the table to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(d) * * *

EPA—APPROVED NEW JERSEY SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier No.	State effective date	EPA approval date	Comments
*	*	*	*	*
Paulsboro Refinery	PI 55829; BOP 180002 U900.	6/26/2018	10/11/2019, [Insert citation of publication].	The External floating roof tanks (EFRTs) that are not being domed include tank numbers 725, 802, 1023, 1027, 2869, 2940, 2941, 3174, S8O, S8I, and S82. The EFRTs that may complete doming after the regulatory deadline include tank numbers 1063, 1116, 1320, 1065, and 1066.
Buckeye Port Reading Terminal.	PI 17996, BOP 160001 U8	6/13/2018	10/11/2019, [Insert citation of publication].	The EFRTs that are not being domed include tank numbers 7930, 7934, 7937, and 7945. The EFRTs that may complete doming after the regulatory deadline include tank numbers 1219 and 1178.
Buckeye Pennsauken Terminal.	PI 51606, BOP 130002 U1	8/21/2014	10/11/2019, [Insert citation of publication].	The EFRT that are not being domed include tank number 2018.
Phillips 66 Company Linden	PI 41805, BOP 170004 U16	1/26/2018	10/11/2019, [Insert citation of publication].	The EFRTs that are not being domed include tank numbers T52, T105, T119, T134, T244, T349, T350, T354, T355, and T356. The EFRT that may complete doming after the regulatory deadline include tank number T234.

* * * * *

[FR Doc. 2019–22108 Filed 10–10–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 191007–0057]

RIN 0648–XX009

Fisheries of the Northeastern United States; Golden Tilefish Fishery; 2020 Specifications

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

ACTION: Final rule.

SUMMARY: We are implementing 2020 specifications for the commercial golden tilefish fishery, including the annual catch and total allowable landings limits. This action establishes allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan.

DATES: Effective November 1, 2019, through October 31, 2020.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council manages the golden tilefish fishery under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for setting annual specifications. Regulations implementing the Tilefish FMP appear at 50 CFR part 648, subparts A and N, which require the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, for up to 3 years at a time. On September 7, 2017, we proposed 2018 specifications for the golden tilefish fishery and announced projected specifications for 2019 and 2020 based on Council recommendations (82 FR 42266). Public comment was accepted through September 22, 2017. We published a final rule implementing the 2018 specifications on November 7, 2017 (82 FR 51578).

On October 23, 2017, we published a proposed rule (82 FR 48967) to implement Framework Adjustment 2 to the Tilefish FMP (Framework 2), and accepted public comment through November 7, 2017. A final rule implementing Framework 2 was published on March 13, 2018 (83 FR 10803). One provision of Framework 2 changed how assumed discards are accounted for in the specifications setting process. As a result, the Framework 2 final rule adjusted the previously published 2018 specifications and projected specifications for 2019 and 2020. Additional background information regarding the development of these specifications was provided in these rules and is not repeated here. We published a final rule implementing the 2019 specifications on October 26, 2018 (83 FR 54055).

At the end of each fishing year, we evaluate catch information and determine if the ACL has been exceeded. If the ACL is exceeded, the regulations at 50 CFR 648.293 require a pound-for-pound reduction in a subsequent fishing year. During fishing year 2018 and thus far in fishing year 2019, there have been no annual catch limit or total allowable landings overages, nor is there any new biological information that would require altering the projected 2020 specifications. As a result, we are announcing the final specifications for fishing year 2020, as projected in the Framework 2 final rule (83 FR 10803; March 13, 2018), and in the final rule implementing the 2019 specifications (83 FR 54055) (See Table 1).

TABLE 1—SUMMARY OF GOLDEN TILEFISH SPECIFICATIONS

	2019		Final 2020	
	mt	million lb	mt	million lb
Overfishing Limit	1,098	2.421	1,039	2.291
ABC	742	1.636	742	1.636
ACL	742	1.636	742	1.636
Individual Fishing Quota (IFQ) ACT	705	1.554	705	1.554
Incidental ACT	37	0.082	37	0.082
IFQ TAL	705	1.554	705	1.554
Incidental TAL	33	0.072	33	0.072

As in previous years, no golden tilefish quota has been allocated for research set-aside. All other management measures in the golden tilefish fishery will remain unchanged for the 2020 fishing year. The incidental trip limit will stay 500 lb (226.8 kg), or 50 percent, by weight, of all species being landed, including tilefish; whichever is less. The recreational catch limit will remain eight fish per-angler, per-trip. Annual IFQ allocations will be issued to individual quota shareholders in mid-October, before the November 1 start of the fishing year.

The fishery management plan allows for the previous year's specifications to remain in place until replaced by a subsequent specifications action (rollover provision). As a result, the 2019 specifications remain in effect until replaced by the 2020 specifications included in this rule.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA) finds it is impracticable, unnecessary, and contrary to the public interest to provide for prior notice and an opportunity for public comment, pursuant to authority set forth at U.S.C. 553(b)(B). The proposed rule for Framework 2 (82 FR 48967, October 23, 2017) provided the public with the opportunity to comment on the projected specifications for 2019 and 2020, and the specifications for fishing year 2020 remain the same as projected in the Framework 2

rulemaking. All comments received were addressed in the respective final rule for Framework 2 (83 FR 10803, March 13, 2017). Similarly, the need to implement these measures in a timely manner for the start of the golden tilefish fishing year, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3), to establish an effective date less than 30 days after date of publication. The public and fishing industry participants expect this action because we previously alerted the public in the proposed and final rules that we would conduct this review in interim years of the status quo multi-year specifications and announce the final quota prior to the start of the fishing year on November 1.

This final rule is exempt from review under Executive Order 12866 because this action contains no implementing regulations.

This final rule does not duplicate, conflict, or overlap with any existing Federal rules.

This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act.

A final regulatory flexibility analysis (FRFA) was prepared for the 2018–2020 specifications final rule (83 FR 10803, March 13, 2017). That analysis included the potential impacts of the projected status quo specifications for 2019 and 2020, and no new information has arisen that would change the conclusions drawn in that previous analysis. Because advance notice and the opportunity for public comment are not required for this action under the Administrative Procedure Act, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* do not apply to this rule. Therefore, no new regulatory flexibility analysis is required and none has been prepared.

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

Dated: October 8, 2019.

Samuel D. Rauch III,

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

[FR Doc. 2019–22316 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 150818742–6210–02]

RIN 0648–XY045

Fisheries of the Economic Exclusive Zone Off Alaska; Pollock Fishery by Vessels Using Trawl Gear in the Western Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels using trawl gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2019 Chinook salmon prohibited species catch limit established for vessels using trawl gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 8, 2019, through 2400 hours, A.l.t., December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

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

The 2019 Chinook salmon prohibited species catch (PSC) limit for vessels directed fishing for pollock using trawl gear in the Western Regulatory Area of the GOA is 6,684 Chinook salmon (§ 679.21(h)(2)(i)).

In accordance with § 679.21(h)(8), the Regional Administrator has determined that the 2019 Chinook salmon PSC limit established for vessels directed fishing for pollock using trawl gear in the Western Regulatory Area of the GOA has been reached. Therefore, NMFS is prohibiting directed fishing for pollock by vessels using trawl gear in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay closing directed fishing for pollock by vessels using trawl gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 7, 2019.

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

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 8, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–22318 Filed 10–8–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 84, No. 198

Friday, October 11, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0761; Airspace Docket No. 19–ANM–18]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Missoula, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E4 airspace areas extending upward from the surface and Class E5 airspace areas extending upward from 700 and 1,200 feet above the surface of the earth at Missoula International Airport, Missoula, MT. This action also proposes to remove the Missoula VORTAC from the legal description as it is not needed to describe the airspace and using the airport as the single reference point enhances the simplicity of describing the airspace. Additionally, this action also proposes to make administrative corrections to the airport's Class D and Class E2 legal descriptions. This action would ensure the safety and management of IFR operations at the airport.

DATES: Comments must be received on or before November 25, 2019.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1–800–647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2019–0761; Airspace Docket No. 19–ANM–18, at the beginning of your comments. You may also submit comments through the internet at *http://www.regulations.gov.* FAA Order 7400.11D, 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 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Matthew Van Der Wal, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3695.

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 the Class E airspace at Missoula International Airport, Missoula, MT to support instrument flight rules (IFR) operations at the 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. Persons 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–2019–0761; Airspace Docket No. 19–ANM–18''. 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 Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D 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 amending Class E4 airspace at Missoula International Airport extending upward from the surface within 1.2 miles each side of the 310° bearing extending from the 4.4-mile radius to 10.8 miles northwest of the airport, and within 1.3 miles each side of the 295° bearing extending from the 4.4-mile radius to 5.6 miles northwest of the airport, and within 0.7 miles each side of the 142° bearing extending from the 4.4-mile radius to 5.6 miles southeast of the airport, and within 1.5 miles each side of the 171° bearing extending from the 4.4-mile radius to 10.6 miles south of the Missoula International Airport. This airspace is designed to contain IFR aircraft descending below 1,000 feet above the surface.

This action also proposes to amend Class E5 airspace extending upward from 700 feet above the surface within 3.5 miles each side of the 311° bearing extending from the 4.4-mile radius to 22.3 miles northwest of the airport, and 1.6 miles west and 4.3 miles east of the 179° bearing extending from the 4.4-mile radius to 15.2 miles south of the Missoula International Airport. This airspace is designed to contain IFR aircraft descending below 1,500 feet above the surface. Further, this action proposes to amend Class E5 airspace extending upward from 1,200 feet above the surface within a 35-mile radius of the Missoula International Airport. This action also proposes an administrative update to remove the Missoula VORTAC from the legal description, this will allow the airspace to be described from a single point, enhancing the simplicity of airspace description.

Further, this action proposes to remove the Missoula VORTAC from the Class E5 legal description. The VORTAC is not needed to define the airspace and removing reference to it allows for a simpler description of the airspace from the airport.

Lastly, this action proposes an administrative update to the Class D and Class E2 legal descriptions to replace Airport/Facilities Directory with Chart Supplement.

Class D, E2, E4 and E5 airspace designations are published in paragraphs 5000, 6002, 6004 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this 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 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM MT D Missoula, MT (Unchanged)

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface up to and including 5,700 feet MSL within a 4.4-mile radius of the Missoula International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as Surface Areas.

* * * * *

ANM MT E2 Missoula, MT (Unchanged)

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface within a 4.4-mile radius of the Missoula International Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

ANM MT E4 Missoula, MT

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from the surface within 1.2 miles each side of the 310° bearing extending from the 4.4-mile radius to 10.8 miles northwest of the airport, and within 1.3 miles each side of the 295° bearing extending from the 4.4-mile radius to 5.6 miles northwest of the airport, and within 0.7 miles each side of the 142° bearing extending from the 4.4-mile radius to 5.6 miles southeast of the airport, and within 1.5 miles each side of the Missoula 171° radial extending from the 4.4-mile radius of the airport to 10.6 miles south of the Missoula International Airport.

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM MT E5 Missoula, MT (Revised)

Missoula International Airport, MT
(Lat. 46°54′59″ N, long. 114°05′26″ W)

That airspace extending upward from 700 feet above the surface within 3.5 miles each side of the 311° bearing extending from the 4.4-mile radius to 22.3 miles northwest of the airport, and 1.6 miles west and 4.3 miles east of the 179° bearing extending from the 4.4-mile radius to 15.2 miles south of the airport, and that airspace extending upward from 1,200 feet about the surface within a 35-mile radius of the Missoula International Airport.

Issued in Seattle, Washington, on October 4, 2019.

Byron Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2019–22255 Filed 10–10–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 242

[Release No. 34–87193; File No. S7–15–19]

RIN 3235–AM56

Rescission of Effective-Upon-Filing Procedure for NMS Plan Fee Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing to amend Regulation NMS under the Securities Exchange Act of 1934 (''Exchange Act'') to rescind a provision that allows a proposed amendment to a national market system plan (''NMS plan'') to become effective upon filing if the proposed amendment establishes or changes a fee or other charge. As a result of rescinding the provision, such a proposed amendment instead would be subject to the procedures set forth in Rule 608(b)(1) and (2) that require the Commission to publish the proposed amendment, provide an opportunity for public comment, and preclude a proposed amendment from becoming effective unless approved by the Commission (the ''standard procedure'').

DATES: Comments should be received on or before December 10, 2019.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–15–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–15–19. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549–1090 on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Michael Bradley, Special Counsel, at (202) 551–5594, Andrew Sherman, Special Counsel, at (202) 551–7255, Liliana Burnett, Attorney-Advisor, at (202) 551–2552, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing to amend 17 CFR 242.608 (Rule 608 of Regulation NMS) under the Exchange Act to rescind paragraph (b)(3)(i) of Rule 608 and thereby eliminate the effective-upon-filing exception for proposed NMS plan amendments to establish or change a fee or other charge collected on behalf of all the plan participants in connection with access to, or use of, any facility contemplated by the plan or amendment (including changes in any provision with respect to distribution of any net proceeds from such fees or other charges to the participants) (''Proposed Fee Changes'').

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I. Introduction

Section 11A(a) of the Exchange Act directs the Commission to facilitate the creation of a national market system for qualified securities.[1] To help implement the national market system, the Commission has required the self-regulatory organizations (''SROs'') to act jointly through NMS plans to, among other things, establish certain facilities. Some NMS plans govern the facilities through which registered securities information processors (''SIPs'') collect, consolidate, and distribute real-time market information (also known as core data) that is essential to investors and others who wish to participate in the U.S. markets for exchange-listed equities and options. The SRO participants, through these NMS plans, charge fees for core data, and the total revenues generated by these fees totaled more than $500 million in 2017.[2] Core data fees are paid by a wide range of market participants, including investors, broker-dealers, data vendors, and others. The NMS plan governing the consolidated audit trail (''CAT'') also contemplates fees would be paid by SRO participants and collected from SRO members.

Rule 608(b) of Regulation NMS sets forth the procedure and requirements for amending an NMS plan. Specifically, pursuant to Rule 608(b)(1), the Commission shall publish notice of any proposed NMS plan amendments, together with the terms of substance of the filing or a description of the subjects and issues involved, and provide

[1] 15 U.S.C. 78k–1(a).

[2] *See infra* Section III.A.

interested persons an opportunity to submit written comments. These filings and related comments assist the Commission in determining whether to approve the proposed amendment. Pursuant to Rule 608(b)(2), the Commission shall approve a proposed NMS plan amendment, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan amendment is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act.[3] Pursuant to Rule 608(b)(1) and (2), the Commission publishes public notice of a proposed NMS plan amendment and provides an opportunity for public comment *before* the amendment can go into effect. In addition, the rule provides that a proposed amendment cannot become effective until it is approved by the Commission.[4]

Paragraph (b)(3)(i) of Rule 608, however, provides an exception to the standard procedure for Proposed Fee Changes (''Fee Exception''). Under the Fee Exception, a Proposed Fee Change may be put into effect upon filing with the Commission, and an NMS plan may begin charging the new fee prior to an opportunity for public comment and without Commission action.

Rule 608(b)(3)(iii) also provides that the Commission may summarily abrogate a Proposed Fee Change within 60 days after filing and require it to be refiled in accordance with the standard procedure if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Exchange Act. The substance of a Proposed Fee Change filed under the Fee Exception is required to be the same as the substance of a Proposed Fee Change (or any other proposed NMS plan amendment) filed under the standard procedure.[5]

Given the substantial amount and broad effect of NMS plan fees, as well as the need of many market participants to obtain core data and the potential conflicts of interest in setting fees discussed below,[6] the Commission preliminarily believes that a Proposed Fee Change should not become effective (and SROs should not be able to charge new or altered fees to investors, broker-dealers, and others) until *after* the public has had an opportunity to comment and the Commission has approved the Proposed Fee Change. Accordingly, the Commission is proposing to eliminate the Fee Exception by rescinding subparagraph (b)(3)(i) of Rule 608.

II. Background

A. NMS Plans That Charge Fees

The Fee Exception is available for NMS plans that currently charge or intend to charge fees and for which the SRO participants, through these NMS plans, must file Proposed Fee Changes with the Commission. Currently, these NMS plans are the core data plans and the CAT plan.[7] The participants in these plans are all SROs.

1. Core Data Plans

For each NMS security,[8] the NMS plans generally define consolidated market information (or ''core data'') as consisting of: (1) The price, size, and exchange of the last sale; (2) each exchange's current highest bid and lowest offer, and the shares available at those prices; and (3) the national best bid and offer (*i.e.,* the highest bid and lowest offer currently available on any exchange).[9] Pursuant to NMS plans, this core data is collected, consolidated, processed, and disseminated by the SIPs.[10] In addition, the SIPs collect, calculate, and disseminate certain regulatory data, including information required by the National Market System Plan to Address Extraordinary Market Volatility (''LULD Plan''),[11] information relating to regulatory halts and market-wide circuit breakers (''MWCBs''),[12] and information regarding short sale circuit breakers pursuant to Rule 201,[13] as well as collect and disseminate other NMS stock data and disseminate certain administrative messages.

Multiple NMS plans currently govern the collection, consolidation, processing, and dissemination of core data for NMS stocks. Specifically, these plans govern three networks (''Networks'') that disseminate core data based on primary listing market: (1) Network A for NYSE-listed stocks; (2) Network B for stocks listed on exchanges other than the NYSE or Nasdaq; and (3) Network C for stocks listed on Nasdaq. Networks A and B are operated pursuant to the Consolidated Tape Association (''CTA'') Plan, which governs the collection and distribution of transaction information, and the Consolidated Quotation (''CQ'') Plan, which governs the collection and distribution of quotation information. Transaction and quotation information for Network C stocks is collected and distributed pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq/UTP'').

In addition, one NMS plan governs the collection, consolidation, processing, and dissemination of last sale and quotation information for listed options, namely, the plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''OPRA'').

2. The CAT Plan

The NMS plan governing the CAT was approved by the Commission on November 15, 2016.[14] The purpose of

[3] *See* Rule 608(b)(2).

[4] *See* Rule 608(b)(1).

[5] *See* Rule 608(a).

[6] *See infra* Sections V.B.1 and V.B.2.

[7] NMS plan filings under Rule 608 are available at: *https://www.sec.gov/rules/sro/nms.htm.*

[8] *See* Rule 600(b)(47) (defining ''NMS security'' as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options); *see also* Rule 600(b)(48) (defining ''NMS stock'' as any NMS security other than an option).

[9] *See In the Matter of the Application of Bloomberg L.P.,* Securities Exchange Act Release No. 83755 at 3 (July 31, 2018), *available at https://www.sec.gov/litigation/opinions/2018/34-83755.pdf* (''Bloomberg Order'').

[10] *See* Rule 603(b) (requiring that every national securities exchange on which an NMS stock is traded and national securities association act jointly pursuant to one or more effective NMS plans to disseminate consolidated information on quotations for and transactions in NMS stocks, and that such plan or plans provide for the dissemination of all consolidated information for an individual NMS stock through a single plan processor).

[11] *See* Securities Exchange Act Release Nos. 85623 (Apr. 11, 2019), 84 FR 16086 (Apr. 17, 2019) (approving LULD Plan on a permanent basis); 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (approving LULD Plan, as modified by Amendment No. 1, on a pilot basis); *see also http://www.luldplan.com/index.html.*

[12] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531(June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129).

[13] *See* Rule 201(b)(3) of Regulation SHO; 17 CFR 242.201(b)(3).

[14] *See* Limited Liability Company Agreement of CAT NMS, LLC (effective Jan. 10, 2018), *available at https://www.catnmsplan.com/wp-content/*

Continued

the CAT plan is to provide for the creation, implementation, and maintenance of a comprehensive audit trail for the U.S. securities markets.[15] This consolidated audit trail is designed to ''capture customer and order event information for orders in NMS securities, across all markets, from the time of order inception through routing, cancellation, modification, or execution in a single, consolidated data source.'' [16]

The CAT plan approved by the Commission allows the operating committee of CAT NMS, LLC (the entity charged with the creation, implementation, and maintenance of CAT), to establish funding for CAT NMS, LLC, including establishing an allocation of its related costs among SRO participants and SRO members that is consistent with the Exchange Act.[17] The CAT plan thus contemplates that fees would be paid by the SRO plan participants, as well as collected from SRO members, which are the ''Industry Members'' under the plan.[18]

3. NMS Plans' Fee Setting Process

Each of the NMS plans is governed by an operating committee composed of one voting representative from each SRO participant.[19] Through their participation in the plan operating committees and votes to approve plan amendments, the SRO plan participants approve new fee proposals for each plan and, in the case of the core data plans (CTA/CQ, Nasdaq/UTP and OPRA), new proposed allocations of fee revenues.[20] Under the CAT plan, the operating committee has discretion to establish fees, which the SRO participants will implement, for both SRO participants and Industry Members.[21] Once a fee or revenue allocation proposal has been approved by the SRO plan participants, the proposal must be filed with the Commission pursuant to Rule 608 of Regulation NMS in order to become effective.

B. Rule 608 of Regulation NMS and the Fee Exception

Rule 608 of Regulation NMS sets forth requirements for filing and amendment of NMS plans. Rule 608(a) provides that any two or more SROs, acting jointly, may file a new proposed NMS plan or a proposed amendment to an existing NMS plan by submitting to the Commission the text of the plan or amendment along with extensive supporting information. Rule 608(b) addresses the effectiveness of proposed NMS plans and plan amendments. It sets forth the standard procedure, along with exceptions for certain types of proposals. Specifically, paragraphs (b)(1) and (b)(2) of Rule 608 generally require that proposed plan changes must be filed with the Commission, published for comment, and approved by Commission order *before* they can become effective and implemented.[22] Paragraph (b)(3) of Rule 608, however, provides an exception to this procedure in three contexts: (i) To establish or change fees or charges (including the allocation of resulting revenues among the participating SROs) (*i.e.,* the Fee Exception), (ii) solely plan administration matters, and (iii) solely technical or ministerial matters. Proposed NMS plan amendments fitting one of these contexts may (but are not required to) be filed pursuant paragraph (b)(3) of Rule 608 and thereby avoid the standard procedure of paragraphs (b)(1) and (2).

A proposed NMS plan amendment that is filed pursuant to paragraph (b)(3) of Rule 608 is deemed effective upon filing, prior to an opportunity for public comment and without Commission action. Paragraph (b)(3)(iii), however, provides that the Commission, at any time within 60 days of the filing of an immediately effective amendment, may summarily abrogate the amendment and require that the amendment be re-filed pursuant to the standard procedure of paragraphs (b)(1) and (2). Consequently, while Rule 608(b)(3) provides an opportunity for public comment and for the Commission to abrogate a Proposed Fee Change, the effective-upon-filing provision means that market participants can be charged a new or altered fee before comments can be submitted and before the Commission can evaluate whether to abrogate a Proposed Fee Change.

The Commission originally adopted the Fee Exception in 1981 in Rule 11Aa3–2, the predecessor to Rule 608. Rule 11Aa3–2 was adopted pursuant to Section 11A(a)(3)(B) of the Exchange Act, which broadly authorizes the Commission to require SROs to act jointly with respect to matters relating to the national market system or facilities thereof, including NMS plans.[23] Separate from the context of NMS plans and the SROs' roles as participants in those plans, SROs also charge fees individually pursuant to a different section of the Exchange Act. In contrast to Section 11A(a)(3)(B), which

uploads/2018/01/CAT-NMS-Plan-Current-as-of-1.10.18.pdf (''2018 CAT Plan''); Securities Act Release No. 79318 (Nov. 15, 2016), 81 FR 84696 (Nov. 23, 2016) (''CAT Plan Approval Order''). In 2012, the Commission adopted Rule 613, which required national securities exchanges and national securities associations to submit a national market system plan to create, implement, and maintain a consolidated audit trail. *See* Securities Act Release No. 67457 (July 18, 2012), 77 FR 45721 (Aug. 1, 2012).

[15] *See* CAT Plan Approval Order, *supra* note 14, at 84698.

[16] *See id.*

[17] 2018 CAT Plan, *supra* note 14, at Sections 11.1–11.2. The operating committee's funding responsibility also includes, among other things, establishing a ''tiered fee structure'' in which the fees charged to ''execution venues'' (*i.e.,* SRO participants and alternative trading systems) are based upon the level of market share, and the fees charged to SRO members' non-ATS activities are based upon message traffic, as well as avoiding ''any disincentives such as placing an inappropriate burden on competition and reduction in market quality[.]'' *Id.* at Section 11.2.

[18] *See* CAT Plan Approval Order, *supra* note 14, at 84710; *see also* 2018 CAT Plan, *supra* note 14, at Section 1.1 (defining an ''Industry Member'' as a member of a national securities exchange or a member of a national securities association) and Section 11.1(b).

[19] *See* Second Restatement of CTA Plan Articles (effective Aug. 27, 2018), *available at https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CTA%20Plan%20-%20Composite%20as%20of%20August%2027,%202018.pdf* (''2018 CTA Plan''), at I.(b), IV.(a); Restatement of CQ Plan (effective July 9, 2018), *available at https://www.nyse.com/publicdocs/ctaplan/notifications/trader-update/CQ_Plan_Composite_as_of_July_9_2018.pdf* (''2018 CQ Plan''), at IV.(a); Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (effective Jan. 9, 2018), *available at https://www.utpplan.com/DOC/Nasdaq-UTPPlan_after_43rd_Amendment-Excluding_21st_36th_38th_42nd_Amendments.pdf* (''2018 Nasdaq/UTP Plan''), at IV.A; Limited Liability Company Agreement of Options Price Reporting Authority, LLC (effective Nov. 3, 2017), *available at https://uploads-ssl.webflow.com/5ba40927ac854d8c97bc92d7/5bf419a6b7c4f5085340f9af_opra_plan.pdf* (''2017 OPRA Plan''), at Section 4.2 (the 2017 OPRA Plan refers to its operating committee as the ''Management Committee'' and its SRO participants as ''Members''; the terms ''operating committee'' and ''participants'' are used throughout this release for ease of reference and are meant to be interchangeable with the terms ''Management Committee'' and ''Members'' in the context of the OPRA Plan); 2018 CAT Plan, *supra* note 14, at Section 4.2.

[20] *See* 2018 CTA Plan, *supra* note 19, at XII.(a) and XII.(b)(iii); 2018 CQ Plan, *supra* note 19, at IX.(a) and IX.(b)(iii); 2018 Nasdaq/UTP Plan, *supra* note 19, at IV.B.(3), IV.B.(5) and IV.C; 2017 OPRA Plan, *supra* note 19, at Sections 4.1(d), 7.1, 10.3; 2018 CAT Plan, *supra* note 14, at Sections 11.1–11.2.

[21] *See* 2018 CAT Plan, *supra* note 14, at Sections 11.1(b) and 11.2.

[22] The Commission is required to approve an NMS plan amendment within 120 days of the date of publication of notice of the filing, with such changes or subject to such conditions as the Commission may deem necessary or appropriate, if it finds that such plan or amendment is necessary or appropriate in the public interest. *See* Rule 608(b)(2). The Commission may extend this review period up to 180 days if it finds such a longer review period to be appropriate and publishes its reasons for so finding, or if the sponsors of the proposal consent to a longer review period. *Id.*

[23] *See* 15 U.S.C. 78k–1(a)(3)(B); *see also* Securities Exchange Act Release No. 17580 (Feb. 26, 1981), 46 FR 15866 (Mar. 10, 1981) (''Rule 608 Adopting Release'').

governs Rule 608 and NMS plan fees, Section 19(b) of the Exchange Act governs the fees that a SRO charges individually.[24] Unlike Section 11A(a)(3)(B), which does not statutorily mandate an effective-upon-filing procedure for Proposed Fee Changes, Section 19(b)(3)(A) specifically mandates by statute an effective-upon-filing procedure for all fee changes that SROs individually propose, regardless of whether the fee is charged to persons other than members of the SRO.[25] Congress added this mandate to Section 19(b)(3)(A) of the Exchange Act in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'').[26] The legislative history of the Dodd-Frank Act indicates that Congress was responding to a concern expressed by several exchanges that the Section 19(b) SRO rule filing process creates a significant competitive advantage for less regulated competitors that do not have to seek regulatory approval before changing their rules.[27]

NMS plan fees, in contrast, are not subject to Section 19(b) of the Exchange Act and, as discussed above, Congress, in amending Section 19(b)(3)(A), was responding to concerns about competitive disparities in the context of individual SRO fees. Indeed, the Commission previously has noted that Congress did not intend to treat NMS plan amendments the same as individual SRO rule changes. For example, when the Commission adopted Rule 11Aa3–2 (the prior designation of Rule 608), the Commission stated that it did ''not believe that it was the intent of Congress to treat NMS Plans as analogous to SRO rules'' and rejected the argument of some commenters that the procedures for NMS plan amendments under Section 11A should incorporate the same procedures specified in Section 19 for rule changes by individual SROs.[28]

Although the Commission did not believe that Congress mandated Section 19 procedures for NMS plan amendments, Rule 11Aa3–2, as adopted in 1981, included all three of the effective-upon-filing exceptions that currently are in Rule 608 and that were similar to the effective-upon-filing exceptions in Section 19.[29] At that time, the Commission stated that the Fee Exception was added in response to concerns expressed by exchanges that they should be able to change NMS plan fees without prior Commission approval to avoid administrative delay.[30]

When Regulation NMS was adopted in 2005, Rule 11Aa3–2 was redesignated as Rule 608 (and will hereinafter be referred to as Rule 608).[31] Several commenters on the proposal of Regulation NMS in 2004 advocated eliminating the effective-upon-filing procedure; they argued that it gave excessive power to self-interested parties and did not facilitate informed and meaningful public and industry participation and comment.[32] When adopted however, Regulation NMS did not change the effective-upon-filing procedure. Rather, the Commission stated that issues relating to the level of core data fees would be most appropriately addressed in the broader context of its separate review of SRO structure, governance, and transparency, which included a 2004 proposal on SRO transparency and a 2004 concept release on SRO structure.[33] The Commission ultimately did not take further action on the proposal or concept release.

C. Recent Roundtable Comments and Petitions Regarding the Fee Exception

Some market participants questioned the Fee Exception more recently. Two petitions for rulemaking were submitted to the Commission in 2017 and 2018 requesting, among other things, that the Fee Exception be rescinded.[34] One of the petitions was submitted by 24 firms representing a broad cross section of market participants, including institutional investors, broker-dealers, and data vendors.[35] In connection with and during the Roundtable on Market Data and Market Access (''Roundtable'') that was hosted by SEC staff in October 2018, commenters and panelists urged the Commission to rescind the Fee Exception to allow for more public and Commission scrutiny of Proposed Fee Changes for core data before they are effective.[36] These commenters and petitioners believe that market participants do not have an opportunity to meaningfully comment on Proposed Fee Changes for core data before the

[24] 15 U.S.C. 78s(b).

[25] *See* 15 U.S.C. 78s(b)(3)(A).

[26] Public Law 111–203, 124 Stat. 1833 (July 21, 2010).

[27] *See* S. Rep. No. 111–176, at 106 (2010).

[28] *See* Rule 608 Adopting Release, *supra* note 23, at 15868 (noting that the legislative history ''indicates that Congress viewed the Commission's authority in Section 11A(a)(3)(B) as distinct from its authority contained in Section 19 or any other provision of the Act.'').

[29] *See* Rule 608 Adopting Release, *supra* note 23.

[30] *Id.* at 15869.

[31] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37570 (June 29, 2005).

[32] *See* Letter from Carrie E. Dwyer, General Counsel and Executive Vice President, Charles Schwab & Co., Inc. (June 30, 2004) at 9, *available at https://www.sec.gov/rules/proposed/s71004/dwyer63004.pdf;* Letter from Marc E. Lackritz, President, Securities Industry Association (June 30, 2004) at 26, *available at https://www.sec.gov/rules/proposed/s71004/s71004-362.pdf;* Letter from Marc E. Lackritz, President, Securities Industry Association (Feb. 1, 2005) at 26, *available at https://www.sec.gov/rules/proposed/s71004/sia020105.pdf;* Letter from Lisa M. Utasi, President, *et. al.,* The Security Traders Association of New York, Inc. (June 30, 2004) at 15, *available at https://www.sec.gov/rules/proposed/s71004/stany063004.pdf.*

[33] *See* Securities Exchange Act Release Nos. 51808 (June 9, 2005), 70 FR 37495, 37560–61 (June 29, 2005) (Regulation NMS adopting release); 50699 (Nov. 18, 2004), 69 FR 71125 (Dec. 8, 2004) (SRO governance and transparency proposing release); 50700 (Nov. 18, 2004), 69 FR 71255 (Dec. 8, 2004) (Concept Release Concerning Self-Regulation). One commenter on the SRO structure concept release echoed the sentiment expressed by commenters on the Regulation NMS proposal that the effective-upon-filing procedure gives excessive power to self-interested parties and does not facilitate informed and meaningful public and industry participation and comment. *See* Letter from Phylis M. Esposito, Executive Vice President and Chief Strategy Officer, Ameritrade, Inc. (Mar. 8, 2005) at 3, *available at https://www.sec.gov/rules/concept/s74004/pmesposito030805.pdf.*

[34] *See* Petition for Rulemaking Regarding Market Data Fees and Request for Guidance on Market Data Licensing Practice; Investor Access to Market Data (Aug. 22, 2018) (SEC 4–728) at 2, 11, *available at https://www.sec.gov/rules/petitions/2018/petn4-728.pdf* (noting that Section 11A does not mandate that SIP fee increases be effective upon filing and expressing the public's need for time to comment); Petition for Rulemaking Concerning Market Data Fees (Dec. 6, 2017) (SEC 5–716) at 8, *available at https://www.sec.gov/rules/petitions/2017/petn4-716.pdf* (''December 6, 2017 Petition'') (similarly noting that Section 11A of the Exchange Act does not speak to the immediate effectiveness of SIP fee filings, and proposing that the Commission remove paragraph (b)(3)(i) from Rule 608); *see also* Letter from Melissa MacGregor, Managing Director and Associate General Counsel, SIFMA (May 21, 2018) at 1, *available at https://www.sec.gov/comments/4-716/4716-3678964-162455.pdf* (endorsing the December 6, 2017 Petition's proposal, among other things, that the Commission repeal immediate effectiveness for SIP fee filings).

[35] *See* December 6, 2017 Petition, *supra* note 34, at 9.

[36] *See, e.g.,* Letter from Marcy Pike, SVP, Enterprise Infrastructure, Krista Ryan, VP, Associate General Counsel, Fidelity Investments (Oct. 26, 2018) at 6–7, *available at https://www.sec.gov/comments/4-729/4729-4566044-176136.pdf* (''Fidelity Letter'') (recommending ''that the SEC amend Rule 608(b) under Regulation NMS to prevent SIP fees from becoming effective immediately upon filing with the SEC, and to require a public notice and comment period for all SIP fee filings''); Letter from Mehmet Kinak, Vice President—Global Head of Systematic Trading & Market Structure, and Jonathan D. Siegel, Vice President—Senior Legal Counsel (Legislative & Regulatory Affairs), T. Rowe Price Associates, Inc. (Jan. 10, 2019) at 2 *available at https://www.sec.gov/comments/4-729/4729-4844471-177204.pdf* (recommending that fee changes by the SIPs be ''subject to notice and public comment before approval or disapproval by the SEC''); Equity Market Structure Roundtables: Roundtable on Market Data and Market Access October 26, 2018 Transcript, *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102618-transcript.pdf* (''Oct. 26 Tr.''), at 239:13–20 (statement of Mr. Rich Steiner, RBC Capital Markets, noting that rescinding the Fee Exception ''would require a public notice and comment period prior to the SEC's approval or disapproval of any fee changes, thereby allowing transparency and stakeholder input'').

market participants are subject to the new fees.[37]

III. Proposed Rescission of the Fee Exception

The Commission is proposing to rescind Rule 608(b)(3)(i) and thereby eliminate the effective-upon-filing procedure for Proposed Fee Changes. As a result, the standard procedure, which requires public notice, an opportunity for public comment, and Commission approval by order *before* a proposed plan amendment can become effective, would apply to any Proposed Fee Change.

The proposed rescission of the Fee Exception would not change any requirements regarding the substantive information that must be set forth in Proposed Fee Changes. The information required by paragraph (a) of Rule 608 and the relevant provisions of the Exchange Act apply whether a proposed fee change filing is submitted under the Fee Exception or the standard procedure.

The Commission preliminarily believes that eliminating the Fee Exception and instead requiring the standard procedure for Proposed Fee Changes would help ensure that fees are fair and reasonable *before* they go into effect. NMS plan fee changes can significantly affect the interests of investors and market participants. By changing the timing of effectiveness, the proposed rescission of the Fee Exception would give commenters an opportunity to provide their views about a Proposed Fee Change prior to the time they are charged a new or altered fee. Moreover, while the Commission can abrogate an immediately effective NMS plan amendment, the input of commenters is an important part of the Commission's review of Proposed Fee Changes, and the Commission generally has not abrogated a Proposed Fee Change prior to reviewing the comments. Rather than allow an NMS plan to charge new or altered fees during this review process, with the potential that investors and market participants may not have adequate notice or time to plan for a fee change before it goes into effect, the Commission preliminarily believes, for the reasons discussed throughout, that the effectiveness and implementation of new or altered fees should occur only after the comment and review process is complete.

A. NMS Plan Fees Must Be Paid by Non-Plan Participants and Are Substantial

Non-SRO market participants, including investors, broker-dealers, data vendors, and others, are required to pay the fees charged by the NMS plans to obtain access to core data.[38] Retail investors that access core data through their broker-dealers (and not directly) can still be affected by core data fees in that such fees paid by their broker-dealers can affect their ready access through their broker-dealer to full NBBO market information.[39] The Commission has previously stated that investors must have core data to participate in the U.S. equity markets.[40] And many market participants, including all broker-dealers, *must* have access to core data to meet their regulatory obligations. Broker-dealer panelists at the Roundtable noted that they are compelled to purchase core data for various reasons, including to receive Limit Up/Limit Down (''LULD'') plan price bands, to perform checks required by Rule 15c3–5 under the Exchange Act (the ''market access'' rule),[41] and for redundancy purposes.[42] Moreover, some broker-dealers use core data to comply with the requirements of Rule 611 of Regulation NMS to prevent trade-throughs and to meet their duty of best execution for customer orders. Also, pursuant to Rule 603(c) of Regulation NMS,[43] known as the ''Vendor Display Rule,'' if a broker-dealer displays any information with respect to quotations for or transactions in an NMS stock in certain contexts, it must also provide a consolidated display for such stock.[44] Broker-dealers typically meet this regulatory requirement by using core data, for which fees must be paid.[45]

Similarly, pursuant to the CAT plan, the SRO participants may set fees that Industry Members must pay for the costs of the CAT system.[46] As discussed above, the CAT plan allows the SRO plan participants, through the operating committee of CAT, to establish an allocation of costs among SRO participants and Industry Members, and collect fees from Industry Members.[47] SRO participants, in setting the allocation of costs among themselves and Industry Members, are beset by similar conflicts that exist when setting fees for core data.[48]

Moreover, the total revenues derived from NMS plan fees are substantial. For example, the total revenues generated by fees for core data totaled more than $500 million in 2017.[49] Similarly, with respect to the CAT plan, the fees related to the costs of creation and maintenance of the CAT systems are and will continue to be substantial.[50] The substantial fees charged by NMS plans to a wide range of market participants heightens the need for full review of Proposed Fee Changes prior to the time that a new or altered fee is charged to market participants.

B. Proposed Fee Changes To Be Subject to Standard Procedure

As noted above,[51] the Commission added the Fee Exception to Rule 608 in 1981 in response to concerns expressed by exchanges about the administrative burdens and delays that could occur if

[37] *See, e.g.,* Fidelity Letter, *supra* note 36, at 6–7 (noting that ''[f]rom a practical standpoint, [the Fee Exception] means that market participants do not know until after a fee filing is effective that fees have increased, or have an opportunity to meaningfully comment on fee increases before being subject to them.''); December 6, 2017 Petition, *supra* note 34, at 6–7 (''In the public interest and for the protection of investors, there should be more transparency and stakeholder input into fee filings through the public notice and comment process, as well as more transparency into fee increases that come in the form of policy changes or changes to the terms and conditions stipulating allowable uses of market data.'').

[38] SROs also pay the relevant fees for use of core data. The CAT plan is currently being funded by the plan participants, but the CAT plan contemplates a funding model in which both plan participants and market participants would contribute to the funding of the CAT. *See* 2018 CAT Plan, *supra* note 14, at Article XI.

[39] As discussed in Section V.B.2 below, some broker-dealers provide customers with market information from SRO proprietary top-of-book data feeds as substitutes for core data in certain applications. This proprietary top-of-book data may be less expensive than SIP data, but may only contain information from one exchange or one exchange family.

[40] *See* Bloomberg Order, *supra* note 9, at 4.

[41] 17 CFR 240.15c3–5.

[42] *See* Equity Market Structure Roundtables: Roundtable on Market Data and Market Access October 25, 2018 Transcript, *available at https://www.sec.gov/spotlight/equity-market-structure-roundtables/roundtable-market-data-market-access-102518-transcript.pdf* (''Oct. 25 Tr.''), at 138:23–139:3, 169:12–24 (statements of Adam Inzirillo, Bank of America Merrill); Oct. 25 Tr., at 184:14–185:2 (statement of Michael Friedman, Trillium).

[43] 17 CFR 242.603(c).

[44] *See* Rule 603(c).

[45] *See* December 6, 2017 Petition, *supra* note 34, at 1 (''As required by the SEC's Display Rule, vendors and broker-dealers are required to display consolidated data from all the market centers that trade a stock. In order to comply with the Display Rule, such vendors and broker-dealers must purchase and display consolidated data feeds distributed by securities information processors ('SIPs'), which are owned by the exchanges and operated pursuant to NMS plans. The fees charged by SIPs are distributed as income to each of the participating exchanges.'').

[46] *See supra* note 17.

[47] *See supra* Section II.A.2.

[48] *See infra* Section V.B.1.

[49] This figure is derived from 2017 audited financial statements for the CTA/CQ and Nasdaq/UTP plans, and from 2017 summary financial information for the OPRA plan.

[50] *See, e.g.,* CAT Plan Approval Order, *supra* note 14, at 84801–02; Securities Exchange Act Release No. 81189 (July 21, 2017), 82 FR 35005, 35008 (July 27, 2017) (stating that the Operating Committee estimated overall CAT costs to be $50,700,000 in total for the year beginning November 21, 2016).

[51] *See supra* Section II.B.

fees could not be changed without prior Commission approval.[52] A potential concern about administrative delay could arise in circumstances where an SRO's competitive position might be harmed by the inability to change its fee quickly. However, the Commission previously has noted that where plans responsible for providing core data are monopolistic providers of such data, there is no market competition that can be relied upon to set competitive prices.[53] For example, the core data plans provide critical market information that is not available from other sources, such as LULD plan price bands and administrative messages.[54]

Moreover, SRO structures and the nature of SRO relations with their members have changed substantially since the Fee Exception was adopted in 1981. Then, exchange SROs were structured as mutual organizations that were owned, for the most part, by SRO members that were registered broker-dealers.[55] Today, in contrast, nearly all exchange SROs are part of publicly-traded exchange groups that are not owned by the SRO members, and there is less opportunity for members to influence a Proposed Fee Change before it is filed with the Commission. As a result, the Commission preliminarily believes that it is more important today than it was prior to the demutualization of the exchange SROs for members and other interested parties to have an opportunity, via the standard procedure, to express their views on a Proposed Fee Change after it is filed with the Commission but before it is effective and can be charged to market participants. This opportunity is not available under the Fee Exception because, even if a Proposed Fee Change is subsequently abrogated, the fee is effective immediately upon filing, remains effective for the period between filing and abrogation, and market participants can be charged the fee during the entire period between filing and abrogation.

The Commission recognizes that eliminating the Fee Exception and subjecting Proposed Fee Changes to the standard procedure may extend the timeframe in which NMS plan participants can put into effect new or amended fees. But the Commission preliminarily believes that changes in the costs of operating NMS plans generally can be reasonably forecasted and that NMS plan participants should be able to account for the longer time periods of the standard procedure in planning new or amended fees. Moreover, as discussed below, few Proposed Fee Changes are filed each year under Rule 608, and we estimate based on past practice that the median time it would take the Commission to make a decision to approve or disapprove proposed NMS plan amendments would be 70.5 days from the time of filing.[56] In the Commission's preliminary view, this delay should not disrupt the ability of NMS plan participants to implement new or amended fees as necessary to perform their plan responsibilities. On balance, therefore, the Commission preliminarily believes that subjecting Proposed Fee Changes to the standard procedure should not impose significant costs, and that any such costs are justified by the benefit of requiring public notice, an opportunity for public comment, and Commission approval by order before a Proposed Fee Change can become effective and market participants are charged a new or altered fee.

The Commission therefore is proposing that all Proposed Fee Changes be subject to the standard procedure set forth in Rule 608(b)(1) and (2).

Requests for Comment:

The Commission requests comment on all aspects of this proposal as well as, in particular, on the following:

1. Do commenters agree that the Commission should rescind the Fee Exception? Why or why not?

2. Are there positive or negative implications, in addition to those discussed above, of the Commission's proposal to rescind the Fee Exception?

3. Is the procedure for notice, comment, and Commission approval or disapproval under existing Rule 608(b)(1) and (2) appropriate for Proposed Fee Changes? Should there be an opportunity for public comment before Proposed Fee Changes can become effective? Should Commission approval be required before Proposed Fee Changes can become effective? Should the time periods set forth in Rule 608(b)(2) be longer or shorter if applied to Proposed Fee Changes? Should any other aspects of paragraphs (b)(1) or (b)(2) of Rule 608 be altered in their application to Proposed Fee Changes?

4. Does the current effective-upon-filing procedure detract from the willingness of commenters to submit their views on Proposed Fee Changes, given that the proposed fee is already in effect when commenters may submit their views? Would market participants be more likely to comment on Proposed Fee Changes if they knew that the fees at issue were not yet effective and could not become effective without Commission action after consideration of comments? If so, do commenters believe that the proposed approach would lead to a more diverse and rich comment process and thereby promote a more informed evaluation of Proposed Fee Changes than is currently provided by the Fee Exception? If commenters do not believe the change would promote a more informed evaluation, why not?

5. Instead of rescinding the Fee Exception altogether, should the Commission modify the abrogation procedure in Rule 608(b)(3)(iii) such that Proposed Fee Changes are not effective immediately upon filing, but become automatically effective some time period (*e.g.,* 60 or 90 days) after filing if the Commission does not abrogate the filing? This alternative would assure that commenters had an opportunity to comment prior to being charged a new or altered fee, as well as provide the Commission an opportunity to review the comments in deciding whether to abrogate the filing. If this new period between the date of filing and automatic effectiveness expired without Commission abrogation, the Proposed Fee Change would become effective without Commission action. Do commenters believe this alternative is preferable to the proposed rescission of the Fee Exception? What, if any, additional aspects of this potential alternative should be considered?

6. Are there other alternative approaches that the Commission could adopt for achieving the goal of providing an opportunity for public comment on and Commission review of

[52] *See* Rule 608 Adopting Release, *supra* note 23, at 15869.

[53] *See, e.g.,* Bloomberg Order, *supra* note 9, at 4. Because the CTA, CQ, and Nasdaq/UTP plans establish the only processors to whom exchanges and associations are required to report their NMS stock data under Rule 603(b) of Regulation NMS, they effectively have a monopoly over core data. *Cf.* Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613, 70627 (Dec. 17, 1999) (Concept Release on Regulation of Market Information Fees and Revenues) (characterizing ''exclusive processors of [core data] market information'' as ''monopolistic provider[s] of a service'').

[54] Examples of administrative messages include free form text messages that, among other things, announce systems problems at an exchange.

[55] *See* Securities Exchange Act Release No. 50699 (Nov. 18, 2004), 69 FR 71125, 71132 (Dec. 8, 2004) (noting that SROs had been challenged by the trend to demutualize and that the ''impact of demutualization is the creation of another SRO constituency—a dispersed group of public shareholders—with a natural tendency to promote business interests'').

[56] *See infra* Section V.B.1. The Commission recognizes that this estimate is based on historical data on proposed NMS plan amendments. This historical data necessarily reflects the substance of the particular amendments, the comments received on those amendments, and other factors that can affect the timing of Commission action. As a result, the estimate based on historical data may not reflect the time periods for Commission action going forward.

Proposed Fee Changes prior to the time they become effective and new or altered fees are charged to market participants?

7. Do commenters believe that the fact that nearly all exchange SROs are public companies that have demutualized raises concerns about immediate effectiveness of Proposed Fee Changes? Do commenters believe that, currently, investors and other market participants that are not plan participants do not have a meaningful opportunity to influence Proposed Fee Changes before they become effective under the Fee Exception? Do commenters believe that such an opportunity is provided under the Rule 608(b)(1) and (2) procedures?

8. What issues or improvements relating to Rule 608 procedures would you recommend the Commission address or undertake to ensure Proposed Fee Changes are not unduly delayed if the immediate effectiveness procedure were eliminated?

9. Do commenters believe that additional guidance on the content of Proposed Fee Changes would help improve the process for handling such filings?

10. Does the availability of proprietary data products sold by some SROs mitigate the Commission's preliminary concerns about subjecting market participants to new fees prior to any review by the Commission or opportunity for comment? Do those proprietary data products represent viable, competitively-priced alternatives to the core data distributed by the NMS plan processors?

IV. Paperwork Reduction Act

The Commission believes that the proposed rescission of the Fee Exception would not impose any new, or revise any existing, collection of information requirement as defined by the Paperwork Reduction Act of 1995, as amended (''PRA'').[57] Accordingly, the Commission is not submitting this proposal to the Office of Management and Budget for review under the PRA.[58] The Commission requests comment on whether the proposed rescission of the Fee Exception would create any new, or revise any existing, collection of information pursuant to the PRA.

V. Economic Analysis

A. Introduction

Section 3(f) of the Exchange Act requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation.[59] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[60] Exchange Act Section 23(a)(2) prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

Wherever possible, the Commission has quantified the likely economic effects of the proposed amendments. However, most of the costs, benefits, and other economic effects discussed are inherently difficult to quantify. Therefore, much of our discussion is qualitative in nature. Our inability to quantify certain costs, benefits, and effects does not imply that such costs, benefits, or effects are less significant. We request that commenters provide relevant data and information to assist us in analyzing the economic consequences of the proposed amendments.

B. Baseline

The Commission has assessed the likely economic effects of the proposed amendments, including benefits, costs, and effects on efficiency, competition, and capital formation, against a baseline that consists of the existing regulatory process for NMS plan fee filings in practice, the structure of the market for core data and aggregated market data products, and the structure of the market for trading services in NMS securities.

1. NMS Plan Fee Filings

There are currently a total of five NMS plans that either charge fees or could charge fees and have filed Proposed Fee Changes under the Fee Exception. These consist of the CAT Plan along with four NMS plans that govern the collection and dissemination of core data: The CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan.[61]

The SROs approve all Proposed Fee Changes.[62] This can create potential conflicts of interest for the SROs because their duties administering NMS plans that either charge or could charge fees could potentially come into conflict with other products the SROs sell or costs they incur as part of their businesses.[63] For example, some of the SROs sell proprietary data products that can, in some situations, be used as substitutes for core data.[64] This can create a conflict of interest with respect to the four NMS plans that set fees for core data because the SROs vote to set SIPs' fees and also own and control the dissemination of all equity and option market data and set the prices of some of the proprietary data products SIPs may compete against.[65] Another conflict potentially exists because both SRO participants and Industry Members are responsible for paying fees related to the CAT plan; however, the CAT operating committee decides how these fees should be split.[66] The Commission comment process is one of the only ways market participants have to express their views on these Proposed Fee Changes.[67] However, under the current process, market participants do not have the opportunity to comment before the Proposed Fee Changes become effective.[68]

Because Proposed Fee Changes are effective upon filing, fees in connection with an NMS plan can be charged immediately upon filing with the Commission.[69] In some cases, SRO members or subscribers to core data plans may not be given adequate time to plan for a new or altered fee before it is implemented.[70] For example, if

[57] 44 U.S.C. 3501 *et seq.*

[58] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[59] 15 U.S.C. 78c(f).

[60] 15 U.S.C. 78w(a)(2).

[61] *See supra* Section II.A.

[62] See id.

[63] *See supra* Section III.B and *infra* Section V.B.2.

[64] However, these proprietary data products do not contain some critical market information, such as LULD plan price bands and administrative messages, which are only available through the SIPs. *See supra* note 54 and accompanying text; *see also infra* Section V.B.2.

[65] *See infra* Section V.B.2.

[66] *See supra* note 17 and accompanying text.

[67] Industry members and other market participants also sit on the Advisory Committees to NMS plans and can express their views during Operating Committee meetings. However, they cannot vote on Proposed Fee Changes. *See supra* note 19.

[68] *See supra* Section III.B.

[69] SRO participants must post a proposed amendment to an NMS plan on their website no later than two business days after the filing of the proposed amendment with the Commission. *See* Rule 608(a)(8)(ii).

[70] The median time it takes NMS plans to begin charging new fees pursuant to Proposed Fee Changes is 62.5 days after filing with the Commission. *See infra* note 72 and accompanying text. However, a few Proposed Fee Changes give significantly less notice before beginning to charge new fees. *See, e.g.,* Securities Exchange Act Release Nos. 69157 (Mar. 18, 2013), 78 FR 17946 (Mar. 25, 2013) and 69361 (Apr. 10, 2013), 78 FR 22588 (Apr. 16, 2013). In some instances, commenters have indicated that they did not receive enough notice regarding the fee changes. *See, e.g.,* Letter from Peter Moss, Managing Director, Trading, Financial and Risk, Thomson Reuters (May 7, 2013) at 1–2, *available at https://www.sec.gov/comments/s7-24-89/s72489-34.pdf* (''Moss Letter'') (commenting on need to ''make necessary changes to billing systems

subscribers to SIP core data are not given enough warning before a SIP changes fees, some subscribers, such as market data vendors, might not have enough time to adjust to the fee changes.

Table 1 shows information on the number of Proposed Fee Changes filed under Rule 608(b)(3)(i) since 2010 for each of the NMS plans that either charge fees or could charge fees. Since 2010, an average of 4.2 Proposed Fee Changes have been filed each year. The median time it takes the Commission to notice a Proposed Fee Change on its website is 25.5 days from the time it is filed.[71] The median time it takes an NMS plan to begin charging new fees pursuant to Proposed Fee Changes is 62.5 days after filing with the Commission.[72] Table 1 also contains information on how many of the fee filings were abrogated by the Commission or withdrawn by the NMS plan after receiving comments from market participants. For cases in which the Commission abrogates a NMS plan fee filing, the median time the fee filing is effective before the Commission abrogates the filing is 57 days.[73] No Proposed Fee Changes that have been abrogated by the Commission have been refiled under the standard procedure.[74] For cases in which an NMS plan withdraws a fee filing, the median time that the fee filing is effective before the NMS plan withdraws the filing is 46.5 days.[75] The median time it takes the Commission to notice fee filings that have been withdrawn is 34 days.[76] When an NMS plan refiles a withdrawn Proposed Fee Change, it is refiled on an immediately effective basis. The median time it takes an NMS plan to refile a withdrawn Proposed Fee Change is 174 days from the time the initial Proposed Fee Change was withdrawn.[77] The median time it takes the Commission to determine whether to approve an NMS plan amendment filed under the standard procedure is 45 days from the time it was noticed.[78]

TABLE 1—INFORMATION ON NMS PLAN FEE FILINGS UNDER RULE 608(b)(3)(i)

Year	Number filed				Number abrogated				Number withdrawn			
	CTA/CQ	NASDAQ/UTP	OPRA	CAT	CTA/CQ	NASDAQ/UTP	OPRA	CAT	CTA/CQ	NASDAQ/UTP	OPRA	CAT
2010	2	0	1	.....	0	0	0	.....	0	0	0	.....
2011	0	2	4	.....	0	0	0	.....	0	0	0	.....
2012	0	0	2	.....	0	0	0	.....	0	0	0	.....
2013	3	3	1	.....	0	0	0	.....	2	2	0	.....
2014	2	1	2	.....	0	0	0	.....	0	0	0	.....
2015	0	0	0	.....	0	0	0	.....	0	0	0	.....
2016	0	0	5	0	0	0	0	0	0	0	0	0
2017	2	1	2	1	0	0	0	1	2	0	0	0
2018	1	2	0	1	1	1	0	0	0	0	0	1
Total	10	9	17	2	1	1	0	1	4	2	0	1

This table shows the number of Proposed Fee Changes filed under Rule 608(b)(3)(i) of Regulation NMS, the number of Proposed Fee Changes that were abrogated by the Commission, and the number of Proposed Fee Changes that were withdrawn by the NMS plan each year from 2010–2018 for the following NMS plans: The CTA and CQ Plans, the NASDAQ/UTP Plan, the OPRA Plan, and the CAT Plan. Proposed Fee Changes to the CTA and CQ Plans are included in one category because fee changes to both NMS plans are included in the same filing.

Source: This table was compiled from NMS plan rule filings *available at https://www.sec.gov/rules/sro/nms.htm.*

and to notify clients of the changes''); Letter from Kimberly Unger, Esq., CEO and Executive Director, The Security Traders Association of New York, Inc., New York, New York (Apr. 10, 2013) at 2, *available at https://www.sec.gov/comments/sr-ctacq-2013-01/ctacq201301-2.pdf* (''Unger Letter''); Letter from Ira D. Hammerman, Senior Managing Director & General Counsel, SIFMA (Mar. 28, 2013) at 6–7, *available at https://www.sec.gov/comments/s7-24-89/s72489-31.pdf* (''Hammerman Letter'') (commenting on need of ''professionals and their firms, as well as market data vendors, to alter their systems and business plans''); *and* Fidelity Letter, *supra* note 36, at 6.

[71] Statistics on the number of days it takes the Commission to notice a Proposed Fee Change and the number of days it takes the Commission to notice a withdrawn Proposed Fee Change were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2014 and 2019. The Commission chose this five-year lookback time period to calculate these measures because it reflects a current snapshot of the timeframes under which the Commission provides notices of Proposed Fee Changes and withdrawn Proposed Fee Changes. The Commission preliminarily believes that the median value is the most appropriate measure to estimate these times. The Commission preliminarily believes that the average is not an informative estimate for these measures because the sample size is small and contains extreme outliers. NMS plan amendments are *available at: https://www.sec.gov/rules/sro/nms.htm.*

[72] Statistics on the number of days it takes an NMS plan to begin charging a new fee are based on dates determined from NMS plan fee filing amendments to the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. NMS plan fee filings that contained policy changes and did not alter or impose a fee or fee cap were not included in this calculation. These statistics do not include NMS plan fee filing amendments to the CAT Plan. NMS plan amendments are *available at: https://www.sec.gov/rules/sro/nms.htm.*

[73] The input of commenters are an important part of the Commission's review of Proposed Fee Changes, and the Commission generally has not abrogated a Proposed Fee Change prior to reviewing the comments. *See supra* Section III and Section II.B. Statistics on the number of days it takes the Commission to abrogate an NMS plan fee filing were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. NMS plan amendments are *available at: https://www.sec.gov/rules/sro/nms.htm.*

[74] *See supra* Section II.B.

[75] Statistics on the number of days it takes an NMS plan to withdraw a fee filing were determined from NMS plan fee filing amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under Rule 608(b)(3)(i) between 2010 and 2019. Note these statistics do not include the Twenty-fourth amendment to the CTA Plan and the Fifteenth amendment to the CQ Plan. *See* Securities Exchange Act Release No. 84194 (Sept. 18, 2018), 83 FR 48356 (Sept. 24, 2018). These amendments withdraw fee changes from the Twenty-second amendment to the CTA Plan and the Thirteenth amendment to the CQ Plan, which was challenged by Bloomberg and stayed by the Commission on July 31, 2018. *See* Bloomberg Order, *supra* note 9. NMS plan amendments are *available at: https://www.sec.gov/rules/sro/nms.htm.*

[76] *See supra* note 71.

[77] Some refiled Proposed Fee Changes were modified but remained substantially similar to the withdrawn fee changes. *See, e.g.,* Securities Exchange Act Release No. 82071 (Nov. 14, 2017), 82 FR 55130 (Nov. 20, 2017). Other refiled Proposed Fee Changes were modified in response to comments. *See, e.g.,* Securities Exchange Act Release No. 70953 (Nov. 27, 2013), 78 FR 72932 (Dec. 4, 2013).

[78] The time it takes for the Commission to determine whether to approve an NMS plan amendment filed under the standard procedure ranges from a minimum of 28 days to a maximum of 111 days. It takes the Commission an average of 60.8 days to determine whether to approve an NMS plan amendment filed under the standard procedure from the time it was noticed. Statistics on the number of days it takes the Commission to approve an NMS plan amendment filed under the standard procedure are based on NMS plan amendments to the CAT Plan, the CTA Plan, the CQ Plan, the Nasdaq/UTP Plan, and the OPRA Plan filed under the standard procedure between 2010 and 2019. NMS plan amendments are *available at: https://www.sec.gov/rules/sro/nms.htm.*

Since 2010, the four NMS plans that govern core data have filed a total of 36 Proposed Fee Change amendments under Rule 608(b)(3)(i). Two of these filings have been abrogated by the Commission and six have been withdrawn by the SRO participants.

Since 2017, the CAT Plan has filed two Proposed Fee Change amendments under Rule 608(b)(3)(i) to establish the allocation of funding for the CAT. One of these fee filings was abrogated by the Commission and one was withdrawn by the SRO participants.

2. Market for Core and Aggregated Market Data Products

Under the NMS plans described above,[79] core data is collected, consolidated, processed, and disseminated by the SIPs.[80] NMS plan operating committees, which are composed of the SROs, set the fees the SIPs charge for core data.[81] Any revenue earned by the SIPs, after deducting costs, is split among the SROs.[82]

The Commission preliminarily believes that the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information,[83] which means that for all such products they would have the market power to charge supracompetitive prices.[84] Fees for core data are paid by a wide range of market participants, including investors, broker-dealers, data vendors, and others.

One reason the SIPs have significant market power is that, although some market data products are comparable to SIP data and could be used by some core data subscribers as substitutes for SIP data in certain situations, these products are not perfect substitutes and are not viable substitutes across all use cases. For example, in the equity markets, some third party data aggregators buy direct depth-of-book feeds from the exchanges and aggregate them to produce products similar to the equity market SIPs.[85] However, these products do not provide market information that is critical to some subscribers and only available through the SIPs, such as LULD plan price bands and administrative messages.[86] Additionally, some SROs offer top-of-book data feeds, which may be considered by some to be viable substitutes for SIP data for certain applications.[87] However, in the equity markets, broker-dealers typically rely on the SIP data to fulfill their obligations under Rule 603 of Regulation NMS, *i.e.,* the ''Vendor Display Rule'', which requires a broker-dealer to show a consolidated display of market data in situations in which a trading or order routing decision can be implemented.[88]

The purchase of market data from all SROs, either directly or indirectly, is necessary for all broker-dealers executing orders in NMS securities. For example, Rule 611(a) of Regulation NMS requires trading centers to establish policies and procedures reasonably designed to prevent trade-throughs. In order to prevent trade-throughs, executing broker-dealers need to be able view the protected quotes on all exchanges. They can fulfill this requirement by using SIP data, proprietary data feeds offered by the SROs, or by using a combination of both. Additionally, some broker-dealers use core data to meet their duty of best execution for customer orders.

SROs have significant influence over the prices of most market data products. For example, SROs set the pricing of the top-of-book data feeds that compete with SIP data, and they also collectively, as participants in the NMS plans, decide what fees to set for SIP data.[89] Although third party data aggregators might compete with the SIPs by offering products that provide core data for the equity markets, they ultimately derive their data from exchange proprietary direct feeds, whose prices are set by the SROs.[90]

3. Current Structure of the Market for Trading Services in NMS Securities

The Commission described the structure of the market for trading in NMS securities, as of that time, in the Notice and the CAT NMS Plan Approval Order.[91] While the Commission's analysis of state of competition in the Notice is fundamentally unchanged, the market for trading services in options and equities currently consists of 23 national securities exchanges, all but one of which are participants to NMS plans,[92] as well as off-exchange trading venues including broker-dealer internalizers and 31 NMS Stock ATSs,[93] which are not participants in NMS plans.[94] The 23 exchanges are currently controlled by seven separate entities; three of which operate a single exchange.[95]

As discussed above, broker-dealer internalizers and ATSs subscribe to SIP data as well as other proprietary data products offered by the exchanges and data aggregators.[96] Additionally, FINRA rebates a portion of the SIP revenue it receives back to broker-dealer internalizers and ATSs based on the trade volume they report.[97] The CAT NMS Plan Approval Order discusses

[79] *See supra* Section II.A.1.

[80] *See supra* note 10 and accompanying text.

[81] *See supra* Section II.A.3.

[82] FINRA rebates a portion of the SIP revenue it receives back to its members. *See* FINRA Rule 7610B, *available at http://finra.complinet.com/en/display/display_main.html?rbid=2403&element_id=7355.*

One Roundtable commenter estimated that from 2013 to 2017, through the Nasdaq/UTP plan, the FINRA/Nasdaq TRF gave 83 percent of SIP revenue it received to broker-dealers. *See* Letter from Thomas Wittman, Executive Vice President, Head of Global Trading and Market Services and CEO, Nasdaq Stock Exchange (Oct. 25, 2018) at 19, *available at https://www.sec.gov/comments/4-729/4729-4562784-176135.pdf.*

[83] *See supra* note 54 accompanying text.

[84] *See NCAA* v. *Board of Regents,* 468 U.S. 85, 109 n.38 (1984).

[85] The feeds produced by third party data aggregators offer additional features, such as lower latency, but usually cost more than SIP data. *See* Oct. 25 Tr., *supra* note 42, at 126:20–129:8 (statement of Mr. Skalabrin).

The equity market SIPs are the core data governed by the CTA Plan, the CQ Plan, and the Nasdaq/UTP Plan. *See supra* Section II.A.1.

[86] *See supra* note 54 and accompanying text.

[87] In the equity markets, the top-of-book feeds offered by the SROs are usually less expensive than SIP data. However, they may only contain information from one exchange, or one exchange family. *See, e.g.,* Nasdaq Basic *available at: https://business.nasdaq.com/intel/GIS/nasdaq-basic.html;* CBOE One *available at: https://markets.cboe.com/us/equities/market_data_services/cboe_one/;* and NYSE BQT *available at: https://www.nyse.com/market-data/real-time/nyse-bqt.*

In the options markets, some SROs also offer top-of-book data feeds that aggregate options data from exchanges in their exchange family. However, they do not offer consolidated information from all of the options exchanges. These data feeds usually offer lower latency than OPRA. *See, e.g.,* CBOE BBO *available at: https://markets.cboe.com/us/options/market_data_services/;* and Best of NASDAQ Options (BONO) *available at: http://www.nasdaqtrader.com/Micro.aspx?id=BONO.*

[88] *See supra* note 45 and accompanying text.

[89] Fees are subject to Commission approval. *See supra* Section II.A.3 *and* Section II.B.

[90] Pursuant to Section 19(b) of the Exchange Act and Rule 19b–4 thereunder, SROs submit proposed rule changes to the Commission in which they set prices for their direct feed data, and those prices can vary depending on the type of end user.

[91] *See* CAT NMS Plan Approval Order, *supra* note 14, Section V.G.1.

[92] LTSE is not yet a participant to NMS plans.

[93] As of September 18, 2019, 31 NMS Stock ATSs are operating pursuant to an initial Form ATS–N. A list of NMS Stock ATSs, including access to initial Form ATS–N filings that are effective, can be found at *https://www.sec.gov/divisions/marketreg/form-ats-n-filings.htm.*

[94] Members from some ATSs or broker-dealer internalizers may serve on the Advisory Committees of some NMS plans, but they would not be able to vote on NMS plan amendments. *See supra* note 67.

[95] Cboe Global Markets, Inc. controls BYX, BZX, C2, EDGA, EDGX and CBOE; Miami Internal Holdings, Inc. controls Miami International, MIAX Emerald and MIAX PEARL; NASDAQ, Inc. controls BX, GEMX, ISE, MRX, PHLX and Nasdaq; Intercontinental Exchange, Inc. controls NYSE, Arca, American, Chicago and National. The three entities that control a single-exchange are IEX Group which controls IEX, a consortium of broker-dealers which controls BOX, and Long Term Stock Exchange, Inc. which controls LTSE.

[96] *See supra* Section V.B.2.

[97] *See supra* note 82.

how the CAT funding model and the allocation of fees between SRO participants and Industry Members could affect competition in the market for trading services in options and equities.[98]

C. Benefits

Overall, the Commission preliminarily believes that the proposed rescission of the Fee Exception will not have significant economic effects for a number of reasons. First, on average, there are very few (only 4.2) proposed NMS plan fee changes in a year.[99] Second, because the existing filing procedure allows for Commission abrogation of proposed fee changes, the impact of the proposed amendments on the fees paid by market participants would largely be restricted to the two to six month Commission review period, during which a fee change is effective under the current procedure, but would not be effective under the proposed amendments.[100] Third, as discussed above, the Commission preliminarily believes that the SIPs have significant market power in the market for core and aggregated market data products and are monopolistic providers of certain information.[101] Therefore, the Commission preliminarily believes the proposed amendments would have a minimal effect on the SIPs' pricing models. Additionally, because the proposed amendments are a procedural change, they would not affect the contents of the SIP data or comparable products.[102]

Nonetheless, the Commission preliminarily believes that the proposed amendments offer three potential benefits. First, the Commission preliminarily believes that the proposed amendments would provide a benefit to market participants because Proposed Fee Changes to NMS plans would be subject to public notice, an opportunity for public comment, and Commission approval by order *before* they could become effective. Therefore, under the proposed amendments, changes to NMS plan fees and charges could not be immediately imposed, and market participants would not have to pay fees (even temporarily) that the Commission may later determine do not meet the standard for approval.

Second, the Commission preliminarily believes that the proposed amendments offer a benefit to SRO members and subscribers of SIP data. Because Proposed Fee Changes to NMS plans would not become effective until after they are subject to public comment and approved by the Commission, in cases where SRO members and subscribers to SIP data may not have received adequate notice, they should have more time to plan and prepare before they are subject to a new or altered NMS plan fee.[103] For example, under the proposed amendments, third party vendors of SIP data would learn about potential fee changes to a type of SIP fee (*i.e.,* non-displayed fees) earlier, which could give them more time to make adjustments and notify their clients before they are subject to the fee changes.

Third, the Commission preliminarily believes that the proposed amendments could benefit SRO members and subscribers of SIP data if a Proposed Fee Change increased an NMS plan fee. Under the proposed amendments, SRO members and subscribers of SIP data could benefit from the delay caused by the comment and Commission approval process because they would not have to pay the increased fee until the Commission approved the fee change and it became effective. However, the Commission preliminarily believes this benefit to SRO members and subscribers of SIP data would also represent a corresponding cost to the SROs.[104]

D. Costs

The Commission preliminarily believes that the proposed amendments could impose costs on SROs because they could be delayed from implementing Proposed Fee Changes while they wait for the Commission to determine whether to approve a fee change. In the case of the SIPs, if the Proposed Fee Change would increase the revenue earned by the SIP, then this delay could cause the SIP to lose out on the incremental revenue it could have collected compared to the baseline, where the Proposed Fee Change would have been effective immediately upon filing. This, in turn, could reduce the revenues the SROs are able to collect from the SIP, as well as the SIP revenue that FINRA rebates back to its members.[105] In the case of the CAT plan, the proposed amendments could also delay the SROs from recovering money for costs they might have already incurred. However, the Commission preliminarily believes that the costs of the proposed amendments would not be significant because the Commission preliminarily estimates that the median delay caused by the proposed amendments to the implementation of Proposed Fee Changes would be 70.5 days.[106] Additionally, on average, there are not many NMS plan fee changes in a year.[107] The Commission preliminarily believes that any lost revenue or delay in recovering money by the SROs could represent a corresponding benefit to SRO members and subscribers of SIP data. Similarly, if a Proposed Fee Change decreased an NMS plan fee, the delay caused by the comment and Commission approval process from the proposed amendments could impose a cost on SRO members and subscribers of SIP data and provide a benefit to SROs.[108]

The proposed rescission of the Fee Exception is a procedural amendment and impacts the timing of effectiveness of Proposed Fee Changes; it does not

[98] *See* CAT Plan Approval Order, *supra* note 14, at 84882–84.

[99] *See supra* Section V.B.1.

[100] The Commission preliminarily believes that the median delay from the proposed amendments would be 70.5 days. *See infra* note 106.

[101] *See supra* Section V.B.2.

[102] *See id.*

[103] *See supra* note 70 and accompanying text.

[104] Correspondingly, if a Proposed Fee Change decreased an NMS plan fee, the delay caused by the comment and Commission approval process could impose a cost on SRO members and subscribers of SIP data and provide a benefit to the SROs. One comment letter submitted in response to the Roundtable contained analysis examining the change in fees that some broker-dealers paid for CTA data between 2010 and 2018. The analysis showed that CTA fees for most categories of data increased by an average of 5% between 2010 and 2018. However, the change in the total amount each broker-dealer spent on CTA data varied based on the type of broker-dealer. They found that the average amount of money spent on CTA data by retail broker-dealers declined by 4% between 2010 and 2017, but the average amount spent by institutional broker-dealers increased by 7%. *See* Letter from Melissa MacGregor, Managing Director and Associate General Counsel and Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA (Oct. 24, 2018) at 21–28, *available at https://www.sec.gov/comments/4-729/4729-4559181-176197.pdf.*

[105] *See supra* note 82; *see also supra* Section V.B.2.

[106] The Commission preliminarily believes that the median delay caused by the proposed amendments to the implementation of Proposed Fee Changes would be 70.5 days. This estimate is based on the median time it takes the Commission to notice a Proposed Fee Change from the time it is filed, 25.5 days, and the median time it takes the Commission to determine whether to approve an NMS plan amendment filed under the standard procedure from the time it was noticed, 45 days. However, the Commission could extend the review period for a Proposed Fee Filing up to a total 180 days from the time it is noticed. *See supra* note 56; *see also supra* Section V.B.1 and Section II.B.

This delay does not include the time between when an NMS plan fee change is filed and the NMS plan begins charging the fee. Under the proposed amendments, an NMS plan fee filing could specify a date when fees will begin being charged based on a certain number of days after the fee filing is approved by the Commission. It is possible that the median delay specified by the NMS plan between approval and when the NMS plan begins charging fees could be similar to the current median delay, *i.e.,* 62.5 days. The delay could also be shorter, since market participants would have received earlier notice about the potential fee change due to the delay caused by the Commission approval process. *See supra* note 70.

[107] *See supra* Section V.B.1.

[108] *See supra* note 104.

affect the supporting information that must be included in all proposed NMS plan amendments.[109] Therefore, the Commission preliminarily believes that the proposed amendments will not impose implementation costs on the administration of NMS plans or on market participants.

E. Impact on Efficiency, Competition, and Capital Formation

1. Efficiency

For the reasons discussed above,[110] the Commission preliminarily believes that the proposed amendments will not have significant effects. Nonetheless, the Commission preliminarily believes that the proposed amendments could affect efficiency in a number of ways.

First, the Commission preliminarily believes that the proposed amendments could improve the efficiency with which SRO members and subscribers to SIP data adjust to fee changes to NMS plans. Specifically, the notice of Proposed Fee Changes to NMS plans before they are approved by the Commission and become effective might give market participants more time to plan and prepare before they are subject to a new or altered NMS plan fee. For example, under the proposed amendments, in circumstances where market participants previously would not have received adequate notice,[111] market participants such as market data vendors would now have more time to make adjustments and notify their clients before they are subject to a change in fees.

Second, the Commission preliminarily believes that the proposed amendments could improve efficiency for Proposed Fee Changes to NMS plans that would otherwise have been abrogated.[112] As discussed above, the median time it takes the Commission to abrogate a fee filing is 57 days, during which time the filings are effective. Under the proposed amendments, the Commission would not need to abrogate the fee filings; absent approval by the Commission, such fee changes would never take effect. To the extent that a fee filing would later be disapproved by the Commission, the proposed change would make the filing process more efficient than the current process.

On the other hand, the proposed amendments could also have a negative impact on efficiency because they could delay when NMS plans could begin charging new fees. As discussed above,[113] if plan participants seek to change existing NMS plan fees, possibly due to changes in technology or market conditions or other demonstrable increases in NMS plan costs, then the proposed amendments could reduce efficiency because any Proposed Fee Changes would take longer to become effective under the standard procedure than under the effective-upon-filing procedure.

2. Competition

The Commission preliminarily believes that the proposed amendments will not have a significant impact on competition in either the market for core and aggregated market data products or in the market for trading services in NMS securities.

The Commission preliminarily believes that the proposed amendments will not have a significant impact on competition in the market for core and aggregated market data products because, for the reasons discussed above, the Commission preliminarily believes the proposed amendments will not have a significant effect on the fees charged for core data.[114] Although the proposed amendments are not likely to have a significant effect on the market power of the SIPs, the Commission preliminarily believes the proposed amendments could have minor effects on the SIPs' ability to compete. On the margin, the SIPs' competitive positions could be negatively affected by the proposed amendments because the amendments would allow the SIPs' competitors, such as third party data aggregators and SRO top-of-book feeds, to be able to adjust their fees and prices more quickly than the SIPs. Under the proposed amendments, the SIPs would face a delay in adjusting their prices, because they could not make any fee changes until they had been noticed for public comment and approved by the Commission. Other market data products would not face this delay because fee changes to products offered directly by the SROs would still be effective upon filing with the Commission and vendors that aggregate market data are not required to file with the Commission to change their prices. This means that if these data products were subject to a cost shock, vendors and data products offered by the SROs would be able to adjust their prices more quickly in response to the cost shock, while the SIPs would face a delay. However, for the reasons discussed above, the Commission preliminarily believes that these competitive effects will not be significant.

The Commission preliminarily believes that the proposed amendments will not have a significant impact on competition in the market for trading services in NMS securities. First, for the reasons discussed above, the Commission preliminarily believes the proposed amendments will not have a significant impact on revenues SROs receive or the costs broker-dealer internalizers and ATSs pay for core data.[115] Second, the Commission preliminarily believes that the proposed amendments will not have a significant impact on the future fees the CAT plan will collect from Industry Members or the allocation of costs among Participants and Industry Members because the Commission already has the ability to abrogate NMS plan fee filings.[116]

3. Capital Formation

The Commission preliminarily believes that the proposed amendments will not have a significant impact on capital formation because, for the reasons discussed above, the proposed amendments will not have a significant impact on NMS plan fees or on the average costs to the subscribers of SIP market data.[117] Since the proposed amendments are unlikely to have a significant effect on the cost of core data, they are also unlikely to significantly affect the fees that investors pay or investor participation in the market. Therefore, the Commission preliminarily believes the proposed amendments are unlikely to have a significant impact on capital formation.

F. Alternative

The Commission considered an alternative where the Commission would amend Rule 608(b)(3)(i) of Regulation NMS to provide that NMS plan fee filings would not become effective immediately upon filing, but would instead become effective automatically without the Commission having to approve the fee filing at the end of the 60 day period, during which the Commission could potentially abrogate the fee filing. If the

[109] *See supra* Section I.

[110] *See supra* Section V.C.

[111] *See supra* note 70 and accompanying text.

[112] The proposed amendments may also improve the efficiency of implementing some Proposed Fee Changes that would otherwise have been withdrawn and later refiled. These fee changes are refiled on an immediately effective basis. The median time it takes an NMS plan to refile these fee changes is 174 days. If these amendments are ultimately approved more quickly under the proposed amendments, it could increase the efficiency of their implementation. *See supra* Section V.B.1.

[113] *See supra* Section V.D.

[114] *See supra* Section V.C.

[115] *See supra* Section V.C and Section V.D.

[116] *See supra* Section II.A.2.

[117] *See supra* Section V.C.

Commission did abrogate the fee filing, then the amendment would still need to be re-filed pursuant to the standard procedure of paragraphs (b)(1) and (2).

This alternative would provide a comment period for Proposed Fee Changes to NMS plans before they go into effect. Therefore, similar to the proposed amendments, market participants would benefit from being able to comment on Proposed Fee Changes *before* they could become effective. SRO members and subscribers to SIP data should have more time to plan and prepare before they are subject to a new or altered NMS plan fees.

Compared to the proposed amendments, the time until a Proposed Fee Filing becomes effective could be shorter.[118] Therefore, the costs to the SROs from the delay in implementing NMS plan fee changes could be lower than under the proposed amendments.[119]

However, under this alternative, the Commission could not extend the 60 day abrogation period.[120] This would provide market participants with more certainty about when the Proposed Fee Changes would become effective because the Commission could not extend its review period. However, if a Proposed Fee Filing is complicated, the Commission may be unable to complete its review during the 60 day abrogation period. If the filing were abrogated by the Commission, it could be subject to the delays of refiling under the standard procedure, which could cause these fee filings to take longer to be approved from the date of initial filing than under the proposed amendments.[121]

G. Request for Comment on the Economic Analysis

The Commission is sensitive to the potential economic effects, including the costs and benefits, of the proposed amendments to Rule 608 of Regulation NMS. The Commission has identified above certain costs and benefits associated with the proposal and requests comment on all aspects of its preliminary economic analysis. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data, information, or statistics regarding any such costs or benefits. In particular, the Commission seeks comment on the following:

11. Do you believe the Commission's analysis of the potential effects of the proposed amendments to Rule 608 of Regulation NMS is reasonable? Why or why not? Please explain in detail.

12. What is the state of competition in the market for core and aggregated market data products? Is the state of competition similar in the equities and options markets? Why or why not? Please explain in detail.

13. The Commission requests that commenters provide relevant data and analysis to assist us in determining the economic consequences of the proposed amendments. In particular, the Commission requests data and analysis regarding the costs SROs and SRO members and subscribers of SIP data may incur from the proposed amendments delaying the implementation of Proposed NMS Fee Changes.

14. Do you agree with the Commission's assessment that the proposed amendments will not have significant effects on efficiency, benefits, or competition? Why or why not? Please explain in detail.

15. Do you agree with the Commission's analysis of the benefits of the proposed amendments? Why or why not? Please explain in detail.

16. Do you agree with the Commission's analysis of the costs of the proposed amendments? Why or why not? Please explain in detail.

17. Do you agree with the Commission's assessment that the proposed amendments will have a minimal effect on the SIPs' pricing models? Why or why not? Please explain in detail.

18. Do you agree with the Commission's analysis of the effects the proposed amendments will have on efficiency, competition, and capital formation? Why or why not? Please explain in detail.

19. Do you believe the proposed amendments will have effects on efficiency, competition, and/or capital formation that the Commission has not recognized? Please explain in detail.

20. Should the Commission adopt an alternative approach in which the Commission does not need to approve NMS plan fee filings but instead delays them from becoming effective until after the 60 day period in which the Commission can abrogate the fee filing? Why or why not? What are the benefits and costs of such an approach? Please explain in detail.

21. Are there other reasonable alternatives for the proposed amendments to Rule 608 of Regulation NMS? If so, please provide additional alternatives and how their costs and benefits, as well as their potential impacts on the promotion of efficiency, competition, and capital formation, would compare to the proposed amendments.

22. Commenters should provide analysis and empirical data to support their views on the benefits and costs of the proposed amendments to Rule 608 of Regulation NMS.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[122] the Commission requests comment on the potential effect of this proposal on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Regulatory Flexibility Certification

The Regulatory Flexibility Act (''RFA'')[123] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a)[124] of the Administrative Procedure Act,[125] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.''[126] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact

[118] Under this alternative, Proposed Fee Filings would become effective 60 days after filing unless the Commission decided to abrogate the fee filing. Under the proposed amendments, the Commission preliminarily estimates that the median time it would take for Proposed Fee Filings to be approved by the Commission and become effective would be 70.5 days from the time of filing. *See supra* note 106.

[119] *See supra* Section V.D.

[120] The Commission could also consider an alternative where it had the option to extend the 60 day abrogation period to allow the Commission more time to consider the filing and comments. The filing would not become effectively automatically until the expiration of this longer time period. This alternative would have similar benefits and costs to the proposed amendments.

[121] *See supra* Section II.B.

[122] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[123] 5 U.S.C. 601 *et seq.*

[124] 5 U.S.C. 603(a).

[125] 5 U.S.C. 551 *et seq.*

[126] Although Section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

on a substantial number of small entities.[127]

The proposed rule would apply to national securities exchanges registered with the Commission under Section 6 of the Exchange Act and national securities associations registered with the Commission under Section 15A of the Exchange Act.[128] None of the exchanges registered under Section 6 that would be subject to the proposed amendments are ''small entities'' for purposes of the Regulatory Flexibility Act.[129] There is only one national securities association, and the Commission has previously stated that it is not a small entity as defined by 13 CFR 121.201.[130]

For the above reasons, the Commission certifies that the proposed amendment to Rule 608, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act.

The Commission invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to support the extent of such impact.

VIII. Statutory Authority and Text of the Proposed Rule Amendments

Pursuant to the Exchange Act, and particularly Section 2, 3, 6, 9, 10, 11A, 15, 15A, 17 and 23(a) thereof, 15 U.S.C. 78b, 78c, 78f, 78*l,* 78j, 78k–1, 78*o,* 78*o*–3 and 78w(a), the Commission proposes to amend Section 242.608 of chapter II of title 17 of the Code of Federal Regulations in the manner set forth below.

[127] *See* 5 U.S.C. 605(b).

[128] *See supra* Section II.A.3.

[129] *See* 17 CFR 240.0–10(e). Paragraph (e) of Rule 0–10 states that the term ''small business,'' when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS, 17 CFR 242.601, and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in Rule 0–10. Under this standard, none of the exchanges subject to the proposed amendment to Rule 608 is a ''small entity'' for the purposes of the RFA. *See also* Securities Exchange Act Release Nos. 82873 (Mar. 14, 2018), 83 FR 13008, 13074 (Mar. 26, 2018) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks); 55341 (May 8, 2001), 72 FR 9412, 9419 (May 16, 2007) (File No. S7–06–07) (Proposed Rule Changes of Self-Regulatory Organizations Proposing Release).

[130] *See, e.g.,* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556, 32605 n.416 (June 8, 2010) (''FINRA is not a small entity as defined by 13 CFR 121.201.'').

List of Subjects in 17 CFR Part 242

Brokers, Reporting and recordkeeping requirements, Securities.

For the reasons stated in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 242—REGULATIONS M, SHO, ATS, AC, NMS AND SBSR AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 1. The authority citation for part 242 continues to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78*l,* 78m, 78n, 78*o*(b), 78*o*(c), 78*o*(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, and 80a–37.

§ 242.608 [Amended]

■ 2. Amend § 242.608 by removing and reserving paragraph (b)(3)(i).

By the Commission.

Dated: October 1, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–21770 Filed 10–10–19; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF EDUCATION

34 CFR Part 263

RIN 1810–AB54

[Docket ID ED–2019–OESE–0068]

Indian Education Discretionary Grant Programs; Professional Development Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise the regulations that govern the Professional Development program, authorized under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), to implement changes to title VI resulting from the enactment of the Every Student Succeeds Act (ESSA). These proposed regulations would update, clarify, and improve the current regulations. These regulations pertain to Catalog of Federal Domestic Assistance (CFDA) number 84.299B.

DATES: We must receive your comments on or before November 12, 2019.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments about these proposed regulations, address them to Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202–6110. Telephone: (202) 205–1909.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Angela Hernandez-Marshall, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W113, Washington, DC 20202–6110. Telephone: (202) 205–1909. Email: *angela.hernandez-marshall@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 13771 and their overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further ways we could reduce potential costs or increase

potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

During and after the comment period, you may inspect all public comments about these proposed regulations by accessing *Regulations.gov*. You may also inspect the comments in person at 400 Maryland Avenue SW, Washington, DC, between 8:30 a.m. and 4:00 p.m., Eastern Time, Monday through Friday of each week except Federal holidays. To schedule a time to inspect comments, please contact one of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

The Secretary proposes to revise the regulations in 34 CFR part 263 that govern the Professional Development program to clarify certain statutory changes made to section 6122 of the ESEA by the ESSA and to better enable the Department and grantees to meet the objectives of the program. We also propose changes that are technical only and therefore will not be addressed in the preamble. For example, we will replace the term ''Indian institution of higher education'' with ''Tribal College or University (TCU)'' throughout in order to align with the reauthorized statute.

The primary statutory change that we are addressing in this notice of proposed rulemaking (NPRM) is the requirement that, after completing their training as teachers or administrators, program participants must work in local educational agencies (LEAs) that serve a high proportion of Indian students. We propose a definition of ''LEA that serves a high proportion of Indian students'' to provide clarity to applicants, participants, and prospective employers.

We also propose adding new priorities that would allow work by administrators in Tribal educational agencies (TEAs), or in entities starting a new school to serve Indian students, to serve as qualifying employment. We also propose to revise priorities and definitions to allow projects to support Native American language certification for teachers in States that offer this option. These changes would allow for greater flexibility for grantees to recruit and retain Indian teachers and administrators to serve in settings desired by Tribes while meeting the statutory requirements.

Tribal Consultation

The Department held a blended in-person and virtual Tribal Consultation on November 15, 2018, to solicit input on the future direction of the Professional Development program, and continued to solicit Tribal comment through December 31, 2018, via its *tribalconsultation@ed.gov* mailbox. The Department also solicited Tribal input by issuing several email messages to Tribal leaders from each of the federally recognized Indian Tribes, all TCU presidents, current grantees under ESEA Title VI formula and discretionary grant programs, and external stakeholders. The topics on which we sought input included how we should define ''LEA that serves a high proportion of Indian students''; whether we should establish a priority for training Indian administrators to start new Indian-serving charter schools; and ways to encourage opportunities for administrators to work with, and in, TEAs. Most respondents were in favor of the Department defining the term ''LEA that serves a high proportion of Indian students'' in order to allow as many LEAs as possible to serve as a qualifying job placement for successful participants, and the Department concurs and proposes to do so in these regulations. The Department had asked for specific input on using Indian student population percentage thresholds to define ''high proportion'' (*e.g.* LEAs with 50 percent Indian student population); Tribal consultation participants were generally opposed to using any specific percentages in the definition. Several participants and subsequent submitted written comments to the Department stated that the options proposed by the Department would result in only schools on reservations qualifying for the program, and would be a disadvantage to urban or off-reservation schools that serve a large number but not a high percentage of Indian students relative to the districtwide student population. Many Tribal consultation participants expressed support for administrator opportunities to work in an entity starting a new charter school or transitioning a school to Tribally controlled, and to work for TEAs under this program.

Significant Proposed Regulations

We group major issues according to subject, with the appropriate sections of the proposed regulations referenced in parentheses. We discuss other substantive issues under the sections of the proposed regulations to which they pertain.

Qualifying Job Placements That Satisfy the Service Payback Obligation

Statute: Section 6122(e)(2) of the ESEA requires applicants to describe how they will use grant funds to train teachers or principals to work in LEAs that serve a high proportion of Indian students. Similarly, the participant service payback requirement described in section 6122(h) requires work that benefits Indian students in an LEA that serves a high proportion of Indian students. The statute does not define the phrase ''LEA that serves a high proportion of Indian students.''

Current Regulations: In § 263.5(b)(1)(ii), the priority for pre-service teacher training requires grantees to provide induction services in schools with a ''significant'' Indian student population. The selection criterion in § 263.6(d)(1) addresses the likelihood that the proposed project will prepare students for successful teaching and/or administration in schools with significant Indian populations.

The selection criteria in § 263.6(a), (c), and (d) (''need for project,'' ''quality of project design,'' and ''quality of project services'') do not reference the type of schools that can qualify for service payback. Under § 263.8(b), work in a school with a significant Indian student population satisfies the requirement that work-related payback benefits Indian people. The current regulations do not define the phrase ''schools with a significant Indian student population.'' The current regulations also make multiple references (§§ 263.4, 263.5 and 263.11) to the terms ''qualifying job[s]'' and ''qualifying employment'' but do not define these terms.

Proposed Regulations: We propose to establish a definition of ''LEA that serves a high proportion of Indian students'' in § 263.3 as an LEA with either (1) a high proportion of Indian students in the LEA as compared to other LEAs in the State; or (2) a high proportion of Indian students in the school in which the participant works, even if the LEA as a whole does not have a high proportion of Indian students. The definition would make clear that ''LEA'' includes a BIE-funded school for this purpose.

We propose to establish a definition of ''qualifying employment'' as

employment in an LEA that serves a high proportion of Indian students. We also propose revising the definition of ''induction services'' to require that such services be provided in an LEA that serves a high proportion of Indian students; and revising the priorities in renumbered § 263.6(b)(1) and (2) to specify that induction services are to be provided to participants completing work-related payback in an LEA that serves a high proportion of Indian students.

We propose adding an application requirement in new 263.5 stating that applicants must submit one or more letters of support from LEAs that serve a high proportion of Indian students.

In the selection criterion renumbered 263.7(a), ''Need for project,'' we propose adding a selection factor that would ask applicants to describe the extent to which employment opportunities exist in LEAs that serve a high proportion of Indian students in the project service area. We also incorporate the new defined term ''LEAs that serve a high proportion of Indian students'' in the selection factor for ''quality of project design'' in renumbered 263.7(c)(3).

Finally, in renumbered § 263.12(c)(1) we propose adding an element to the required payback agreement that participants must sign, clarifying that in order to qualify for the work payback requirement, the job must be in an LEA ''that serves a high proportion of Indian students.''

Reasons: First, we propose to define ''LEA that serves a high proportion of Indian students'' broadly in order to maximize the number of LEAs that would qualify under this definition. This proposed definition, informed by Tribal Consultation feedback, would allow us to consider whether an LEA's student body population has a high proportion relative to the Indian population in the grantee's State, as opposed to a nationwide comparison using a strict percentage. It would also permit a comparison of whether the school in which the participant works has a high percentage of Indian students compared to other LEAs in the State. This approach would mitigate the potential for perceived ''competition'' between urban and rural areas, address the need for serving Indian students in States where few to no schools have high percentages of Indian student populations, and would still adhere to the intent of this requirement.

In addition, we propose to add a definition of ''qualifying employment'' because the current regulations use different terms, such as ''qualifying employment'' and ''qualifying jobs,'' but do not define either. Defining this term with reference to the new statutory requirement of working in an LEA with a high proportion of Indian students would provide clarity for grantees, participants, and employers regarding which jobs will qualify for the work payback requirement. For example, under 263.12(d) (as proposed to be renumbered in this NPRM), grantees continue to have an obligation to assist participants in obtaining qualifying employment (consistent with the definition); but the definition would remove any ambiguity as to which job placements meet the definition of ''LEA that serves a high proportion of Indian students.''

The proposed revision to the definition of ''induction services,'' which would require that such services be provided in an LEA that serves a high proportion of Indian students, would align that definition to the statutory requirement that applicants describe how they will support the preparation and professional development of teachers or principals in LEAs that serve a high proportion of Indian students. We propose revising the priorities in renumbered § 263.6(b)(1) and (2) to replace the current language concerning induction services for participants ''in schools with significant Indian populations'' with the new statutory ''high proportion'' language.

We propose adding the application requirement in § 263.5 for letters of support from LEAs that serve a high proportion of Indian students to help ensure that participants have actual opportunities for jobs following their training, at schools that will qualify for the work payback obligation. The letters of support would need to include evidence, such as a school, district and State report card that includes demographic information, that the LEA meets the definition of ''LEA that serves a high proportion of Indian students.'' We invite comment on what type of evidence the Department should accept, and what type of evidence is available to LEAs.

The proposed new element in the payback agreement (in proposed § 263.12(c)) would clarify in writing for participants that to satisfy the work payback requirement, they must work in an ''LEA that serves a high proportion of Indian students.'' This will increase the potential for participants to successfully meet the service payback requirement.

Native American Language Certificate

Statute: The ESEA, both prior to and after the ESSA amendments, does not specify whether an applicant IHE for this program must be a degree-granting institution. Although section 6122 of the ESEA does not define the phrase ''institution of higher education,'' section 8101 of the ESEA, which is also applicable to this program, contains a definition of ''institution of higher education.'' The statute does not define the term ''full-time student.''

Current Regulations: Under § 263.2(c), eligibility of an applicant requiring a consortium with any IHE, including a TCU, requires that the IHE be accredited to provide the coursework and level of degree required by the project. In § 263.3, the current definition of ''full-time student'' requires that a student be a candidate for a baccalaureate or graduate degree. The definition of ''institution of higher education'' requires that the institution be accredited to award a baccalaureate degree or higher. ''Pre-service training'' is defined as training that results in licensing or certification in a field requiring at least a baccalaureate degree. In the priority for pre-service teacher training in § 263.5(b)(1), the training must be in a subject area that requires a degree.

Proposed Regulations: The proposed regulations in § 263.2(c), regarding eligibility of an applicant requiring a consortium with any IHE, would be broadened to include IHEs that are accredited to provide the coursework and level of degree or Native American language certificate required by the project.

In the definition of ''full-time student'' in § 263.3, the proposed regulations would add the option that students who are candidates for a Native American language certificate can also qualify as ''full-time students,'' for an applicant proposing a program that awards a certificate of Native American language instruction rather than a baccalaureate degree. For the definition of ''institution of higher education,'' the proposed regulations would use the statutory definition from ESEA section 8101. For consistency with that definition, the list of eligible entities in § 263.2(a)(1) would be revised to use the word ''or'' between the phrase ''institution of higher education'' and the phrase ''TCU,'' rather than the existing word ''including.'' Conforming changes would be made to add ''or TCU'' following the phrase ''institution of higher education'' in paragraphs (a)(2) through (a)(4) of § 263.2, and in the definition of ''Indian organization'' in § 263.3.

The proposed regulations would add to the definition of ''pre-service training'' the option that the training could be either in a field that requires at least a baccalaureate degree, or

certification in Native American language instruction.

The proposed regulations would also revise the priority for pre-service teacher training in § 263.6(b)(1)(i), as renumbered, to add the option of training in the field of Native American language instruction. Finally, the proposed regulations would add definitions of the terms ''Native American'' and ''Native American language.''

Reasons: The Department has learned, both from current grantees and through Tribal consultation, that there is interest in providing training for teachers of Native American languages, and that there is a shortage of qualified teachers in this field. We understand that a number of States now have a certificate or license for teaching Native American languages, and that such certificates generally do not require a bachelor's degree. This enables non-traditional students such as Tribal elders to obtain the needed qualifications to teach Native American languages in the public schools. These proposed changes to the regulations would provide more flexibility to grantees, better recognize Tribal sovereignty, and help fulfill the Department's obligation under the Native American Languages Act (NALA) to support efforts to preserve, protect, and promote the rights and freedom of Native Americans to use, practice, and develop Native American languages.

The proposed regulations contain several changes to facilitate this flexibility in the Professional Development program. First, the proposed regulations would change the definition of ''IHE'' to the general definition in title VIII of the ESEA, which in turn uses the definition in section 101(a) of the Higher Education Act of 1965 (HEA). This proposed definition would eliminate the prior requirement in the regulatory definition for this program that the institution must award a baccalaureate degree or higher. The proposed definition would enable an IHE that meets the HEA definition but does not award a baccalaureate degree, such as a community college that has a Native American language certificate or licensing program, to be eligible for this program. For consistency with that definition, the list of eligible entities in section 263.2(a) would be revised to use the word ''or'' between the phrase ''IHE'' and the phrase ''TCU,'' because a TCU is generally not included under the ESEA definition of IHE, which requires State authorization of the entity. We understand that TCUs are generally authorized by the Tribe and not the State.

Next, the proposed regulations would revise the definitions of ''full-time student'' and ''pre-service training'' to add the option of a Native American language certificate that does not require a baccalaureate degree. The proposed definition of ''Native American language'' is taken from section 8101 of the ESEA, which references section 103 of NALA (25 U.S.C. 2902). We have used the language from NALA in the definition for user convenience. The proposed definition of ''Native American'' is also from section 8101 of the ESEA, which references section 103 of NALA (25 U.S.C. 2902), which defines ''Native American'' as an ''Indian, Native Hawaiian, or Native American Pacific Islander.'' The NALA definition of ''Indian'' further references the ESEA title VI definition of that term (ESEA section 6151). We propose a definition that is a user-friendly compilation of these three discrete sources; the proposed definition is also the same definition used in the ESEA Title I regulations in 34 CFR 200.6(k).

Finally, the priority for pre-service teacher training in section 263.6(b)(1)(i), as renumbered, would add the option of training in the field of Native American language instruction.

Application Requirements

Section 263.5 What are the application requirements?

Statute: Under section 6122 of the ESEA, the Secretary requires applicants to describe how they will recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders; use funds made available under the grant to support the recruitment, preparation, and professional development of Indian teachers or principals in LEAs that serve a high proportion of Indian students; and assist participants in meeting the payback obligation requirement.

Current Regulations: The current regulations do not include a specific section that describes application requirements. However, under the current section 263.5 there is a priority for applicants that include a letter of support from an LEA or BIE-funded school that agrees to consider program graduates for qualifying employment.

Proposed Regulations: We plan to include this list of statutory requirements under a new section 263.5. In addition, we propose that the current priority for applicants that include a letter of support now be made an application requirement.

Reasons: First, adding a new section that describes the application requirements provides applicants with one place to reference multiple requirements. Second, we are proposing adding to the statutorily-mandated requirements a requirement that applicants include a letter of support from prospective LEAs, including BIE-funded schools, that meet the qualifying employment definition, in order to increase applicants' understanding, at the outset, of their statutory obligation to support participants' placement in qualifying employment, should they receive a grant. One reason we are proposing this change is that, when we included a competitive preference priority for letters of support in each of the last two grant competition cycles in Fiscal Years (FYs) 2016 and 2018, the competitive preference priority points did not help to discern which applications were of the highest quality. Second, in the past, applicants have provided letters from LEAs that may no longer be considered locations for qualifying employment under the new definition of ''LEAs that serve a high proportion of Indian students.'' Requiring, rather than providing an incentive for, applicants to provide letters of support from LEAs that serve a high proportion of Indian students would help to ensure that participants will find qualifying employment.

Number of Years of Induction Services

Statute: Section 6122(d) of the ESEA permits grant funds to be used for teacher induction services during the first three years of teachers' employment.

Current Regulations: The definition of ''induction services'' in current section 263.3 includes only services provided during the first year of teaching. The priorities for pre-service teacher training and pre-service administrator training in current 263.5(b)(1)(ii) and (b)(2)(ii) also require one year of induction services.

Proposed Regulations: The proposed definition of ''induction services'' would include services provided during a teacher's first one to three years of qualifying employment; the Department would announce the number of years of required induction services in the applicable notice inviting applications. The allowable costs provision in proposed § 263.4(c)(4) would include the new statutory language concerning induction services but would indicate that induction services can be provided for up to the first three years of a teacher's employment. Similarly, the priorities for pre-service teacher training and pre-service administrator training in 263.6(b)(1)(ii) and (b)(2)(ii), as renumbered, would include language stating that induction services are to be

provided for the period of time stated in the applicable notice inviting applications.

Reasons: The proposed change would provide flexibility in tailoring the length of induction services to the total grant period. Prior to the ESSA amendments, the Department had awarded four-year grants, and grantees were required to provide induction services to graduated and employed participants during the fourth year of the grant. In the latest competition, for FY 2018, the Department awarded five-year grants because the statute now authorizes grants for an initial period of up to three years, with possible renewal for up to two years for grantees that are achieving the objectives of the grant. In the FY 2018 competition, the Department required three years of training and two years of induction services, assuming the grantee makes substantial progress towards the objectives. A longer period of induction services should provide more support to new teachers and lead to fewer participants leaving the teaching profession.

Priority for Administrator Training for Work in TEAs

Statute: The Secretary has the authority to establish regulatory priorities for the Indian Education Professional Development Program under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: The current regulations in section 263.5 contain one priority required by statute, and three regulatory priorities. There is no priority for administrator training for work in TEAs. Section 263.3 does not include a definition of TEA. Current § 263.8(b) provides the requirements for work-related payback but does not address TEAs.

Proposed Regulations: The proposed regulations in section 263.6(b), as renumbered, would include a priority for training administrators to work for TEAs. Under this priority, grantees would be required to provide opportunities for participants to work with or for TEAs during the training period, and to make efforts to place participants in administrator jobs in TEAs following program completion.

The proposed regulations would also add a definition of TEA to the definitions in § 263.3. In addition, the proposed regulations would include a note following § 263.9(b), as renumbered, regarding work-related payback, stating that for grants that provide administrator training, if a graduate works for a TEA that provides administrative control or direction of public schools (*e.g.,* BIE-funded schools or charter schools), such employment would satisfy the requirements for work payback.

Reasons: We understand from Tribal consultation that many Tribes have established or are seeking greater control over education. In some cases, TEAs are in control of BIE-funded schools or Tribally funded schools. Under the current regulations, it has been unclear to grantees whether graduates are permitted to work in a TEA to satisfy the work payback obligation, or whether they must obtain employment in a State-funded LEA. The proposed change would provide clarity on this issue, increase flexibility for applicants interested in administrator training, and better recognize Tribal sovereignty.

The proposed definition of TEA in § 263.3 is taken from the definition in ESEA section 6132. The proposed note following § 263.9(b), as renumbered, would clarify that graduates who work for a TEA would satisfy the work payback obligation, if the TEA has administrative control or direction of schools. This clarification is needed due to the statutory requirement that work payback take place in an LEA; the note would explain that the work payback requirement is satisfied if the graduate is employed by a TEA that satisfies the requirements in the statutory definition of LEA in ESEA section 8101.

Priority for Administrator Training for School Start-Ups

Statute: The Secretary has the authority to establish regulatory priorities for the Indian Education Professional Development Program under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: The current regulations in section 263.5 contain one priority required by statute, and three regulatory priorities. There is no priority for administrator training for school start-ups.

Proposed Regulations: The proposed regulations in section 263.6(b), as renumbered, would include a priority for training administrators to start new schools that serve Indian students, such as charter schools or schools transitioning from BIE-operated to Tribally controlled. Grantees would be required to make efforts to place participants in administrator jobs working for an entity planning to start a school to serve Indian students or transitioning an existing school to one under Tribal control.

Reasons: We heard through Tribal consultation that Tribes are interested in opportunities to train administrators in ways to expand choice in Indian country, including specifically how to establish new charter schools, or how to change a BIE-funded school that is currently BIE-operated to one that is Tribally operated. A priority for such training would enable the Department to provide a competitive advantage to projects that include this focus. Because of the statutory requirement for work payback, a project doing such training would need to ensure that its graduates obtain jobs in which they would be administering schools, as opposed to merely planning for future administration. Thus, if the graduate worked for an entity such as a TEA that is planning to open a new school, that person would also need to be in a position that involves current school administration duties. The proposed change would provide more flexibility to applicants interested in administrator training and would better recognize Tribal sovereignty.

Section 263.7 How does the Secretary evaluate applications for the Professional Development Program?

Statute: The Secretary has the authority to establish regulatory selection criteria for the Indian Education Professional Development program under 20 U.S.C. 1221e-3 and 3474.

Current Regulations: Under the current section 263.6 there are five criteria, each with corresponding factors specific to the Professional Development program, including need for the project, significance, quality of the project design, quality of project services, and quality of project personnel.

Proposed Regulations: The proposed regulations would add under the selection criterion (d), ''Quality of Project Design,'' a selection factor regarding the extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program. The proposed regulations in § 263.7(d), as renumbered, would also include a sixth factor to address the extent to which the applicant will assist participants in meeting the service obligation requirements.

Reasons: One of the statutory changes made by ESSA is to add the requirement that applicants describe how they will recruit and select participants. Adding this as a selection criterion will help ensure that projects include participants who are likely to complete the program. Another statutory change requires applicants to describe how they will assist participants in meeting the work payback obligation. By including this as

a selection factor, we can encourage applicants to increase their focus on placement in qualifying employment. Our review of current and past projects shows that participants' ability to meet the service obligation can be better supported when grantees give more time and attention to planning for how they will support participants' placement in jobs that meet the service obligation requirements.

Other Significant Issues

Bureau-Funded School

Statute: Section 6122 of the ESEA includes Bureau-funded schools, as defined in section 1146 of the Educational Amendments of 1978, among eligible entities of the Professional Development program.

Current Regulations: Section 263.3 defines Bureau-funded school as a Bureau of Indian Education school, a contract or grant school, or a school that receives support under the Tribally Controlled Schools Act of 1988. Section 263.2 also uses the term in the list of eligible entities. However, the priority described in § 263.5(b)(3) makes reference to a BIE-funded school.

Proposed Regulation: The proposed regulations would change the term from Bureau-funded school to BIE-funded school throughout the regulations and would change the term to BIE-funded school in the definitions in § 263.3, but the content of the definition would remain unchanged.

Reasons: Using the term BIE-funded school throughout the regulations would ensure consistency. And although the statute refers to Bureau-funded school, the term ''BIE-funded school'' is a term more commonly used and more familiar to grantees, participants and other stakeholders.

Quality of Project Personnel—Project Consultants

Statute: The Secretary has the authority to establish regulatory selection criteria for the Indian Education Professional Development program under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Section 263.6(e)(3) is a selection factor that considers the qualifications of subcontractors and consultants who may be included in the proposed project.

Proposed Regulations: The proposed regulations would eliminate this selection factor.

Reasons: Most applicants do not identify subcontractors and consultants who are not already in the role of project director or key personnel. Consequently, any applicant whose proposed project does not include subcontractors or consultants cannot receive peer review points because they lack this non-required element. Eliminating this evaluation factor would eliminate this negative impact on such projects.

Payback Agreement Submission

Statute: The Secretary has the authority to regulate post-award requirements that apply to the Professional Development program under 20 U.S.C. 1221e–3 and 3474.

Current Regulations: Current § 263.11(c)(1) requires that grantees obtain a signed payback agreement from each participant and submit it to the Department within seven days of signing.

Proposed Regulations: The proposed regulations would extend the timeframe for grantees to submit the signed payback agreement to the Department to 30 days.

Reasons: Based on current grantee feedback, participant orientation and related administrative processes generally take more than seven days due to grantees holding related activities. Addressing all related administrative duties for a part-time staff has proven challenging. Based on Department analysis of submission times over the last four years, 30 days is more reasonable and is adequate for the time period needed for grantees to adhere to this requirement.

Technical Changes

The ESSA amendments to Title VII of the ESEA also necessitate multiple technical changes to the current program regulations. As a result, this NPRM includes the following technical changes:

(1) In § 263.1, we add language regarding the purposes of the program as stated in ESEA section 6122(a)(2).

(2) In §§ 263.2(a), 263.3, and 263.6, we reflect changes to the eligible entities listed in ESEA section 6122(b)(1). We remove references to ''Indian institution of higher education'' and replace them with ''TCU'' throughout. In section 263.2(a) we also add the statutory language requiring BIE-funded schools to apply in consortium with at least one TCU, where feasible.

(3) We revise the definition of induction services in § 263.3, and we add to section 263.4 new paragraphs (c)(4) and (c)(5), to reflect authorized activities described in ESEA section 6122(d)(1)(B).

(4) We add new § 263.5 to reflect application requirements described in ESEA section 6122(e). We also revise the selection criteria in redesignated § 263.7 to add the element regarding recruiting participants, from ESEA section 6122(e)(1), to redesignated § 263.7(c)(2) and (d)(5), and we add the element regarding helping participants with payback, from ESEA section 6122(e)(3), to redesignated § 263.7(d)(6).

(5) We revise §§ 263.1–263.3, and redesignated §§ 263.6, 263.7, 263.9, 263.11, and 263.12 to reflect the service obligation described in ESEA section 6122(h)(1)(A)(ii), which requires that work must benefit Indian students in an LEA that serves a high proportion of Indian students.

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

Under Executive Order 13771, for each new regulation 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 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. The proposed regulations are not a significant regulatory action.

Therefore, the requirements of Executive Order 13771 do not apply.

We have also reviewed these regulations 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 these proposed regulations only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that these proposed regulations are consistent with the principles in Executive Order 13563.

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

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

Discussion of Costs and Benefits: The potential costs associated with the proposed regulatory changes would be minimal, while there would be greater potential benefits.

For Professional Development grants, applicants may anticipate minimal additional costs in developing their applications due to the new required letter of support that the applicant must obtain from an LEA in proposed section 263.5, estimated at two hours of additional work. We anticipate no additional time spent reporting participant payback information in the Professional Development Program Data Collection System (PDPDCS) and the costs of carrying out these activities would continue to be paid for with program funds.

The benefits include enhancing project design and quality of services to better meet the objectives of the programs with the result being more participants successfully completing their programs of study and obtaining employment as teachers and administrators. Elsewhere in this section under *Paperwork Reduction Act of 1995,* we identify and explain burdens specifically associated with information collection requirements.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§ '' and a numbered heading; for example, § 263.3 What definitions apply to the Professional Development program?)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make these proposed regulations easier to understand, see the instructions in the **ADDRESSES** section.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a substantial economic impact on a substantial number of small entities. The U.S. Small Business Administration 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 would be affected by these proposed regulations are LEAs, institutions of higher education, TCUs, tribes, and tribally operated schools receiving Federal funds under this program. The proposed regulations would not have a significant economic impact on the small entities affected because the regulations do not impose excessive regulatory burdens or require unnecessary Federal supervision. The proposed regulations would impose minimal requirements to ensure the proper expenditure of program funds, including reporting of participant payback information. We note that grantees that would be subject to the minimal requirements that these proposed regulations would impose would be able to meet the costs of compliance using Federal funds provided through the Indian Education Discretionary Grant programs.

However, the Secretary specifically invites comments on the effects of the proposed regulations on small entities, and on whether there may be further opportunities to reduce any potential adverse impact or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of Indian Education Discretionary Grant

programs. Commenters are requested to describe the nature of any effect and provide empirical data and other factual support for their views to the extent possible.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

Proposed §§ 263.5, 263.6, and 263.7, as renumbered, contain information collection requirements for the program application package, and proposed §§ 263.12 and 263.13 contain information collection requirements renewed by OMB on August 12, 2019. Table A–1 illustrates the status of both the current and proposed collections associated with this program:

TABLE A–1—PD PROGRAM INFORMATION COLLECTION STATUS

OMB Control No.	Relevant regulations	Expiration	Current burden (total hours)	Proposed burden (total hours)	Proposed action under final rules
1810–0580	Proposed §§ 263.5, 263.6, and 263.7.	June 30, 2021.	Applicants: 1,500	0	Discontinue this collection and use 1894–0006
1894–0006	Proposed §§ 263.5, 263.6, and 263.7.	January 31, 2021.	0	Applicants: 1,500	Use this collection.
1810–0698	Proposed §§ 263.12	August 31, 2022.	Grantees: 2,040 Participants: 660 Employers: 304	Grantees: 2,040 Participants: 660 Employers: 304	Use this collection.

As a result of the proposed revisions to §§ 263.5, 263.6, and 263.7, we would transfer the grant application package information collection burden from 1810–0580 to 1894–0006, resulting in discontinuation of 1810–0580.

Proposed § 263.12 contains information collection requirements that will continue in order to:

- Fulfill six Government Performance and Results Act (GPRA) performance measures and reporting requirements;
- Ensure that participants fulfill the statutory payback requirements; and
- Collect budget and project-specific performance information from grantees for project monitoring.

This information collection was recently renewed by OMB. We expect that the proposed amendments will slightly change, but not increase, the current OMB approved data collection burden. Because the changes impact only information collection requirements for post-award induction activities that would not occur prior to FY 2022, and in order to mitigate revisions due to any possible changes to the proposed regulations, we plan to submit the revised information collection for OMB approval once final regulations are published.

If your comments relate to the ICR for these proposed regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Written requests for information or comments submitted by postal mail or delivery related to the information collection requirements should be addressed to the Director of the Information Collection Clearance Program, U.S. Department of Education, 550 12th Street SW, room 9086, Washington, DC 20202.

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.

Federalism

Executive Order 13132 requires us to ensure meaningful and timely input by State and local elected officials in the development of regulatory policies that have federalism implications. ''Federalism implications'' means substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. These proposed regulations may have federalism implications. We encourage State and local elected officials to review and provide comments on these proposed regulations.

Assessment of Educational Impact

In accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e–4, the Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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 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 Adobe 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.

(Catalog of Federal Domestic Assistance Number: 84.299B Professional Development Program.)

List of Subjects in 34 CFR part 263

Business and industry, College and universities, Elementary and secondary education, Grant programs—education, Grant programs—Indians, Indians—education, Reporting and recordkeeping

requirements, Scholarships and fellowships.

Dated: October 4, 2019.

Frank Brogan,

Assistant Secretary for Elementary and Secondary Education.

For the reasons discussed in the preamble, the Secretary of Education proposes to amend part 263 of title 34 of the Code of the Federal Regulations as follows:

PART 263—INDIAN EDUCATION DISCRETIONARY GRANT PROGRAMS

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

Authority: 20 U.S.C. 7441, unless otherwise noted.

■ 2. Section 263.1 is amended by:
■ a. Revising paragraphs (a)(2) and (a)(3);
■ b. Adding paragraph (a)(4); and
■ c. Revising paragraph (b)(1).

The revisions and addition read as follows:

§ 263.1 What is the Professional Development program?

(a) * * *

(2) Provide pre- and in-service training and support to qualified Indian individuals to become effective teachers, principals, other school leaders, administrators, teacher aides, paraprofessionals, counselors, social workers, and specialized instructional support personnel;

(3) Improve the skills of qualified Indian individuals who serve in the education field; and

(4) Develop and implement initiatives to promote retention of effective teachers, principals, and school leaders who have a record of success in helping low-achieving Indian students improve their academic achievement, outcomes, and preparation for postsecondary education or employment.

(b) * * *

(1) Perform work related to the training received under the program and that benefits Indian students in a local educational agency that serves a high proportion of Indian students, or to repay all or a prorated part of the assistance received under the program; and

* * * * *

■ 3. Section 263.2 is amended by:
■ a. Revising paragraph (a)(1);
■ b. Adding the words ''or a TCU'' after the phrase ''institution of higher education'' in paragraphs (a)(2), (3), and (4);
■ c. Revising paragraph (a)(5);
■ d. Removing the phrase ''Bureau-funded'' and adding in its place the phrase ''BIE-funded'' in paragraph (b);
■ e. Revising paragraph (b)(2); and
■ f. Revising paragraph (c).

The revisions read as follows:

§ 263.2 Who is eligible to apply under the Professional Development program?

(a) * * *

(1) An institution of higher education, or a Tribal College or University (TCU);

* * * * *

(5) A Bureau of Indian Education (BIE)-funded school in consortium with at least one TCU, where feasible.

(b) * * *

(2) A pre-service training program when the BIE-funded school applies in consortium with an institution of higher education that meets the requirements in paragraph (c) of this section.

(c) Eligibility of an applicant that is an institution of higher education or a TCU, or an applicant requiring a consortium with any institution of higher education or TCU, requires that the institution of higher education or TCU be accredited to provide the coursework and level of degree or Native American language certificate required by the project.

■ 4. Section 263.3 is amended by:
■ a. Removing the words ''Bureau-funded'' in the definition of ''Bureau-funded school'' and adding, in their place, the words ''BIE-funded'';
■ b. Revising the definition of ''Full-time student'';
■ c. Removing the definition of ''Indian institution of higher education'';
■ d. In paragraph (5) of the definition of ''Indian organization'', adding the phrase ''or TCU'' after the phrase ''any institution of higher education'';
■ e. Revising the definitions of ''Induction services'' and ''Institution of higher education'';
■ f. Adding in alphabetical order the definitions of ''Local educational agency (LEA) that serves a high proportion of Indian students'', ''Native American'', and ''Native American language'';
■ g. Adding, in the definition of ''Pre-service training'' the words '', or licensing or certification in the field of Native American language instruction'' after the word ''degree''; and
■ h. Adding in alphabetical order the definitions of ''qualifying employment'', ''Tribal College or University (TCU)'', and ''Tribal education agency''.

The additions and revisions read as follows:

§ 263.3 What definitions apply to the Professional Development program?

* * * * *

Full-time student means a student who—

(1) Is a candidate for a baccalaureate degree, graduate degree, or Native American language certificate, as appropriate for the project;

(2) Carries a full course load; and

(3) Is not employed for more than 20 hours a week.

* * * * *

Induction services means services provided—

(1)(i) By educators, local traditional leaders, or cultural experts;

(ii) For the one, two, or three years of qualifying employment, as designated by the Department in the notice inviting applications; and

(iii) In local educational agencies (LEAs) that serve a high proportion of Indian students;

(2) To support and improve participants' professional performance and promote their retention in the field of education and teaching, and that include, at a minimum, these activities:

(i) High-quality mentoring, coaching, and consultation services for the participant to improve performance;

(ii) Access to research materials and information on teaching and learning;

(iii) Assisting new teachers with use of technology in the classroom and use of data, particularly student achievement data, for classroom instruction;

(iv) Clear, timely, and useful feedback on performance, provided in coordination with the participant's supervisor; and

(v) Periodic meetings or seminars for participants to enhance collaboration, feedback, and peer networking and support.

* * * * *

Institution of higher education (IHE) has the meaning given that term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

Local educational agency (LEA) that serves a high proportion of Indian students means—

(1) A local educational agency, including a BIE-funded school, that serves a high proportion of Indian students in the LEA as compared to other LEAs in the State; or

(2) A local educational agency, including a BIE-funded school, that serves a high proportion of Indian students in the school in which the participant works compared to other LEAs in the State, even if the LEA as a whole in which the participant works does not have a high proportion of Indian students compared to other LEAs in the State.

Native American means ''Indian'' as defined in section 6151(3) of the Elementary and Secondary Education Act, which includes Alaska Native and members of Federally-recognized or

State-recognized Tribes; Native Hawaiian; and Native American Pacific Islander.

Native American language means the historical, traditional languages spoken by Native Americans.

* * * * *

Qualifying employment means employment in a local educational agency that serves a high proportion of Indian students.

* * * * *

Tribal college or university (TCU) has the meaning given that term in section 316(b) of the Higher Education Act of 1965 (20 U.S.C. 1059c(b)).

Tribal educational agency (TEA) means the agency, department, or instrumentality of an Indian Tribe that is primarily responsible for supporting Tribal students' elementary and secondary education.

* * * * *

■ 5. Section 263.4 is amended by:

■ a. Removing the word ''and'' at the end of paragraph (c)(2).

■ b. Removing the ''.'' at the end of paragraph (c)(3) and adding a '';''; and

■ c. Adding paragraphs (c)(4) and (c)(5).

The additions read as follows:

§ 263.4 What costs may a Professional Development program include?

* * * * *

(c) * * *

(4) Teacher mentoring programs, professional guidance, and instructional support provided by educators, local traditional leaders, or cultural experts, as appropriate for teachers for up to their first three years of employment as teachers; and

(5) Programs designed to train traditional leaders and cultural experts to assist participants with relevant Native language and cultural mentoring, guidance, and support.

* * * * *

§§ 263.5 through 263.12 [Redesignated]

■ 6. Redesignate §§ 263.5 through 263.12 as §§ 263.6 through 263.13.

■ 7. Add a new § 263.5 to read as follows:

§ 263.5 What are the application requirements?

An applicant must—

(a) Describe how it will—

(1) Recruit qualified Indian individuals, such as students who may not be of traditional college age, to become teachers, principals, or school leaders;

(2) Use funds made available under the grant to support the recruitment, preparation, and professional development of Indian teachers or principals in local educational agencies that serve a high proportion of Indian students; and

(3) Assist participants in meeting the payback requirements under § 263.9(b);

(b) Submit one or more letters of support from LEAs that serve a high proportion of Indian students. Each letter must include—

(1) A statement that the LEA agrees to consider program graduates for employment;

(2) Evidence that the LEA meets the definition of ''LEA that serves a high proportion of Indian students''; and

(3) The signature of an authorized representative of the LEA;

(c) If applying as an Indian organization, demonstrate that the entity meets the definition of ''Indian organization'' in these regulations; and

(d) Comply with any other requirements in the application package.

■ 8. Newly redesignated § 263.6 is amended by:

■ a. Removing the phrase ''Indian institution of higher education'' and adding, in its place, the phrase ''TCU'' in paragraphs (a)(1) and (a)(2)(i).

■ b. Removing the word ''or'' at the end of paragraph (b)(1)(i)(B).

■ c. Adding the word ''or'' at the end of paragraph (b)(1)(i)(C).

■ d. Adding new paragraph (b)(1)(i)(D).

■ e. Revising paragraph (b)(1)(ii).

■ f. In paragraph (b)(1)(iii)(D), remove the word ''jobs'' and add in its place ''employment''.

■ g. Revising paragraph (b)(2)(ii).

■ h. In paragraph (b)(2)(iii)(D), remove the word ''jobs'' and add in its place ''employment''.

■ i. Revising paragraph (b)(3).

■ j. Adding a new paragraph (b)(4).

The addition and revisions read as follows:

§ 263.6 What priority is given to certain projects and applicants?

* * * * *

(b) * * *

(1) * * *

(i) * * *

(D) Training in the field of Native American language instruction;

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications, while participants are completing their work-related payback in schools in local educational agencies that serve a high proportion of Indian students; and

(2) * * *

(ii) Provide induction services, during the award period, to participants after graduation, certification, or licensure, for the period of time designated by the Department in the notice inviting applications while administrators are completing their work-related payback as administrators in local educational agencies that serve a high proportion of Indian students; and

* * * * *

(3) *Pre-service administrator training for work in Tribal educational agencies.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training on working for a TEA, and opportunities for participants to work with or for TEAs during the training period; and

(iii) Include efforts by the applicant to place participants in administrator jobs in TEAs following program completion.

(4) *Pre-service administrator training for school start-ups.* The Secretary establishes a priority for projects that—

(i) Meet the requirements of the pre-service administrator training priority in paragraph (b)(2) of this section;

(ii) Include training to support the capacity of school leaders to start new schools that serve Indian students, such as charter schools or schools transitioning from BIE-operated to Tribally controlled; and

(iii) Include efforts by the applicant to place participants in administrator jobs with entities planning to start or transition a school to serve Indian students.

* * * * *

■ 9. Newly redesignated § 263.7 is amended by:

■ a. Revising paragraph (a)(2).

■ b. Removing the word ''jobs'' in paragraph (c)(1)(iv) and adding in its place ''employment''.

■ c. Revising paragraphs (c)(2) and (c)(3).

■ d. Revising paragraph (d)(1) by removing the phrase ''schools with significant Indian populations'' and adding in its place the phrase ''LEAs that serve a high proportion of Indian students''.

■ e. Adding to the end of paragraph (d)(3) the phrase ''and that offer qualifying employment opportunities''.

■ f. Adding new paragraphs (d)(5) and (d)(6).

■ g. Removing paragraph (e)(3).

The additions and revisions read as follows:

§ 263.7 How does the Secretary evaluate applications for the Professional Development program?

(a) * * *

(2) The extent to which LEAs with qualifying employment opportunities

exist in the project's service area, as demonstrated through a job market analysis, and have provided a letter of support for the project.

* * * * *

(c) * * *

(2) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that program participants are likely to complete the program.

(3) The extent to which the proposed project will incorporate the needs of potential employers, as identified by a job market analysis, by establishing partnerships and relationships with LEAs that serve a high proportion of Indian students and developing programs that meet their employment needs.

(d) * * *

(5) The extent to which the proposed project has a plan for recruiting and selecting participants, including students who may not be of traditional college age, that ensures that the program participants are likely to complete the program.

(6) The extent to which the applicant will assist participants in meeting the service obligation requirements.

* * * * *

■ 10. Newly redesignated § 263.9 is amended by:

■ a. In paragraph (b)(1), removing the word ''people'' and adding, in its place, the word ''students'' and removing the words ''school that has a significant Indian population'' and adding, in their place, the words ''LEA that serves a high proportion of Indian students''.

■ b. Adding a note at the end of this section.

The addition reads as follows:

§ 263.9 What are the payback requirements?

* * * * *

Note to § 263.9: For grants that provide administrator training, a participant who has received administrator training and subsequently works for a Tribal educational agency that provides administrative control or direction of public schools (*e.g.,* BIE-funded schools or charter schools) satisfies the requirements of paragraph (b)(1) of this section.

§ 263.11 [Amended]

■ 11. Newly redesignated § 263.11 is amended by removing the word ''people'' in paragraph (b)(1) and replacing it with the phrase ''students in an LEA that serves a high proportion of Indian students''.

■ 12. Newly redesignated § 263.12 is amended by

■ a. Removing the word ''and'' at the end of paragraph (c)(1)(ii).

■ b. Redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv) and adding a new paragraph (c)(1)(iii).

■ c. Removing in paragraph (c)(2) the word ''seven'' and adding, in its place, the word ''thirty''.

The addition reads as follows:

§ 263.12 What are the grantee post-award requirements?

* * * * *

(c) * * *

(1) * * *

(iii) A statement explaining that work must be in an ''LEA that serves a high proportion of Indian students,'' and the regulatory definition of that phrase; and

* * * * *

[FR Doc. 2019–22075 Filed 10–10–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2019–0228; FRL–9998–64]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances (19–3.F)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 31 chemical substances which were the subject of premanufacture notices (PMNs). Eight of these chemical substances are subject to TSCA Orders issued by EPA and the remaining 23 of these chemical substances received a ''not likely to present an unreasonable risk'' determination. This action would require persons who intend to manufacture (defined by statute to include import) or process any of these 31 chemical substances for an activity that is proposed as a significant new use to notify EPA at least 90 days before commencing that activity. Persons may not commence manufacture or processing for the significant new use until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required by that determination.

DATES: Comments must be received on or before November 12, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0228, 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: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@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?

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this proposed rule. 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:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), *e.g.,* chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR

12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to final SNURs must certify their compliance with the SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after November 12, 2019 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) (see 40 CFR 721.20), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Background

A. What action is the Agency taking?

EPA is proposing these SNURs under TSCA section 5(a)(2) for chemical substances that were the subject of PMNs. These proposed SNURs would require persons to notify EPA at least 90 days before commencing the manufacture or processing of a chemical substance for any activity proposed as a significant new use. Receipt of such notices would allow EPA to assess risks and, if appropriate, to regulate the significant new use before it may occur. Additional background regarding SNURs is more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** issue of April 24, 1990 (55 FR 17376) (FRL–3658–5). Consult that preamble for further general information on the objectives, rationale, and procedures for SNURs and on the basis for significant new use designations, including provisions for developing test data.

B. What is the Agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four bulleted TSCA section 5(a)(2) factors listed in Unit III.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the proposed rule, recordkeeping requirements, and exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

III. Significant New Use Determination

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining significant new uses for the 31 chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances and potential human exposures and environmental releases that may be associated with the substances, in addition to the factors in TSCA section 5(a)(2). Consistent with TSCA section 5(f)(4), for the eight chemical substances subject to an order under TSCA section 5(e), EPA is proposing to identify any use not conforming to the restrictions of the order as a significant new use. For the 23 chemical substances that EPA has determined ''not likely'' to present an unreasonable risk under the conditions of use, EPA is proposing to identify other circumstances that, while not reasonably foreseen, would warrant further EPA review before manufacture or processing for such a use is commenced.

IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for 31 chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR or basis for the TSCA section 5(e) Order.
- Potentially Useful Information. This is information identified by EPA that would help characterize the potential health and/or environmental effects of the chemical substance in support of a request by the PMN submitter to modify the Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use designated by the SNUR.

• CFR citation assigned in the regulatory text section of the proposed rule. The regulatory text section of each proposed rule specifies the activities that would be designated as significant new uses. Certain new uses, including exceedance of production volume limits (*i.e.,* limits on manufacture volume) and other uses designated in this proposed rule, may be claimed as CBI.

These proposed rules include 8 PMN substances that are subject to orders issued under TSCA section 5(e)(1)(A), as required by the determinations made under TSCA section 5(a)(3)(B). Those TSCA section 5(e) Orders require protective measures to limit exposures or otherwise mitigate the potential unreasonable risk. The proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the restrictions imposed by the underlying TSCA section 5(e) Orders, consistent with TSCA section 5(f)(4).

These proposed rules also include 23 PMN substances that received ''not likely to present an unreasonable risk'' determination in TSCA section 5(a)(3)(c). However, during the course of these reviews, EPA identified concerns for certain health and/or environmental risks if the chemicals were not used following the limitations identified by the submitters in the notices. EPA did not deem such uses as reasonably foreseen in the TSCA section 5(a)(3)(C) determinations. The proposed SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to those same limitations.

The chemicals subject to these proposed SNURs are as follows:

PMN Numbers: P–16–151, P–16–152, P–16–153, P–16–154, and P–16–155

Chemical names: Perfluoropolyether halide (generic) (P–16–151), Perfluoropolyether aryl (generic) (P–16–152), Substituted aryl-perfluoropolyether (generic) (P–16–153), Sulfonated perfluoropolyether aromatic transition metal salt (generic) (P–16–154), and Sulfonated perfluoropolyether aryl alkali metal salt (generic) (P–16–155).

CAS numbers: Not available.

Effective date of TSCA section 5(e) Order: April 30, 2019.

Basis for TSCA section 5(e) Order: The PMNs state that the generic (non-confidential) use of the substances P–16–151 and P–16–152 will be as intermediates and P–16–153, P–16–154, P–16–155 will be as lubricant additives. Based on the physical/chemical properties of the PMN substances (as described in the New Chemical Program's PBT category at 64 FR 60194; November 4, 1999) and test data on structurally similar substances, the PMN substances are potentially persistent, bioaccumulative, and toxic (PBT) chemicals. EPA estimates that the PMN substances will persist in the environment more than 2 months and estimates a bioaccumulation factor of greater than or equal to 1,000. Based on results of testing on analogous small fluorinated polyether substances, EPA has identified concerns for the possible degradation products of the PMN substances for liver toxicity, kidney effects, hematology and clinical chemistry changes, pancreatic and testicular cell tumor formation, and reproductive and developmental effects. Based on estimated ecotoxicity values for the possible degradation products, EPA predicts toxicity to aquatic organisms may occur at concentrations that exceed 153 parts per billion (ppb). The TSCA section 5(e) Order was issued under TSCA sections 5(a)(3)(B)(i) and 5(e)(1)(A)(i), based on a finding that the available information is insufficient to permit a reasoned evaluation of the human health and environmental effects of the PMN substances. The TSCA section 5(e) Order was also issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substances may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the TSCA section 5(e) Order requires:

1. Submission to EPA of certain fate testing within one year after the Notice of Commencement of the PMN P–16–155;

2. Establishment and use of a hazard communication program, including environmental hazard precautionary statements on each label and in the Safety Data Sheet (SDS);

3. Dispose of the PMN substances only with Hazardous Waste, High Temperature Incineration with a control efficiency of 99.99% efficiency or greater;

4. No release of the PMN substances to surface waters;

5. Manufacture the PMN substances only for the confidential uses specified in the PMNs; and

6. No manufacture beyond the annual production volumes specified in the TSCA section 5(e) Order.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. The submitter has agreed not to manufacture (including import) the P–16–155 substance beyond one year after the Notice of Commencement without performing an indirect photolysis screening test (OCSPP Test Guideline 835.5270). EPA has also determined that the results of hydrolysis testing, photodegradation in soil, chronic aquatic toxicity, and reproductive toxicity testing would help EPA determine the potential human and environmental effects of the PMN substances. Although the TSCA section 5(e) Order does not require these tests, the TSCA section 5(e) Order's restrictions remain in effect until the TSCA section 5(e) Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citations: 40 CFR 721.11346 (P–16–151); 40 CFR 721.11347 (P–16–152); 40 CFR 721.11348 (P–16–153); 40 CFR 721.11349 (P–16–154) and 40 CFR 721.11350 (P–16–155).

PMN Number: P–16–225

Chemical names: Cyclohexanol, 4-ethylidene-2-propoxy- (P–16–225, chemical A) and Cyclohexanol, 5-ethylidene-2-propoxy- (P–16–225, chemical B).

CAS numbers: 1631145–48–6 (P–16–225, chemical A) and 1631145–49–7 (P–16–225, chemical B).

Basis for action: The PMN states that the use of the substance will be as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners, air fresheners, candles and other similar industrial, household and consumer products. Based on the physical/chemical properties of the PMN substances, test data on the PMN substances, and Structure Analysis Relationships (SAR) analysis of test data on analogous substances, EPA has identified concerns for systemic toxicity, and aquatic toxicity at surface water concentrations exceeding 300 ppb, if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substances as described in the PMN include the following protective measures:

1. No domestic manufacture of the PMN substances (*i.e.,* import only);

2. No import of the PMN substances at more than 10,000 kg annual production volume;

3. No use of the PMN substances other than for the fragrance use stated in the PMN submission; and

4. No processing of the PMN substances to greater than 10% in compounded fragrance oil formulation.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substances in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption testing and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substances.

CFR citation: 40 CFR 721.11351 (P–16–225, chemical A) and 40 CFR 721.11352 (P–16–225, chemical B).

PMN Number: P–16–314

Chemical Name: Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-.

CAS Number: 1370699–98–1.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as part of a fragrance formula. Based on test data on the new chemical substance, the estimated physical/chemical properties of the PMN, and SAR analysis on analogous neutral organics, EPA has identified concerns for liver toxicity for the intact new chemical substance, oncogenicity for the ketone/aldehyde hydrolysis product(s) that may be formed under the acidic conditions in the stomach, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

1. No domestic manufacture of the PMN substance (*i.e.,* import only);

2. Less than 10% of the PMN substance in any formulation from processing; and

3. No manufacture (including import) beyond an annual production volume of 10,000 kilograms per year.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption testing and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.11353.

PMN Number: P–16–429

Chemical Name: Endcapped polysiloxane (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a universal tint paste resin having high solids. Based on the estimated physical/chemical properties of the PMN substance, structural information, and information on analogous alkoxysilanes, EPA has identified lung effects and irritation to the eye, skin, lung, and mucous membranes if the chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- Use of the PMN substance only for the confidential use specified in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of pulmonary effects and skin irritation testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11354.

PMN Number: P–16–470

Chemical Name: 2,7-Nonadien-4-ol, 4,8-dimethyl-.

CAS Number: 103983–77–3.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as part of a fragrance formula. Based on the estimated physical/chemical properties of the PMN substance and available data on the new chemical substance, EPA has identified concerns for skin irritation, eye irritation, liver and thyroid toxicity, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No release of the PMN substance from manufacturing or processing resulting in surface water concentrations that exceed 113 ppb;

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific organ toxicity and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.11355.

PMN Number: P–17–108

Chemical Name: Carbonodithioic acid, O-[2-[(dithiocarboxy)amino]-2-methylpropyl] ester, sodium salt (1:2).

CAS Number: 1947332–67–3.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be for use in ore processing. Based on the estimated physical/chemical properties of the PMN substance, available PMN data, comparison with structurally analogous chemical substances, and SAR analysis of test data on analogous dithiocarbamates, EPA has identified concerns for irritation and corrosion to all tissues, developmental and neurological effects, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measure:

- No release of the PMN substance resulting in surface water concentrations exceeding 2 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of reproductive/developmental toxicity, neurotoxicity, skin irritation/

corrosion, and toxicokinetics and chronic aquatic ecotoxicity testing would help characterize the potential health and environmental effects of the PMN substance.

CFR Citation: 40 CFR 721.11356.

PMN Number: P–17–253

Chemical Name: Oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be to enhance formulation solubilization properties. Based on its estimated physical/chemical properties, data on analogous chemicals, and other structural information, EPA has identified concerns for lung effects and irritation if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measures:

- No processing of the substance to a concentration greater than 5% by weight in the final formulated product, for any use; and
- No consumer use.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11357.

PMN Number: P–18–91

Chemical Name: Vegetable oil, polymers with diethylene glycol- and polyol- and polyethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

CAS Number: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as a chemical intermediate (polyol) for use in the manufacture of polyurethane polymers. Based on the estimated physical/chemical properties of the PMN substance, comparison with structurally analogous chemical substances, test data on analogous substances, and SAR analysis on esters, EPA has identified concerns for lung effects, irritation to eye, mucous membranes and lung, anesthetization of the eye, developmental, renal and bladder toxicity, kidney toxicity, and renal cancer if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No modification of manufacture, processing or use if it results in inhalation exposures to vapors, particulate, mist or aerosols.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of *in vitro* skin irritation and eye damage testing using human derived cells would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11358.

PMN Number: P–18–120

Chemical Name: 1H-Pyrrole-2,5-dione, 1,1′-C36-alkylenebis-.

CAS Number: 1911605–95–2.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an adhesive component. Based on the available data for the new chemical substance, estimated physical/chemical properties of the PMN substance, and comparison with structurally analogous chemical substances, EPA has identified concerns for developmental toxicity and sensitization if the chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacturing, processing, or use of the substance that results in inhalation exposures.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of developmental toxicity and sensitization testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11359.

PMN Number: P–18–129

Chemical name: Benzenepropanal, .alpha.,.alpha.,3-trimethyl-.

CAS number: 107737–97–3.

Effective date of TSCA section 5(e) Order: April 30, 2019.

Basis for TSCA section 5(e) Order: The PMN states that the generic (non-confidential) use of the substance will be as an intermediate used for chemical production. Based on test data on the PMN substance and analogue data, EPA has identified concerns for sensitization and developmental toxicity. In addition, based on SAR analysis of test data on analogous neutral organics, EPA predicts toxicity to aquatic organisms may occur at concentrations greater than 99 ppb. The TSCA section 5(e) Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the TSCA section 5(e) Order requires:

- No manufacture (including import) of the PMN substance beyond the confidential annual production volume specified in the TSCA section 5(e) Order.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of biodegradability, chronic aquatic toxicity, and reproductive toxicity testing would help EPA determine the potential human and environmental effects of the PMN substance. Although the TSCA section 5(e) Order does not require this information, the TSCA section 5(e) Order's restrictions remain in effect until the TSCA section 5(e) Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11360.

PMN Number: P–18–182

Chemical name: Multiwalled carbon nanotubes (generic).

CAS number: Not available.

Effective date of TSCA section 5(e) Order: May 3, 2019.

Basis for TSCA section 5(e) Order: The PMN states that substance will be used in heat transfer, heat storage, thermal emission, and general temperature management in heat-generating systems such as electronics, to improve mechanical properties or electrical conductivities of other materials or products, and for light absorption properties. EPA has identified concerns for pulmonary toxicity based on carbon nanotube analogues. EPA has also identified concerns for aquatic toxicity when the substance is at low concentrations and in the presence of natural organic matter. The TSCA section 5(e) Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation, the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the TSCA section 5(e) Order requires:

1. Use of personal protective equipment by workers to prevent dermal exposure where there is potential dermal exposure;
2. Use of a National Institute of Occupational Safety and Health (NIOSH) certified respirators with an Assigned Protection Factor (APF) of at least 50 workers to prevent inhalation exposure where there is potential inhalation exposure;
3. Refrain from using the PMN in applications that generates a dust, vapor, mist, or aerosol, unless such application method occurs in an enclosed process;
4. Process and use of the PMN substance only as described in the PMN;
5. No release of the PMN substance to surface waters; and
6. Disposal only by incineration or landfill.

The proposed SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the human health and environmental effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has determined that the results of pulmonary toxicity and chronic aquatic toxicity testing would help EPA determine the potential human and environmental effects of the PMN substance. Although the TSCA section 5(e) Order does not require this information, the TSCA section 5(e) Order's restrictions remain in effect until the TSCA section 5(e) Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11361.

PMN Number: P–18–186

Chemical Name: Polyolefin ester (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a fuel additive. Based on the estimated physical/chemical properties of the PMN substance and comparison with structurally analogous substances, EPA has identified concerns for lung surfactancy and irritation to the eye and skin if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

1. No use involving an application method that generates a vapor, mist, or aerosol; and
2. No manufacture (including import) of the substance at less than the confidential average molecular weight identified in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of absorption, distribution, metabolism, and excretion (ADME)/toxicokinetic and lung toxicity testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11362.

PMN Numbers: P–18–247, P–18–248, P–18–249, P–18–250, P–18–251, and P–18–252

Chemical Names: Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polyetherpolyol, .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and 1,2-propanediol, iso-Bu alc.- and 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and Et alc.- and methanol- and 1-methoxy-2-propanol-blocked (generic) (P–18–247); Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol-blocked (generic) (P–18–248); Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic) (P–18–249); Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic) (P–18–250); Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic) (P–18–251); Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic) (P–18–252).

*CAS Number*s: Not available.

Basis for action: The PMNs state that the use of the PMN substances will be as crosslinkers for automotive electrocoats. Based on the physical/chemical properties, chemical structure of the substances, submitted data on the substances, and comparison to structurally analogous substances, EPA has identified concerns for lung effects, skin sensitization, and aquatic toxicity if the chemical substances are not used following the limitations noted. The conditions of use of the PMN substances as described in the PMNs include the following protective measures:

1. No manufacture, processing, or use in a manner that results in inhalation exposure; and
2. No release of the PMN substance to surface waters exceeding 200 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of chronic ecotoxicity testing and lung effects tiered testing for surfactants would help characterize the potential health and environmental effects of the PMN substances.

CFR citations: 40 CFR 721.11363 (P–18–247); 40 CFR 721.11364 (P–18–248); 40 CFR 721.11365 (P–18–249); 40 CFR 721.11366 (P–18–250); 40 CFR 721.11367 (P–18–251); and 40 CFR 721.11368 (P–18–252).

PMN Number: P–18–282

Chemical Name: Fatty acid ester, polyether, diisocyanate polymer (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as an adhesive. Based on the estimated physical/chemical properties of the PMN substance, test data on an analogue of the residual isocyanate, and comparison with structurally analogous chemical substances, EPA has identified concerns for irritation/sensitization for the skin, eyes, mucous membrane, and lungs, and respiratory effects if the chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacturing, processing, or use of the PMN substance containing greater than the confidential percentage of residual isocyanate identified in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin irritation, eye damage, skin sensitization, and pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11369.

PMN Number: P–18–305

Chemical Name: Alkenoic acid, alkyl-, alkyl ester, polymer with alkyl alkenoate, substituted heteromonocycle, substituted carbomonocycle, substituted alkanediol and alkenoic acid, alkali metal salt (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a component of ink. Based on the estimated physical/chemical properties of the PMN substance and comparison with structurally analogous chemical substances, EPA has identified lung effects if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacturing, processing, or use of the substance that results in inhalation exposures.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11370.

PMN Number: P–18–339

Chemical Name: Alkyl heteromonocycle with heteroatom substituted alkyl cycloalkane and 2-hydroxyethyl heteromonocycle methacrylate-blocked homopolymer (generic).

CAS Number: Not available.

Basis for action: The PMN states that the use of the PMN substance will be as an immobilizing agent for the microbial promoter of nitrogen decomposition. Based on the estimated physical/chemical properties of the PMN substance and comparison with structurally analogous chemical substances, EPA has identified lung effects if the chemical substance is not used following the limitations noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No manufacture, processing, or use that results in inhalation exposures.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of specific target organ toxicity including pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11371.

PMN Number: P–19–5

Chemical Name: Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (generic).

CAS Number: Not available.

Effective date of TSCA section 5(e) Order: March 29, 2019.

Basis for TSCA section 5(e) Order: The PMN states that the use of the PMN substance will be as an adhesive for automotive parts. EPA identified concerns for reproductive/developmental toxicity, mutagenicity, and carcinogenicity for the low molecular weight components based on the epoxides chemical category and submitted test data. EPA also identified concerns for skin and lung sensitization and systematic toxicity based on the epoxide moieties. In addition, based on analysis of test data on the PMN substance and SAR analysis on analogous thiols/mercaptans, polyepoxides, and monoepoxides, EPA predicts chronic toxicity to aquatic organisms may occur at concentrations greater than 1 ppb. The TSCA section 5(e) Order was issued under TSCA sections 5(a)(3)(B)(ii)(I) and 5(e)(1)(A)(ii)(I), based on a finding that in the absence of sufficient information to permit a reasoned evaluation the substance may present an unreasonable risk of injury to human health and the environment. To protect against these risks, the TSCA section 5(e) Order requires:

1. Use of personal protective equipment where there is a potential for dermal exposure;
2. Refraining from manufacture, processing or use of the PMN substance in a manner that would result in inhalation exposure;
3. No release of the PMN substance to surface waters exceeding 1 ppb; and
4. Establishment and use of a hazard communication program, including human health precautionary statements on each label and in the SDS.

The SNUR designates as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information about the health and environmental effects of the PMN substance may be potentially useful in support of a request by the PMN submitter to modify the TSCA section 5(e) Order, or if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this SNUR. EPA has also determined that specific ecological hazard, reproductive/developmental toxicity, sensitization, and carcinogenicity effects testing of the

PMN substance would be useful in determining the health and environmental effects of the PMN substance. Although the TSCA section 5(e) Order does not require these tests, the TSCA section 5(e) Order's restrictions remain in effect until the TSCA section 5(e) Order is modified or revoked by EPA based on submission of this or other relevant information.

CFR citation: 40 CFR 721.11372.

PMN Number: P–19–20

Chemical Name: Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs. (generic).

CAS Number: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a lubricating additive. Based on the estimated physical/chemical properties of the PMN substance and comparison to structurally analogous chemical substances, EPA has identified concerns for irritation, sensitization, blood and liver toxicity, lung toxicity, and developmental toxicity if the chemical substance is not used following the limitation noted. The condition of use of the PMN substance as described in the PMN includes the following protective measure:

- No use of the PMN substance involving an application method that generates a vapor, mist, or aerosol.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of sensitization, irritation, target organ toxicity/pulmonary effects, and reproduction/developmental effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11373.

PMN Number: P–19–35

Chemical Name: Acetamide, 2-(4-methylphenoxy)-N–1H-pyrazol-3-yl-N-(2-thienylmethyl)-.

CAS Number: 1374760–95–8.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substance will be as a fragrance. Based on the estimated physical/chemical properties of the PMN substance, available test data on the new chemical substance, and SAR analysis on analogous thiophenes, EPA has identified concerns for severe eye irritation, sensitization, lung effects, histopathological effects on the nasal passages, and aquatic toxicity if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substance as described in the PMN include the following protective measures:

1. No domestic manufacture of the PMN substance; and
2. No release of the PMN substance to surface waters exceeding 15 ppb.

The proposed SNUR would designate as a ''significant new use'' the absence of these protective measures.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of pulmonary effects testing would help characterize the potential health effects of the PMN substance.

CFR Citation: 40 CFR 721.11374.

PMN Number: P–19–54

Chemical Names: Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (generic) (P–19–54, chemical A) and Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (generic) (P–19–54, chemical B).

CAS Numbers: Not available.

Basis for action: The PMN states that the generic (non-confidential) use of the PMN substances will be as an automotive lubricant additive. Based on the available data for the new chemical substance, estimated physical/chemical properties of the PMN substances, comparison with structurally analogous chemical substances and other structural information, EPA has identified irritation to all tissues if the chemical substance is not used following the limitations noted. The conditions of use of the PMN substances as described in the PMN include the following protective measure:

- Exceeding the concentration of the PMN substances in a formulated lubricant fluid for consumer use greater than the confidential percentage identified in the PMN.

The proposed SNUR would designate as a ''significant new use'' the absence of this protective measure.

Potentially useful information: EPA has determined that certain information may be potentially useful to characterize the health effects of the PMN substances if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin and eye irritation testing would help characterize the potential health effects of the PMN substances.

CFR Citation: 40 CFR 721.11381 (P–19–54, chemical A) and 40 CFR 721.11382
(P–19–54, chemical B).

V. Rationale and Objectives of the Proposed Rule

A. Rationale

During review of the PMNs submitted for the chemical substances that are subject to these proposed SNURs, EPA concluded that for 8 chemical substances regulation was warranted under TSCA section 5(e), pending the development of information sufficient to make reasoned evaluations of the health or environmental effects of the chemical substances. The basis for such findings is outlined in Unit IV. Based on these findings, TSCA section 5(e) Orders requiring the use of appropriate exposure controls were negotiated with the PMN submitters. As a general matter, EPA believes it is necessary to follow TSCA section 5(e) Orders with a SNUR that identifies the absence of those protective measures as Significant New Uses to ensure that all manufacturers and processors—not just the original submitter—are held to the same standard.

During review of the other 23 chemical substances that are the subject of these SNURs and as further discussed in Unit IV, EPA identified certain circumstances different from the intended conditions of use that raised potential risk concerns. EPA determined that deviations from the protective measures identified in the submissions could result in changes in the type or form of exposure to the chemical substances and/or increased exposures to the chemical substances and/or changes in the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of the chemical substances, and therefore warranted SNURs. The SNURs would identify as significant new uses any manufacturing, processing, use, distribution in commerce, or disposal that does not conform to the protective measures in the submission.

B. Objectives

EPA is proposing these SNURs for specific chemical substances which

have undergone premanufacture review because the Agency wants:

- To receive notice of any person's intent to manufacture or process a listed chemical substance for the described significant new use before that activity begins.
- To review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To either determine that the prospective manufacture or processing is not likely to present an unreasonable risk, or to take necessary regulatory action associated with any other determination, before the described significant new use of the chemical substance occurs.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Chemical Substance Inventory (TSCA Inventory). Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *http://www.epa.gov/opptintr/existingchemicals/pubs/tscainventory/index.html.*

VI. Applicability of the Proposed Significant New Use Designation

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule have undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for chemical substances for which an NOC has not been submitted EPA concludes that the designated significant new uses are not ongoing.

When chemical substances identified in this proposed rule are added to the TSCA Inventory, EPA recognizes that, before the rule is effective, other persons might engage in a use that has been identified as a significant new use. However, TSCA section 5(e) Orders have been issued for 8 of the 31 chemical substances, and the PMN submitters are prohibited by the TSCA section 5(e) Orders from undertaking activities which would be designated as significant new uses. The identities of 25 of the 31 chemical substances subject to this proposed rule have been claimed as confidential (per 40 CFR 720.85) for a chemical substance covered by this action. Based on this, the Agency believes that it is highly unlikely that any of the significant new uses described in the regulatory text of this proposed rule are ongoing.

Therefore, EPA designates October 11, 2019 as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified as of that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and wait until EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken such actions as are required with that determination.

VII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require developing any particular new information (*e.g.,* generating test data) before submission of a SNUN. There is an exception: Development of test data is required where the chemical substance subject to the SNUR is also subject to a rule, order or consent agreement under TSCA section 4 (see TSCA section 5(b)(1)).

In the absence of a TSCA section 4 test rule covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information identified by EPA that would help characterize the potential health and/or environmental effects of the PMN/SNUN substance for all the listed SNURs. EPA recognizes that the 2016 Lautenberg Amendments have led to modifications in our approach to testing requirements, including an increased consideration of alternatives to vertebrate testing. Descriptions of tests/information needs are provided for informational purposes only and EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the potentially useful information. EPA encourages dialogue with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h). To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.'' The Organisation for Economic Co-operation and Development test guidelines are available from the OECD Bookshop at *http://www.oecdbookshop.org* or SourceOECD at *http://www.sourceoecd.org.*

The potentially useful information listed in Unit IV. may not be the only means of addressing the potential risks of the chemical substance. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

VIII. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E–PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket identified for this rulemaking under **ADDRESSES**.

X. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This proposed rule would establish SNURs for several new chemical substances that were the subject of PMNs and TSCA section 5(e) Orders. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

According to PRA (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this proposed rule have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, to the Director, Regulatory Support Division, Office of Mission Support (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to this address.

C. Regulatory Flexibility Act (RFA)

Pursuant to section 605(b) of the RFA (5 U.S.C. 601 *et seq.*), the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 10 in FY2016, 14 in FY2017, and 18 in FY2018 and only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this proposed rule would not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

E. Executive Order 13132: Federalism

This action would not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action would not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes. This proposed rule would not significantly nor uniquely affect the Indian Tribal governments, nor would it involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this proposed rule is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this proposed rule would not involve any technical standards, NTTAA section 12(d) (15 U.S.C. 272 note), does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 26, 2019.

Tala Henry,

Deputy Director, Office of Pollution Prevention and Toxics.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PARTS 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, 2613, and 2625(c).

■ 2. Add §§ 721.11346 through 721.11374, 721.11381 and 721.11382 to subpart E to read as follows:

Subpart E—Significant New Uses for Specific Chemical Substances

Sec.

721.11346 Perfluoropolyether halide (generic).
721.11347 Perfluoropolyether aryl (generic).
721.11348 Substituted aryl-perfluoropolyether (generic).
721.11349 Sulfonated perfluoropolyether aromatic transition metal salt (generic).
721.11350 Sulfonated perfluoropolyether aryl alkali metal salt (generic).
721.11351 Cyclohexanol, 4-ethylidene-2-propoxy- (P–16–225, chemical A).
721.11352 Cyclohexanol, 5-ethylidene-2-propoxy- (P–16–225, chemical B).
721.11353 Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-.
721.11354 Endcapped polysiloxane (generic).
721.11355 2,7-Nonadien-4-ol, 4,8-dimethyl-.
721.11356 Carbonodithioic acid, O-[2-[(dithiocarboxy)amino]-2-methylpropyl] ester, sodium salt (1:2).
721.11357 Oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether (generic).
721.11358 Vegetable oil, polymers with diethylene glycol- and polyol- and polyethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).
721.11359 1H-Pyrrole-2,5-dione, 1,1′-C36-alkylenebis-.
721.11360 Benzenepropanal, .alpha.,.alpha.,3-trimethyl-.
721.11361 Multiwalled carbon nanotubes (generic).
721.11362 Polyolefin ester (generic).
721.11363 Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polyetherpolyol, .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and 1,2-propanediol, iso-Bu alc.- and 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and Et alc.- and methanol- and 1-methoxy-2-propanol-blocked, (generic).
721.11364 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol-blocked, (generic).
721.11365 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic).
721.11366 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic).
721.11367 Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic).
721.11368 Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic).
721.11369 Fatty acid ester, polyether, diisocyanate polymer (generic).
721.11370 Alkenoic acid, alkyl-, alkyl ester, polymer with alkyl alkenoate, substituted heteromonocycle, substituted carbomonocycle, substituted alkanediol and alkenoic acid, alkali metal salt (generic).
721.11371 Alkyl heteromonocycle with heteroatom substituted alkyl cycloalkane and 2-hydroxyethyl heteromonocycle methacrylate-blocked homopolymer (generic).
721.11372 Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (generic).
721.11373 Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs. (generic).
721.11374 Acetamide, 2-(4-methylphenoxy)-N–1H-pyrazol-3-yl-N-(2-thienylmethyl)-.
721.11375 [Reserved]
721.11376 [Reserved]
721.11377 [Reserved]
721.11378 [Reserved]
721.11379 [Reserved]
721.11380 [Reserved]
721.11381 Polyamines, reaction products with succinic anhydride polyalkenyl derivs. metal salts (generic) (P–19–54, chemical A).
721.11382 Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (generic) (P–19–54, chemical B).

Subpart E—Significant New Uses for Specific Chemical Substances

§ 721.11346 Perfluoropolyether halide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoropolyether halide (PMN P–16–151) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e) (concentration set at 1.0%), (f), (g)(3)(i), (ii), (4)(i), (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t). It is a significant new use to manufacture the substance for more than one year.

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11347 Perfluoropolyether aryl (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as perfluoropolyether aryl (PMN P–16–152) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard Communication.* Requirements as specified in § 721.72(a) through (d), (e) (concentration set at

1.0%), (f), (g)(3)(i), (ii), (4)(i), (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11348 Substituted aryl-perfluoropolyether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as substituted aryl-perfluoropolyether (PMN P–16–153) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e) (concentration set at 1.0%), (f), (g)(3)(i), (ii), (4)(i), (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11349 Sulfonated perfluoropolyether aromatic transition metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated perfluoropolyether aromatic transition metal salt (PMN P–16–154) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e) (concentration set at 1.0%), (f), (g)(3)(i), (ii), (4)(i), (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11350 Sulfonated perfluoropolyether aryl alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as sulfonated perfluoropolyether aryl alkali metal salt (PMN P–16–155) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication.* Requirements as specified in § 721.72(a) through (d), (e) (concentration set at 1.0%), (f), (g)(3)(i), (ii), (4)(i), (iii), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(k) and (t).

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (b)(1), and (c)(1). Incineration must be hazardous waste high temperature incineration where the treatment efficiency is no less than 99.99%.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), (c) and (f) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(ii) of this section.

§ 721.11351 Cyclohexanol, 4-ethylidene-2-propoxy-(P–16–225, chemical A).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexanol, 4-ethylidene-2-propoxy-(PMN P–16–225, chemical A; CAS No. 1631145–48–6) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (s)(10,000 kg). It is a significant new use to use other than as a fragrance and process the substance to greater than 10% in compounded fragrance oil formulations.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11352 Cyclohexanol, 5-ethylidene-2-propoxy-(P–16–225, chemical B).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as cyclohexanol, 5-ethylidene-2-propoxy-(PMN P–16–225, chemical B; CAS No. 1631145–49–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (s)(10,000 kg). It is a significant new use to use other than as a fragrance and process the substance to greater than 10% in compounded fragrance oil formulations.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a), (b), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11353 Ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as ethanone, 1-(5-propyl-1,3-benzodioxol-2-yl)-(PMN P–16–314, CAS No. 1370699–98–1) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (s)(10,000 kg). It is a significant new use to exceed 10% of the PMN substance in processing formulations.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11354 Endcapped polysiloxane (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as endcapped polysiloxane (PMN P–16–429) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11355 2,7-Nonadien-4-ol, 4,8-dimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 2,7-nonadien-4-ol, 4,8-dimethyl-(PMN P–16–470, CAS No. 103983–77–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4) and (b)(4) where N=113.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11356 Carbonodithioic acid, O-[2-[(dithiocarboxy)amino]-2-methylpropyl] ester, sodium salt (1:2).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as carbonodithioic acid, O-[2-[(dithiocarboxy)amino]-2-methylpropyl] ester, sodium salt (1:2) (PMN P–17–108; CAS No. 1947332–67–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N=2.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11357 Oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance is identified generically as oxirane, 2-methyl-, polymer with oxirane, methyl 2-(substituted carbomonocycle isoquinolin-2(3H)-yl) propyl ether (PMN P–17–253) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to process the substance to a concentration greater than 5% by weight in the final formulated product for any use.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11358 Vegetable oil, polymers with diethylene glycol- and polyol- and polyethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as vegetable oil, polymers with diethylene glycol- and polyol- and polyethylene glycol-depolymd. poly(ethylene terephthalate) waste plastics and arylcarboxylic acid anhydride (PMN P–18–91) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to modify the manufacture, process, or use of the substance that results in inhalation exposure to vapors, particulate, mist or aerosols.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11359 1H-Pyrrole-2,5-dione, 1,1′-C36-alkylenebis-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as 1H-pyrrole-2,5-dione, 1,1′-C36-alkylenebis-(PMN P–18–120, CAS No. 1911605–95–2) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in any manner that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11360 Benzenepropanal, .alpha.,.alpha.,3-trimethyl-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as benzenepropanal, .alpha.,.alpha.,3-trimethyl-(P–18–129; CAS No. 107737–97–3) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(t).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11361 Multiwalled carbon nanotubes (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as multiwalled carbon nanotubes (PMN P–18–182) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply to quantities of the substance that have been:

(i) embedded or incorporated into a polymer matrix that itself has been reacted (cured);

(ii) embedded in a permanent solid/polymer form that is not intended to undergo further processing, except mechanical processing; or

(iii) incorporated into an article as defined at 40 CFR 720.3(c).

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (3), when determining which persons are reasonably likely to be exposed as required for § 721.63(a)(1) and, (a)(4), engineering control measures (*e.g.,* enclosure or confinement of the operation, general and local ventilation) or administrative control measures (*e.g.,* workplace policies and procedures) shall be considered and implemented to prevent exposure, where feasible, (5)(respirators must provide a National Institute for Occupational Safety and Health assigned protection factor of at least 50), (6)(particulate), and (c).

(ii) *Industrial, commercial, and consumer activities.* It is a significant new use to use an application method that generates a dust, mist, or aerosol, unless such application method occurs in an enclosed process. It is a significant new use to use the substance other than for heat transfer, heat storage, thermal emission, and general temperature management in heat-generating systems such as electronics, to improve mechanical properties or electrical conductivities of other materials or products, and for light absorption properties.

(iii) *Disposal.* Requirements as specified in § 721.85 (a)(1), (2), (b)(1), (2), (c)(1), and (2).

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(1), (b)(1), and (c)(1).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11362 Polyolefin ester (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyolefin ester (PMN P–18–186) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (y)(1). It is a significant new use to manufacture (including import) the substance at less than the confidential average molecular weight identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11363 Isocyanic acid, polymethylenepolyphenylene ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polyetherpolyol, .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and 1,2-propanediol, iso-Bu alc.- and 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and Et alc.- and methanol- and 1-methoxy-2-propanol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, polymer with 2-ethyl-2-(hydroxymethyl)-1,3-propanediol, polyetherpolyol, .alpha.,.alpha.′-[(1-methylethylidene)di-4,1-phenylene]bis[.omega.-hydroxypoly(oxy-1,2-ethanediyl)] and 1,2-propanediol, iso-Bu alc.- and 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and Et alc.- and methanol- and 1-methoxy-2-propanol-blocked (PMN P–18–247) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11364 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol-blocked, (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol-blocked, (PMN P–18–248) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11365 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol and 1-methoxy-2-propanol-blocked (PMN P–18–249) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11366 Isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, polymer with polyetherpolyol, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked. (PMN P–18–250) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c). (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11367 Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol-

and 1(or 2)-(2-methoxymethylethoxy)propanol-blocked (PMN P–18–251) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11368 Isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as isocyanic acid, polymethylenepolyphenylene ester, 2-butoxyethanol- and 2-(2-butoxyethoxy)ethanol- and methanol- and 1-methoxy-2-propanol-blocked. (PMN P–18–252) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N = 200.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11369 Fatty acid ester, polyether, diisocyanate polymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as fatty acid ester, polyether, diisocyanate polymer (PMN P–18–282) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance containing greater than the confidential residual isocyanate percentage identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

§ 721.11370 Alkenoic acid, alkyl-, alkyl ester, polymer with alkyl alkenoate, substituted heteromonocycle, substituted carbomonocycle, substituted alkanediol and alkenoic acid, alkali metal salt (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid, alkyl-, alkyl ester, polymer with alkyl alkenoate, substituted heteromonocycle, substituted carbomonocycle, substituted alkanediol and alkenoic acid, alkali metal salt (PMN P–18–305) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance that results in inhalation exposures.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11371 Alkyl heteromonocycle with heteroatom substituted alkyl cycloalkane and 2-hydroxyethyl heteromonocycle methacrylate-blocked homopolymer (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkyl heteromonocycle with heteroatom substituted alkyl cycloalkane and 2-hydroxyethyl heteromonocycle methacrylate-blocked homopolymer (PMN P–18–339) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance for any use that results in inhalation exposure.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11372 Phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as phenol-formaldehyde epoxy, polymer with an alkyl polyether polysulfide (PMN P–19–5) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1) and (3).

(ii) *Hazard communication.* Requirements as specified in § 721.72 (a) through (d), (f), (g)(1)(iv), (vi), (vii), (skin and respiratory sensitization), (germ cell mutagenicity), (2)(i), (ii), (v), (3)(i), (ii), (4)(water release restrictions apply), and (5). Alternative hazard and warning statements that meet the criteria of the Globally Harmonized System and OSHA Hazard Communication Standard may be used.

(iii) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the PMN substance in any manner that results in inhalation exposure.

(iv) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N=1.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a) through (c), (f) through (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11373 Alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs. (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkylphenol, reaction products with carbon dioxide, distn. residues from manuf. of alkylphenol derivs. and calcium alkylphenol derivs. (PMN P–19–20) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(y)(1).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11374 Acetamide, 2-(4-methylphenoxy)-N–1H-pyrazol-3-yl-N-(2-thienylmethyl)-.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as acetamide, 2-(4-methylphenoxy)-N–1H-pyrazol-3-yl-N-(2-thienylmethyl)- (PMN P–19–35, CAS No. 1374760–95–8) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f).

(ii) *Release to water.* Requirements as specified in § 721.90 (a)(4), (b)(4), and (c)(4) where N=15.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c), (i), and (k) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11375 [Reserved]

§ 721.11376 [Reserved]

§ 721.11377 [Reserved]

§ 721.11378 [Reserved]

§ 721.11379 [Reserved]

§ 721.11380 [Reserved]

§ 721.11381 Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (generic) (P–19–54, chemical A).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (PMN P–19–54, chemical A) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to exceed the confidential concentration percentage of the substance in a formulated lubricant fluid for consumer use identified in P–19–54.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

§ 721.11382 Polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (generic) (P–19–54, chemical B).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as polyamines, reaction products with succinic anhydride polyalkenyl derivs., metal salts (PMN P–19–54, chemical B) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to exceed the confidential concentration percentage of the substance in a formulated lubricant fluid for consumer use identified in P–19–54.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 2019–21720 Filed 10–10–19; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 84, No. 198
Friday, October 11, 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.

UNITED STATES AFRICAN DEVELOPMENT FOUNDATION

Public Quarterly Meeting of the Board of Directors

AGENCY: United States African Development Foundation.

ACTION: Notice of meeting.

SUMMARY: The U.S. African Development Foundation (USADF) will hold its quarterly meeting of the Board of Directors to discuss the agency's programs and administration. This meeting will occur at the USADF office.

DATES: The meeting date is Tuesday, October 22, 2019, 11:00 a.m. to 12:00 noon.

ADDRESSES: The meeting location is USADF, 1400 I St. NW, Suite 1000, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: June Brown, (202)233–8882.

Authority: Public Law 96–533 (22 U.S.C. 290h).

Dated: October 8, 2019.

June B. Brown,

General Counsel.

[FR Doc. 2019–22287 Filed 10–10–19; 8:45 am]

BILLING CODE 6117–01–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 8, 2019.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW, Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by November 12, 2019. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Livestock, Poultry, and Grain Market News.

OMB Control Number: 0581–0033.

Summary of Collection: The Agricultural Marketing Act of 1946, (60 Stat. 1087–1091, as amended: 7 U.S.C. 1621–1627, (AMA)) legislates that USDA shall ''collect and disseminate marketing information . . .'' and ''. . . collect, tabulate, and disseminate statistics on marketing agricultural products, including, but not restricted to statistics on marketing supplies, storage, stocks, quantity, quality, and condition of such products in various positions in the marketing channel, use of such products, and shipments and unloads thereof.'' The mission of Market New is to provide current unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer.

Need and Use of the Information: Information is used by the private sector to make economic decisions to establish market values for application in contracts or settlement value, and to address specific concerns or issues related to trade agreements and disputes as well as being used by educational institutions, specifically, agricultural colleges and universities. Government agencies such as the Foreign Agricultural Service, Economic Research Service and the National Agricultural Statistics Service use market news data in the performance of their missions. LPGMN reports provide interested segments of the market chain and the general public with unbiased comprehensive livestock, poultry, meat, eggs, wool, grain market data which helps equalize the competitive position of all market participants. The absence of these data would deny primary and secondary users information that otherwise would be available to aid them in their production and marketing decisions, analyses, research and knowledge of current market conditions. The omission of these data could adversely affect prices, supply, and demand.

Description of Respondents: Business or other for-profit; Farms.

Number of Respondents: 2,939.

Frequency of Responses: Reporting: Weekly; Monthly.

Total Burden Hours: 15,970.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22281 Filed 10–10–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

October 8, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by November 12, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Housing Service

Title: Form RD 410–8, Application Reference Letter (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection: The Rural Housing Service (RHS), under Section 502 of Title V of the Housing Act of 1949, as amended, provides financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, which will provide modest, decent, safe, and sanitary housing to eligible individuals in rural areas. Form RD 410–8, Applicant Reference Letter, provides credit information and is used by RHS to obtain information about an applicant's credit history that might not appear on a credit report.

Need and Use of the Information: Using form RD–410–8, RHS will collect information to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants. It can be used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a credit report. The form provides RHS with relevant information about the applicant's creditworthiness and is used to make better creditworthiness decisions.

For the form to retain the OMB number, this collection is for approval of the form itself. The burden for this form will be accounted for within the individual RD program collection packages using the form.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1.

Kimble Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–22283 Filed 10–10–19; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2018–0061]

Changes to the National Poultry Improvement Plan Program Standards

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of determination.

SUMMARY: We are updating the National Poultry Improvement Plan (NPIP) Program Standards. In a previous notice, we made available to the public for review and comment proposed changes to the NPIP Program Standards. These changes will be added to the NPIP Program Standards.

DATES: Applicable December 10, 2019.

FOR FURTHER INFORMATION CONTACT: Dr. Elena Behnke, DVM, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094–5104; (770) 922–3496; email: *elena.behnke@usda.gov.*

SUPPLEMENTARY INFORMATION: The National Poultry Improvement Plan (NPIP), also referred to below as ''the Plan,'' is a cooperative Federal-State-Industry mechanism for controlling certain poultry diseases. The Plan consists of a variety of programs intended to prevent and control poultry diseases. Participation in all Plan programs is voluntary, but breeding flocks, hatcheries, and dealers must first qualify as ''U.S. Pullorum-Typhoid Clean'' as a condition for participating in the other Plan programs.

The regulations in 9 CFR parts 56, 145, 146, and 147 (referred to below as the regulations) contain the provisions of the Plan. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) amends these provisions from time to time to incorporate new scientific information and technologies within the Plan.

Because changes in diagnostic science, testing technology, and best practices for maintaining sanitation are continual, and the rulemaking process can be lengthy, certain provisions of the Plan are contained in an NPIP Program Standards document [1] rather than in the regulations. The NPIP Program Standards may be updated or revised via a notice-based process rather than by rulemaking.

On April 11, 2019, we published a notice [2] in the **Federal Register** (84 FR 14642–14643, Docket No. APHIS–2018–0061) advising the public that we had prepared updates to the NPIP Program Standards. We proposed updating the standards by:

- Adding and amending definitions of H5/H7 low pathogenicity avian influenza (LPAI) (exposed) and H5/H7 LPAI (infected);
- Clarifying and amending the testing protocol for *Mycoplasma* by allowing use of molecular-based examination procedures;
- Removing specific agar gel immunodiffusion Avian Influenza testing procedures with directions to use the current National Veterinary Services Laboratories protocol;
- Amending and clarifying salmonella isolation procedures;
- Updating and clarifying bacteriological examination procedures for cull chicks and poults for salmonella;
- Adding a new salmonella diagnostic test kit;
- Removing outdated testing procedures for the sanitation monitored program;
- Updating and clarifying hatching egg and hatchery sanitation

[1] This document may be viewed on the NPIP website at *http://www.poultryimprovement.org/documents/ProgramStandardsAugust2014.pdf,* or by writing to the Service at National Poultry Improvement Plan, APHIS, USDA, 1506 Klondike Road, Suite 101, Conyers, GA 30094.

[2] To view the notice and comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2018-0061.*

requirements, flock sanitation procedures, and cleaning and disinfection procedures;

- Adding new dealer sanitation requirements;
- Updating and clarifying compartmentalization language as well as amending and clarifying audit guidelines and checklists; and
- Adding Newcastle disease virus compartmentalization physical requirements for an egg depot receiving/shipping dock.

We solicited comments for 30 days ending on May 13, 2019. We received three comments by that date. One commenter, who submitted two of the comments, expressed her dissatisfaction with the practices of the poultry industry and USDA's oversight, but did not offer any comments on the proposed updates to the standards. The other commenter suggested that the NPIP would be more successful if each State had to meet the same requirements. The commenter further indicated that the program needed better funding, which would reduce costs for participants and would increase participation.

The NPIP program is a voluntary program, and the regulations governing the program are voted on by the members that participate in the program. All States must meet the provisions in the regulations, however, States have the ability to implement regulations that may go above and beyond provisions. Currently, 100 percent of the primary breeding industry participates in the NPIP as does 95 percent of the commercial poultry industry, so we do not believe that differences in State requirements or the current funding of the program presents a hindrance to participation in the Plan.

Therefore, we are updating the NPIP Program Standards as described in our previous notice and in this document.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection activities included in this notice will be approved by the Office of Management and Budget under control number 0579–0007.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this notice, please contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

Congressional Review Act

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

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 7th day of October 2019.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2019–22299 Filed 10–10–19; 8:45 am]

BILLING CODE 3410–34–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, October 18, 2019, 10:00 a.m. EDT.

ADDRESSES: Meeting to take place by telephone.

FOR FURTHER INFORMATION CONTACT: Brian Walch: (202) 376–8371; TTY: (202) 376–8116; *publicaffairs@usccr.gov.*

SUPPLEMENTARY INFORMATION: This business meeting is open to the public by telephone only. Dial-in: 800–635–7637, Conference ID 610–6266. Persons with disabilities who need accommodation should contact Pamela Dunston at (202) 376–8105 or at *access@usccr.gov* at least seven business days before the scheduled date of the meeting.

Agenda

I. Approval of Agenda
II. Business Meeting
  A. Presentation by Maine Advisory Committee member on the Committee's recent report, *The Criminalization of People with Mental Illnesses in Maine*
  B. Presentation by Georgia Advisory Committee member on the Committee's recent report, *Disability Rights and Civil Rights in Georgia*
  C. Presentation by Nevada Advisory Committee member on the Committee's recent report, *Mental Health Implications for Policing Practices and the Administration of Justice in Nevada*
  D. Discussion and vote on Commission Advisory Committee appointments
  - Maryland
  - West Virginia
  E. Discussion and Vote on Commission's report, *Sexual Harassment and Free Speech on Campus*
  F. Management and Operations
  - Staff Director's Report
III. Adjourn Meeting

Dated: October 9, 2019.

Brian Walch,

Director, Communications and Public Engagement.

[FR Doc. 2019–22405 Filed 10–9–19; 11:15 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the Delaware Advisory Committee to the Commission will convene by conference call, on Monday, October 21, 2019 at 4:00 p.m. (EDT). The purpose of the meeting is to discuss and vote to submit the Committee's civil rights project report on implicit bias and policing in communities of color in Delaware to the Staff Director for publication on the agency's website.

DATES: Monday, October 21, 2019 at 4:00 p.m. (EDT).

Public Call-In Information: Conference call number: 1–866–556–2429 and conference call ID: 4512490.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–866–556–2429 and conference call ID: 4512490. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). 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 herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number:1–866–556–2429 and conference call ID: 4512490.

Members of the public are invited make statements during the Public Comment section of the meeting or to submit written comments; the written comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Evelyn Bohor at *ero@usccr.gov*. Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing, as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlEAAQ,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Monday, October 21, 2019 at 4:00 p.m. (EDT)

I. Welcome and Roll Call

II. Project Planning

—Discuss and Vote To Submit Civil Rights Project Report to the Staff Director

III. Other Business

IV. Public Comment

V. Next Meeting

VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the Committee preparing to release its final report.

Dated: October 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–22268 Filed 10–10–19; 8:45 am]

BILLING CODE;P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a planning meeting of the New Jersey Advisory Committee to the Commission will convene by conference call, on Friday, October 18, 2019 at 11:30 a.m. (EDT). The purpose of the meeting is to discuss and vote on the project proposal for the Committee's civil rights project on the collateral consequences of a criminal record on forfeiture of private property and access to professional licenses.

DATES: Friday, October 18, 2019, at 11:30 a.m. (EDT).

Public Call-In Information: Conference call number: 1–800–667–5617 and conference call ID number: 7386659.

FOR FURTHER INFORMATION CONTACT: Ivy L. Davis, at *ero@usccr.gov* or by phone at 202–376–7533.

SUPPLEMENTARY INFORMATION: Interested members of the public may listen to the discussion by calling the following toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659. Please be advised that before placing them into the conference call, the conference call operator may ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). 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 herein.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–800–877–8339 and providing the operator with the toll-free conference call number: 1–800–667–5617 and conference call ID number: 7386659.

Members of the public are invited to make statements during the Public Comment section of the meeting or to submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425, or emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing, as they become available at: *https://gsageo.force.com/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzjVAAQ,* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

Agenda: Friday, October 18, 2019 at 11:30 a.m. (EDT).

I. Welcome and Roll Call

II. Planning Meeting

—Discuss and Vote on the Civil Rights Project Proposal

—Discuss Plans for Scheduling the Project Briefing Meeting

III. Other Business

IV. Next Meeting

V. Public Comment

VI. Adjourn

Exceptional Circumstance: Pursuant to 41 CFR 102–3.150, the notice for this meeting is given less than 15 calendar days prior to the meeting because of the exceptional circumstances of the need for the committee to prepare for its future meeting to hear testimony.

Dated: October 7, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–22269 Filed 10–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2019]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Authorization of Limited Production Activity; Teijin Carbon Fibers, Inc. (Polyacrylonitrile-Based Carbon Fiber); Greenwood, South Carolina

On June 7, 2019, the South Carolina State Ports Authority, grantee of FTZ 38, submitted a notification of proposed production activity to the FTZ Board on behalf of Teijin Carbon Fibers, Inc., within FTZ 38, in Greenwood, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 29496, June 24, 2019). On October 7, 2019, the applicant was notified of the FTZ Board's decision that further review of part of the proposed activity is warranted. The FTZ Board authorized the production activity described in the notification on a limited basis, subject to the FTZ Act and the Board's regulations, including Section 400.14, and further subject to a restriction requiring that all foreign-status polyacrylonitrile (PAN) fiber admitted for production activity must be re-exported (entry for U.S. consumption is not authorized).

Dated: October 7, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–22309 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–62–2019]

Foreign-Trade Zone (FTZ) 141—Rochester, New York; Notification of Proposed Production Activity; Eastman Kodak Company; (One-Time Use Cameras); Rochester, New York

Eastman Kodak Company (Eastman Kodak) submitted a notification of proposed production activity to the FTZ Board for its facility in Rochester, New York. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on September 26, 2019.

Eastman Kodak already has authority to produce printer cartridges and thermal media within FTZ 141. The current request would add a finished product and a foreign status component to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status component and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Eastman Kodak from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, Eastman Kodak would be able to choose the duty rates during customs entry procedures that apply to underwater one-time use cameras (duty-free). Eastman Kodak would be able to avoid duty on foreign-status components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The component sourced from abroad is a non-flash one-time use camera (duty-free). The request indicates that one-time use cameras are subject to special duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is November 20, 2019.

A copy of the notification will be available for public inspection in the ''Reading Room'' section of the Board's website, which is accessible via *www.trade.gov/ftz.*

For further information, contact Christopher Wedderburn at *Chris.Wedderburn@trade.gov* or (202) 482–1963.

Dated: October 7, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–22308 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–857]

Welded Large Diameter Line Pipe From Japan: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on welded large diameter line pipe (line pipe) from Japan would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

DATES: Applicable October 11, 2019.

FOR FURTHER INFORMATION CONTACT: John McGowan, 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) 482–3019.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 2018, Commerce published the notice of initiation of the third sunset review of the AD order on line pipe from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1] As a result of the review, Commerce determined that revocation of the AD order on line pipe from Japan would likely lead to a continuation or recurrence of dumping.[2] Commerce, therefore, notified the ITC of the magnitude of the dumping margins likely to prevail should the AD order be revoked. On October 3, 2019, the ITC published notice of its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD order on line pipe from Japan would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

[1] *See Initiation of Five-Year (Sunset) Reviews,* 83 FR 45887 (September 11, 2018).

[2] *See Welded Large Diameter Line Pipe from Japan: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 84 FR 1059 (February 1, 2019).

[3] *See Certain Welded Large Diameter Line Pipe from Japan: Investigation No. 731–TA–919 (Third Review),* USITC Publication 4973 (September 2019); *see also Certain Welded Large Diameter Line Pipe from Japan,* 84 FR 52896 (October 3, 2019).

Scope of the Order

The product covered by this order is certain welded carbon and alloy line pipe, of circular cross section and with an outside diameter greater than 16 inches, but less than 64 inches, in diameter, whether or not stenciled. This product is normally produced according to American Petroleum Institute (API) specifications, including Grades A25, A, B, and X grades ranging from X42 to X80, but can also be produced to other specifications. The product currently is classified under U.S. Harmonized Tariff Schedule (HTSUS) item numbers 7305.11.10.30, 7305.11.10.60, 7305.11.50.00, 7305.12.10.30, 7305.12.10.60, 7305.12.50.00, 7305.19.10.30, 7305.19.10.60, and 7305.19.50.00. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope is dispositive. Specifically not included within the scope of this investigation is American Water Works Association (AWWA) specification water and sewage pipe and the following size/grade combinations; of line pipe:

- Having an outside diameter greater than or equal to 18 inches and less than or equal to 22 inches, with a wall thickness measuring 0.750 inch or greater, regardless of grade.
- Having an outside diameter greater than or equal to 24 inches and less than 30 inches, with wall thickness measuring greater than 0.875 inches in grades A, B, and X42, with wall thickness measuring greater than 0.750 inches in grades X52 through X56, and with wall thickness measuring greater than 0.688 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 30 inches and less than 36 inches, with wall thickness measuring greater than 1.250 inches in grades A, B, and X42, with wall thickness measuring greater than 1.000 inches in grades X52 through X56, and with wall thickness measuring greater than 0.875 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 36 inches and less than 42 inches, with wall thickness measuring greater than 1.375 inches in grades A, B, and X42, with wall thickness measuring greater than 1.250 inches in grades X52 through X56, and with wall thickness measuring greater than 1.125 inches in grades X60 or greater.
- Having an outside diameter greater than or equal to 42 inches and less than 64 inches, with a wall thickness measuring greater than 1.500 inches in grades A, B, and X42, with wall thickness measuring greater than 1.375 inches in grades X52 through X56, and with wall thickness measuring greater than 1.250 inches in grades X60 or greater.
- Having an outside diameter equal to 48 inches, with a wall thickness measuring 1.0 inch or greater, in grades X–80 or greater.
- In API grades X80 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.90 inch or more.
- In API grades XI00 or above, having an outside diameter of 48 inches to and including 52 inches, and with a wall thickness of 0.54 inch or more.
- An API grade X–80 having an outside diameter of 21 inches and wall thickness of 0.625 inch or more.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD order on line pipe from Japan.

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The applicable date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year sunset review of the order not later than 30 days prior to the fifth anniversary of the applicable date of continuation.

This five-year sunset review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: October 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22339 Filed 10–8–19; 4:15 pm]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–890]

Certain Quartz Surface Products From India: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances Determination, In Part, 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 certain quartz surface products (quartz surface products) from India for the period of investigation April 1, 2018 through March 31, 2019. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 11, 2019.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Stephanie Moore, 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) 482–4793 or (202) 482–3692, 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 June 3, 2019.[1] On July 3, 2019, Commerce postponed the preliminary determination of this investigation and the revised deadline is now October 7, 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

[1] *See Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 84 FR 25524 (June 3, 2019) (*Initiation Notice*).

[2] *See Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 84 FR 31839 (July 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Quartz Surface Products from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

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 is available to all parties in the Central Records Unit, room B8024 of the main 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 quartz surface products from India. 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 antidumping duty (AD) and countervailing duty (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]

Preliminary Affirmative Determination of Critical Circumstances, In Part

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances do not exist with respect to Pokarna Engineered Stone Limited (Pokarna) and Antique Marbonite Private Limited, India (Antique Marbonite) but do exist with respect to imports of quartz surface products from India for all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, *see* 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 CVD determination in this investigation with the final determination in the companion AD investigation of quartz surface products from India based on a request made by the petitioner.[7] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled no later than February 18, 2020, unless postponed.[8]

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 preliminarily found a *de minimis* rate for Antique Marbonite. Therefore, the only rate that is not zero, *de minimis* or based entirely on facts otherwise available is the rate calculated for Pokarna. Consequently, the rate calculated for Pokarna is also assigned as the rate for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate *ad valorem* (percent)
Antique Marbonite Private Limited, India (Antique Marbonite)[9]	* 1.57
Pokarna Engineered Stone Limited (Pokarna)[10]	4.32
All Others	4.32

* *De minimis.* India is considered a developing country and has a *de minimis* rate of 2.0 percent.[11]

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. Because the subsidy rate for Antique Marbonite is *de minimis,* Commerce is directing CBP not to suspend liquidation of entries of the merchandise produced by Antique

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997) (*Preamble*).

[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* Petitioner's Letter, ''Certain Quartz Surface Products from India: Request for Alignment,'' dated October 1, 2019.

[8] *See Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 52062 (October 1, 2019).

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Antique Marbonite Private Limited, India: Antique Granito Shareholders Trust (Antique Trust), Prism Johnson Limited (Prism Johnson), and Shivam Enterprises (Shivam).

[10] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Pokarna: Pokarna Limited.

[11] *See Developing and Least-Developed Country Designations under the Countervailing Duty Law,* 63 FR 29945 (June 2, 1998). The higher *de minimis* subsidization rate of 3.0 percent, under Article 27.11 of the Agreement on Subsidies and Countervailing Measures, expired on December 31, 2002.

Marbonite and exported by Antique Marbonite, Antique Trust, Prism Johnson, or Shivam. However, entries of subject merchandise in any other producer/exporter combination, *e.g.,* merchandise produced by a third party and exported by Antique Marbonite, Antique Trust, Prism Johnson, or Shivam, or produced by Antique Marbonite and exported by a third party are subject to the cash deposit requirements at the all-others rate.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of quartz surface products from India for all other exporters or producers not individually examined. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from all other exporters or producers not individually examined that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

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.

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: October 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by the investigation is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of this investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of this investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products. The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (''Glass Pieces''); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope Comments
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V. Preliminary Affirmative Determination of Critical Circumstances, In Part
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[FR Doc. 2019–22314 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–838]

Certain Quartz Surface Products From the Republic of Turkey: Preliminary Affirmative Countervailing Duty Determination, Preliminary Affirmative Critical Circumstances 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 certain quartz surface products (quartz surface products) from the Republic of Turkey (Turkey). The period of investigation is January 1, 2018 through December 31, 2018. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable October 11, 2019.

FOR FURTHER INFORMATION CONTACT: Stephanie Berger or Peter Zukowski, 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) 482–2483 or (202) 482–0189, 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 June 3, 2019.[1] On July 3, 2019, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now October 7, 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 *https://access.trade.gov,* and is available to all parties in the Central Records Unit, Room B8024 of the main 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 quartz surface products from Turkey. 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 antidumping duty (AD) and countervailing duty (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]

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 703(e)(1) of the Act, Commerce preliminarily determines that critical circumstances exist with respect to imports of quartz surface products from Turkey for Belenco Diş Ticaret A.Ş. (Belenco) and all other exporters or producers not individually examined. For a full description of the methodology and results of Commerce's analysis, *see* 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 CVD determination in this investigation with the final determination in the companion AD investigation of quartz surface products from Turkey based on a request made by the petitioner.[7] 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 February 18, 2020, unless postponed.[8]

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.

Commerce calculated an individual estimated countervailable subsidy rate for Belenco and Peker Yüzey Tasarıları

[1] *See Certain Quartz Surface Products from India and the Republic of Turkey: Initiation of Countervailing Duty Investigations,* 84 FR 25524 (June 3, 2019) (*Initiation Notice*).

[2] *See Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 84 FR 31839 (July 3, 2019).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Certain Quartz Surface Products from Turkey,'' 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) (*Preamble*).

[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* Petitioner's Letter, ''Certain Quartz Surface Products from Turkey: Request to Align Determinations,'' dated October 1, 2019.

[8] *See Certain Quartz Surface Products from India and the Republic of Turkey: Postponement of the Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 84 FR 52062 (October 1, 2019).

Sanayi ve Tic. A.Ş. (Peker Yüzey), the only individually examined exporter/producer in this investigation. Because the only individually calculated rate is not zero, *de minimis,* or based entirely on facts otherwise available, the estimated weighted-average rate calculated for Belenco/Peker Yüzey is the rate assigned to all other producers and exporters, pursuant to section 705(c)(5)(A)(i) of the Act.

Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Belenco Diş Ticaret A.Ş. and Peker Yüzey Tasarıları Sanayi ve Tic. A.Ş.[9]	3.81
All Others	3.81

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.

Section 703(e)(2) of the Act provides that, given an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of (a) the date which is 90 days before the date on which the suspension of liquidation was first ordered, or (b) the date on which notice of initiation of the investigation was published. Commerce preliminarily finds that critical circumstances exist for imports of subject merchandise produced and/or exported by Belenco/Peker Yüzey and All Others. In accordance with section 703(e)(2)(A) of the Act, the suspension of liquidation shall apply to unliquidated entries of merchandise from the exporters/producers identified in this paragraph that were entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice.

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.[10] 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.

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: October 7, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (*e.g.,* quartz, quartz powder, cristobalite, glass powder) as well as a resin binder (*e.g.,* an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigation. However, the scope of the investigation only includes products where the silica content is greater than any other single material, by actual weight. Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of this investigation includes surface products of all other sizes, thicknesses, and shapes. In addition to slabs, the scope of this investigation includes, but is not limited to, other surfaces such as countertops, backsplashes, vanity tops, bar tops, work tops, tabletops, flooring, wall facing, shower surrounds, fire place surrounds, mantels, and tiles. Certain quartz surface products are covered by the investigation whether polished or unpolished, cut or uncut, fabricated or not fabricated, cured or

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with Belenco Dis Ticaret AS: Peker Yüzey Tasarıları Sanayi ve Tic. A.Ş.

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

uncured, edged or not edged, finished or unfinished, thermoformed or not thermoformed, packaged or unpackaged, and regardless of the type of surface finish.

In addition, quartz surface products are covered by the investigation whether or not they are imported attached to, or in conjunction with, non-subject merchandise such as sinks, sink bowls, vanities, cabinets, and furniture. If quartz surface products are imported attached to, or in conjunction with, such non-subject merchandise, only the quartz surface product is covered by the scope.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise fabricated in a third country, including by cutting, polishing, curing, edging, thermoforming, attaching to, or packaging with another product, or any other finishing, packaging, or fabrication that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the quartz surface products.

The scope of the investigation does not cover quarried stone surface products, such as granite, marble, soapstone, or quartzite. Specifically excluded from the scope of the investigation are crushed glass surface products. Crushed glass surface products must meet each of the following criteria to qualify for this exclusion: (1) The crushed glass content is greater than any other single material, by actual weight; (2) there are pieces of crushed glass visible across the surface of the product; (3) at least some of the individual pieces of crushed glass that are visible across the surface are larger than 1 centimeter wide as measured at their widest cross-section (''Glass Pieces''); and (4) the distance between any single Glass Piece and the closest separate Glass Piece does not exceed three inches.

The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under the following subheading: 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, 2506.20.0080, and 7016.90.1050. The HTSUS subheadings set forth above are provided for convenience and U.S. Customs purposes only. The written description of the scope is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

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[FR Doc. 2019–22315 Filed 10–10–19; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–867]

Large Power Transformers From the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results, Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Court of International Trade (CIT) granted a request from Hyosung Corporation and HICO America Sales and Technology (HICO America) (collectively, Hyosung) for partial final judgment regarding issues pertaining solely to Hyosung concerning the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) covering the period August 1, 2013 through July 31, 2014 (Court Order, *ABB Inc.* v. *United States*, Ct. No. 16–54 (CIT August 29, 2019)). The Department of Commerce (Commerce) is notifying the public that the partial final judgment in this case is not in harmony with the final results and notice of amended final results of the administrative review and that Commerce is amending the amended final results with respect to the dumping margins assigned to Hyosung.

DATES: Applicable October 11, 2019.

FOR FURTHER INFORMATION CONTACT: John K. Drury, 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) 482–0195.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2016, Commerce issued the *Final Results.*[1] In the *Final Results,* Commerce assigned dumping margins of 9.40 percent and 4.07 percent to Hyosung and Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai), respectively. Upon consideration of various ministerial error allegations, Commerce issued the *Amended Final Results* on May 5, 2016, and calculated a weighted-average margin of 7.89 percent for Hyosung.[2] Hyosung and Hyundai are Korean producers/exporters of LPTs and were mandatory respondents in the underlying administrative review.[3]

On October 10, 2017, the CIT remanded certain aspects of the *Final Results* and *Amended Final Results* to Commerce.[4] Specifically, the CIT instructed Commerce to clarify the treatment of the respondents' U.S. commissions based on record evidence, as well as to re-examine whether to cap Hyundai's service-related revenues based on associated expenses.

Pursuant to the *Remand Order,* Commerce issued its Final Redetermination, which addressed the Court's holdings and revised the weighted-average dumping margins for Hyosung and Hyundai to 8.74 percent and 25.51 percent, respectively.[5]

On November 13, 2018, the CIT sustained Commerce's Final Redetermination with respect to commissions, but remanded the issue of service-related revenues to Commerce a second time.[6] Hyosung moved for partial final judgment on issues affecting its entries. On August 29, 2019, the CIT issued the partial final judgment with regard to issues which affected Hyosung (Court Order, *ABB Inc.* v. *United States*, Ct. No. 16–54 (CIT August 29, 2019)).

Timken Notice

In its decision in *Timken,*[7] as clarified by *Diamond Sawblades,*[8] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend

[1] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 14087 (March 16, 2016) (*Final Results*) and accompanying Issues and Decision Memorandum.

[2] *See Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013–2014,* 81 FR 27088 (May 5, 2016) (*Amended Final Results*).

[3] Commerce also assessed margins of 6.74 percent for ILJIN Electric Co., Ltd. (ILJIN Electric), ILJIN, and LSIS Co., Ltd., based on the margins calculated for Hyosung and Hyundai. *See Final Results.*

[4] *See ABB INC.* v. *United States,* Slip Op. 17–138 (CIT, October 10, 2017) (*Remand Order*).

[5] *See* Memorandum, ''Final Results of Redetermination Pursuant to Court Remand *ABB INC* v. *United States* Court No. 16–00054, Slip-Op. 17–138 (CIT October 10, 2017),'' dated February 7, 2018 (Final Redetermination) (*available at http://enforcement.trade.gov/remands/17-138.pdf*).

[6] *See ABB, INC.* v. *United States,* Court No. 16–00054, Slip Op. 18–156 (CIT 2018).

[7] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), at 341.

[8] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 20 10) (*Diamond Sawblades*).

liquidation of entries pending a ''conclusive'' court decision. The CIT's August 29, 2019 Order and judgment sustaining Commerce's Final Redetermination with respect to commissions, and Hyosung's motion for partial final judgment, constitute a final decision of the CIT that is not in harmony with the *Amended Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, Commerce will continue the suspension of liquidation of the subject merchandise at issue pending expiration of the period to appeal or, if appealed, pending a final and conclusive court decision.

Amended Final Results

Because there is now a final court decision, Commerce is amending the *Amended Final Results* with respect to the dumping margins calculated for Hyosung. Based on the Final Redetermination, as affirmed by the CIT, the revised dumping margin for Hyosung from August 1, 2013 through July 31, 2014, is as follows:

Producer/exporter	Weighted-average margin (percent)
Hyosung Corporation	8.74

In the event that the CIT's rulings are not appealed or, if appealed, are upheld by a final and conclusive court decision, Commerce will instruct Customs and Border Protection (CBP) to assess antidumping duties on unliquidated entries of subject merchandise based on the revised dumping margins listed above.

Cash Deposit Requirements

Since the *Amended Final Results,* Commerce has established a new cash deposit rate for Hyosung.[9] Therefore, this Final Redetermination, and as affirmed by the Court, does not change the later-established cash deposit rates for Hyosung.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: October 4, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2019–22302 Filed 10–10–19; 8:45 am]

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[9] *See, e.g., Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Duty Administrative Review; 2016–2017,* 84 FR 16461 (April 19, 2019).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–052]

Certain Hardwood Plywood Products From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2017–2018

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/or exporters subject to this administrative review during the period of review (POR), April 25, 2017 through December 31, 2018. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable October 11, 2019.

FOR FURTHER INFORMATION CONTACT: Annathea Cook, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0250.

SUPPLEMENTARY INFORMATION:

Background

On April 1, 2019, Commerce published the notices of initiation of the administrative review of the countervailing duty (CVD) order [1] on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China).[2] On May 2, 2019, Commerce published a correction of the original *Initiation Notice* to include additional companies for which a review had been requested.[3] Pursuant to the *Initiation Notice* and *Corrected Initiation Notice,* we initiated a review on 59 companies.

On August 27, 2019, based on timely requests for withdrawal of administrative review, Commerce partially rescinded the administrative review for 47 entities. [4] In addition to the companies for which we rescinded the review in the *Rescission Notice,* we are, concurrent with these preliminary results, also rescinding the review with respect to Linyi Celtic, whose requests for review were also timely withdrawn. In addition, as described further below, Commerce is preliminarily rescinding the review with respect to nine additional companies for which CBP data showed no reviewable entries, leaving 2 companies subject to the administrative review.[5]

From June 24, 2019 to August 15, 2019, Commerce selected Linyi Dahua Wood Co., Ltd. (Linyi Dahua); Zhejiang Dehua TB Import & Export Co., Ltd (Zhejiang Dehua) and Jiangsu High Hope Arser Co., Ltd. (High Hope), as mandatory respondents.[6] For a complete description of the events that followed the initiation of this administrative review, *see* the Preliminary Decision Memorandum.[7]

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's AD and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete

[1] *See Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order,* 83 FR 513 (January 4, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 12200 (April 1, 2019) (*Initiation Notice*).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 18777 (May 2, 2019) (*Corrected Initiation Notice*).

[4] *See Certain Hardwood Plywood Products from the People's Republic of China: Partial Rescission of 2017–2018 Countervailing Duty Administrative Review,* 84 FR 44853 (August 27, 2019) (*Partial Rescission Notice*).

[5] *See* DeKieffer & Horgan, PPLC's Letter, ''Hardwood Plywood Products from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated June 25, 2019; *see also* Richmond International Forest Products LLC's Letter, ''Administrative Review of the Countervailing Duty on Plywood Products from the People's Republic of China: Withdrawal of Request for Review and Correction to June 21 Submission,'' dated July 1, 2019.

[6] *See* Memorandum, ''Countervailing Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China: Respondent Selection,'' dated June 24, 2019; *see also* Memorandum, ''Countervailing Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China: Replacement Respondent Selection,'' dated July 18, 2019; and Memorandum, ''Countervailing Duty Administrative Review of Certain Hardwood Plywood Products from the People's Republic of China: Second Replacement Respondent Selection,'' dated August 15, 2019. The review request for Linyi Dahua was subsequently withdrawn and it was included in the *Partial Rescission Notice.*

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review: Certain Hardwood Plywood Products from the People's Republic of China; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

version of the Preliminary Decision Memorandum can be accessed directly on the internet at *http://enforcement.trade.gov/frn/.* A list of topics included in the Preliminary Decision Memorandum is included at the Appendix to this notice.

Scope of the Order

The merchandise subject to this order is hardwood and decorative plywood, and certain veneered panels. For the purposes of this proceeding, hardwood and decorative plywood are described as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers of plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. For a complete description of the scope of the Order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For a full description of the methodology underlying our preliminary results of review, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that two companies selected as mandatory respondents for individual examination (Zhejiang Dahua and High Hope), as well as the Government of China, 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. For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party or parties that requested a review withdraws the request within 90 days of the publication date of the notice of initiation of the requested review. As noted above, all requests for administrative review were timely withdrawn with regard to Linyi Celtic Therefore, in accordance with 19 CFR 351.213(d)(1), we are rescinding this administrative review with respect to Linyi Celtic.

Additionally, it is Commerce's practice to rescind an administrative review of a countervailing duty order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[8] Normally, upon completion of an administrative review, the suspended entries are liquidated at the countervailing duty assessment rate for the review period. *See* 19 CFR 351.212(b)(2). Therefore, for an administrative review to be conducted, there must be a reviewable, suspended entry that Commerce can instruct CBP to liquidate at the calculated countervailing duty assessment rate for the review period.[9] Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are preliminarily rescinding this administrative review in accordance with 19 CFR 351.213(d)(3) for the following companies: Happy Wood Industrial Group Co., Ltd; Jiangsu Sunwell Cabinetry Co., Ltd.; Linyi Bomei Furniture Co., Ltd.; Pingyi Jinniu Wood Co., Ltd.; Qingdao Top P&Q International Corp.; SAICG International Trading Co., Ltd.; Shandong Huaxin Jiasheng Wood Co., Ltd.; Shandong Jinhua International Trading Co., Ltd.; and Xuzhou Amish Import & Export Co., Ltd.

Preliminary Results of Review

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Zhejiang Dehua TB Import & Export Co., Ltd (Zhejiang Dehua)	194.90
Jiangsu High Hope Arser Co., Ltd. (High Hope)	194.90

Disclosure and Public Comment

Normally, Commerce discloses to interested parties the calculations performed in connection with the preliminary results of a review within ten days of its public announcement, or if there is no public announcement, within five days of the date of publication of the notice of preliminary results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because Commerce preliminarily applied AFA to the companies under review (*i.e.,* Zhejiang Dahua and High Hope), in accordance with section 776 of the Act, and because our calculation of the AFA subsidy rate is outlined in the Preliminary Decision Memorandum,[10] there are no further calculations to disclose.

Assessment Rates and Cash Deposit Requirement

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue instructions to CBP 15 days after publication of the final results of review.

Pursuant to section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties, in the amounts shown above for each of the respective companies shown above, on 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, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: October 3, 2019.

Jeffrey I. Kessler,

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

[8] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017).

[9] *See* 19 CFR 351.213(d)(3).

[10] *See* Preliminary Decision Memorandum.

IV. Application of The CVD Law to Imports From the PRC
V. Use of Facts Otherwise Available and Adverse Inferences
VI. Disclosure and Public Comment
VII. Recommendation

[FR Doc. 2019–22310 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: NIST Invention Disclosure and Inventor Information Collection.

OMB Control Number: 0693–XXXX.

Form Number(s): NIST DN–45.

Type of Request: Regular Submission. New Collection.

Number of Respondents: Invention Disclosure Form—10 per year; Inventor Information Form—100 per year.

Average Hours per Response: Invention Disclosure Form: 3 hours; Inventor Information Form: 30 minutes.

Burden Hours: Invention Disclosure Form: 30 hours; Inventor Information Form: 50 hours.

Needs and Uses: The NIST DN–45 Invention Disclosure Form is used to collect information pertaining to inventions created by Federal employees or by non-Federally employed individuals who have created an invention using NIST laboratory facilities as NIST Associates. The collection of this information is required to protect the United States rights to inventions created using Federal resources. The information collected on the form allows the Government to determine: (1) If an invention has been created; (2) the status of any statutory bar that pertains to the potential invention or that may pertain to the invention in the future. The information collected may allow the Government to begin a patent application process

The Inventor Information Sheet is used to collect from individuals who have been named as potential inventors on a NIST Invention Disclosure Form. The collection of this information is used for multiple purposes:

(1) Some of the information may be required to file a patent application, if NIST seeks to protect a federally owned invention, pursuant to 35 U.S.C. 207.

(2) The form, in part, is a statement made by the respondent declaring whether the respondent considers herself/himself to be an inventor.

(3) Some of the information is needed for NIST to determine potential assignees with which NIST would potentially negotiate consolidation of rights and other patent related matters.

(4) Some of the information helps NIST determine under which statutory authority NIST may consolidate rights in an invention with other potential assignees.

(5) Country citizenship information is required to determine whether a Scientific and Technology agreement or treaty with the respondent's country may impact the U.S. Government's rights to the invention.

The information is collected by the Technology Partnerships Office and shared with the Office of Chief Counsel at NIST. The information may also be shared with non-Governmental entities that may have ownership rights to the potential invention. The Government collects this information to execute the policy and objective of the Congress expressed at 35 U.S.C. 200. 35 U.S.C. 207 authorizes Federal agencies to apply for, obtain, and maintain patents or other forms of protection . . . on inventions in which the Federal Government owns a right, title, or interest. 35 U.S.C. 207 also authorizes each Federal agency to undertake all other suitable and necessary steps to protect and administer rights to federally owned inventions on behalf of the Federal government. The information collected through the NIST DN–45 is necessary for NIST to execute the authority granted at 35 U.S.C. 207.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22313 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV102

South Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of public hearings via webinar pertaining to Framework Amendment 8 to the Fishery Management Plan for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. The amendment addresses commercial trip limits in the Atlantic southern zone for commercial king mackerel.

DATES: The public hearings will be held via webinar on October 29 and 30, 2019.

ADDRESSES:

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The public hearings will be conducted via webinar and accessible via the internet from the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/*. The public hearings will begin at 5 p.m. Registration for the webinars is required. Registration information, a copy of the Public Hearing Document, an online public comment form and any additional information as needed will be posted on the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. Public comments must be received by 5 p.m. on October 31, 2019.

Framework Amendment 8 to the Coastal Migratory Pelagics FMP

The draft amendment currently addresses commercial king mackerel trip limits in the Atlantic southern zone (North Carolina/South Carolina line to the Miami-Dade/Monroe County, Florida boundary) during season two (October 1st to the end of February). At their June 2019 meeting, the Council requested the National Marine Fisheries

Service take emergency action to increase in the commercial trip limit from 50-fish to 75-fish in the Atlantic southern zone, south of the Flagler/Volusia County line, Florida during season two of the 2019/20 commercial fishing year. Framework Amendment 8 will permanently address season two commercial king mackerel trip limits.

During the public hearings, Council staff will present an overview of the amendment and will be available for informal discussions and to answer questions via webinar. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22289 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV103

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public scoping meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of scoping meetings via webinar (with listening stations in North Carolina) pertaining to Regulatory Amendment 34 to the Snapper Grouper Fishery Management Plan for the South Atlantic Region. The amendment would designate artificial reefs in the federal waters off North Carolina and South Carolina as Special Management Zones (SMZ) and implement fishing gear restrictions within the SMZs.

DATES: The public scoping meetings will be held via webinar (with listening stations in North Carolina) on October 28–30, 2019.

ADDRESSES: The meetings will be held via webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The scoping meetings will be conducted via webinar with assigned listening stations (in North Carolina only). The scoping meetings will begin at 6 p.m. Registration for the webinars is required. Registration information will be posted on the Council's website at *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/* as it becomes available. Listening stations will be available at the following locations:

October 28, 2019 Webinar

Dare County Administration Building, 954 Marshall Collins Dr. (Commissioners Meeting Room), Manteo, NC 27954; Phone: (252) 475–5555.

October 29, 2019 Webinar

N.C. Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557; Phone: (252) 726–7021.

October 30, 2019 Webinar

N.C. Division of Marine Fisheries Southern District Office, 127 Cardinal Drive Extension, Wilmington, NC 28405; Phone: (910) 796–7215.

Regulatory Amendment 34 to the Snapper Grouper Fishery Management Plan

The draft regulatory amendment contains proposed actions to:

Establish 30 Special Management Zones at permitted artificial reef sites in federal waters off the coast of North Carolina. Within the SMZs, harvest of snapper grouper species would be allowed with handline, rod and reel, and spear. All harvest by spear would be limited to the applicable recreational bag limit.

Establish four additional SMZs at permitted artificial reef sites in federal waters off the coast of South Carolina. Within the SMZs, harvest of snapper grouper species would only be allowed with handline, rod and reel, and spear (without powerheads) and harvest would be limited to the applicable recreational bag limit.

During the scoping meetings, Council staff will present an overview of the draft amendment and will be available for informal discussions and to answer questions via webinar. Area Council members will be present at each of the Listening Stations. Members of the public will have an opportunity to go on record to record their comments for consideration by the Council. A public comment form will also be available online. The comment form, a copy of the Regulatory Amendment 34 Scoping Document, and additional information will be posted on the Council's website as it becomes available at: *https://safmc.net/safmc-meetings/public-hearings-scoping-meetings/.*

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 3 days prior to the public hearings.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22290 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV101

Council Coordination Committee Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: NMFS will host a meeting of the Council Coordination Committee (CCC), consisting of the Regional Fishery Management Council (Council) chairs, vice chairs, and executive directors on November 5 to November 7, 2019. The intent of this meeting is to discuss issues of relevance to the Councils and NMFS, including issues related to the implementation of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSA). All sessions are open to the public.

DATES: The meeting will begin at 1:30 p.m. on Tuesday, November 5, 2019, recess at 5:30 p.m. or when business is complete; reconvene at 8:30 a.m. on

Wednesday, November 6, 2018, and recess at 5:30 p.m. or when business is complete; reconvene at 8:30 a.m. on Thursday November 7, 2018, and adjourn by 12:30 p.m. or when business is complete.

ADDRESSES: The meeting will be held at the Omni Shoreham, 2500 Calvert Street NW, Washington, DC, Telephone: 202–234–0700.

FOR FURTHER INFORMATION CONTACT: Diane Daly: telephone 301–427–8573 or email at *Diane.Daly@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act established the CCC by amending Section 302 (16 U.S.C. 1852) of the MSA. The committee consists of the chairs, vice chairs, and executive directors of each of the eight Councils authorized by the MSA or other Council members or staff. Updates to this meeting and additional information will be posted on *http://www.fisherycouncils.org/ccc-meetings/november-2019-ccc-meeting* and *https://www.fisheries.noaa.gov/national/partners/council-coordination-committee* when available.

Proposed Agenda

The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Tuesday, November 5, 2019, 1:30 p.m.–5:30 p.m.

- Welcome and Introductions
- Background Report and May CCC Meeting Report
- NMFS Update and FY 2020 Priorities
- Legislative Outlook and MSA Reauthorization and Roundtable Discussions

Wednesday, November 6, 2019, 8:30 a.m.–5:30 p.m.

- Alternative Fishery Management Approaches for Recreational Fisheries
- Allocations with Assessments Based on New Marine Recreational Information Program (MRIP) Data
- NMFS Science Enterprises Updates and Response to Council Research Priorities
- National Standard 1 Technical Guidance Work Group Updates
- CCC input for Committee of Fisheries
- Marine Fisheries Advisory Committee (MAFAC) Orientation
- Biodiversity Beyond National Jurisdictions (BBNJ)
- NMFS website

Thursday, November 7, 2019, 8:30 a.m.–12:30 p.m.

- Management and Budget FY 2020 Update
- CCC Committees and Work Group Reports
- Other Business and Wrap Up

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Diane Daly at 301–427–8573 at least five working days prior to the meeting.

Dated: October 7, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–22284 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Natural Resource Damage Assessment Restoration Project Information Sheet

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before December 10, 2019.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and 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: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brittany Jensen, (301) 427–8692 or *Brittany.Jensen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for an extension of a currently approved information collection.

The purpose of this information collection is to assist state and federal Natural Resource Trustees in more efficiently carrying out the restoration planning phase of Natural Resource Damage Assessments (NRDA), in compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370d; 40 CFR 1500–1500 and other federal and local statutes and regulations as applicable. The NRDA Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration, during the restoration planning phase of the NRDA process. This information is provided by the public on a voluntary basis. The information provided benefits the public by informing the NRDA restoration process. However there are no individual benefits that depend on the submission of information. Individuals can update the information as needed, but there is no required update frequency.

II. Method of Collection

The primary method of collection for The Restoration Project Information Sheet will be electronic submission via an online form. PDF or paper forms will be made available upon request for submission by email, mail, or fax.

III. Data

OMB Control Number: 0648–0497.

Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, local, or tribal governments; individuals or households; business or other for-profits organizations; not-for-profit institutions; farms; and the federal government.

Estimated Number of Respondents: 300.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–22320 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV100

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a 3-day meeting in October to discuss the items contained in the agenda in the **SUPPLEMENTARY INFORMATION**.

DATES: The meetings will be held from October 29, 2019 to October 31, 2019, starting on Tuesday October 29 at 9 a.m., through October 31 at 5 p.m.

ADDRESSES: The meetings will be held at the Embassy Suites Hotel, 8000 Tartak St., Isla Verde, Carolina, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION:

Draft Agenda

—Call to Order
—Adoption of the Agenda
—Review of National Standard 1 Technical Guidance for Designing, Evaluating, and Implementing Carry-over and Phase-in Provisions within ABC Control Rules—Dan Holland—Northwest Fisheries Science Center
—Review Draft Report to Congress as required in Section 201 of the Modernizing Recreational Fisheries Management Act of 2018
—Stock Assessment Review: SEDAR 57—Caribbean Spiny Lobster—Adyan Ríos, Southeast Fisheries Science Center
—Development of three ecosystem conceptual models– one each for Puerto Rico, St. Thomas/St. John, and St. Croix
—Summary August 2019 Meeting Chair Presentation to CFMC 166
—Finalize the Generic Ecosystem Conceptual Model
—Determination of direction and strengths of the boxes representing ecosystem components (*e.g.*, ecological, economic, social)
—SSC Development of Puerto Rico Ecosystem Conceptual Model
—Determination of Critical Links that can serve as Indicators
—SSC Development of St. Thomas/St. John Ecosystem Conceptual Model
—Determination of Critical Links that can serve as Indicators
—SSC Development of St. Croix Ecosystem Conceptual Model
—Determination of Critical Links that can serve as Indicators
—Other Business
—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on October 29, 2019 at 9 a.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated. In addition, the meeting may be extended from, or completed prior to the date established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 766–5926, at least 5 days prior to the meeting date.

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

Dated: October 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22288 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

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; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Scripps Institute of Oceanography (SIO) to incidentally harass, by Level A and Level B harassment, marine mammals during a low-energy marine geophysical survey in the Southwest Atlantic Ocean.

DATES: This Authorization is effective from September 12, 2019 through September 11, 2020.

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.

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 was 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.

Description of Specified Activity

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). A total of ~7,500 kilometers (km) of seismic data would be collected. 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. The receiving system would consist of one hydrophone streamer, 200–1,600 m in length, which would receive the returning acoustic signals and transfer the data to the on-board processing system.

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 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 (see Figure 1 in the IHA application). 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.

Comments and Responses

A notice of NMFS's proposal to issue an IHA to SIO was published in the **Federal Register** on August 12, 2019 (84 FR 39896). That notice described, in detail, SIO's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and Falklands Conservation, and a comment from the Falkland Islands Director of Natural Resources.

Comment 1: The Commission recommended NMFS specify why it believes that sound channels with downward refraction, as well as seafloor refractions, are not likely to occur during SIO's survey and the degree to which both of these parameters would affect the estimation (or underestimation) of Level B harassment zones in deep and intermediate water depths. Additionally, the Commission recommended NMFS specify how it has validated use of Lamont-Doherty Earth Observatory's (L–DEO's) acoustic modeling correction factors and ratios to account for differing water depths, tow depths, and airgun spacing for surveys that occur in both intermediate and shallow water.

Response: The L–DEO approach to the modeling is generally conservative as supported by data collected from calibration and other field data along with modeling results. The L–DEO approach does not rely on incorporating every possible environmental factor in the marine environment. Published results from Tolstoy (2009), Diebold (2010), and Crone *et al.* (2014, 2017), along with nearly 20 years of PSO observations from previous NSF-funded seismic surveys in various water depths validate the approach. L–DEO has presented their modeling approach to NMFS and the Commission on several occasions. Given the information presented, numerous discussions, and observations from past NSF-funded seismic surveys that used the L–DEO modeling approach, NMFS remains confident that the methodology used is appropriate and conservatively protects marine mammals.

Comment 2: The Commission noted tables depicting source levels in both the IHA application and the **Federal Register** notice contained inadequate information and that the appendices of SIO's IHA application did not contain necessary information. The Commission recommended that NMFS ensure that all source levels, modified source levels, and related adjustment factors are specified and all relevant isopleth figures and user spreadsheet tables are included in all future NSF-funded and -affiliated applications prior to processing them.

Response: NMFS has added clarification on the tables noted by the Commission and provided the Commission the requested information. NMFS will ensure that all applications contain the necessary information required for adequate understanding of the acoustic modeling prior to publishing the notice of proposed IHA.

Comment 3: The Commission recommended that, instead of using the L–DEO modeling described in the IHA application, NMFS require SIO to re-estimate the proposed Level A and Level B harassment zones and associated takes of marine mammals using (1) both operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics at a minimum) parameters, (2) a comprehensive source model (*i.e.,* Gundalf Optimizer or AASM) and (3) an appropriate sound propagation model for the proposed incidental harassment authorization. Specifically, the Commission reiterates that L–DEO should be using the ray-tracing propagation model BELLHOP—which is a free, standard propagation code that readily incorporates all environmental inputs listed herein, rather than the limited, in-house

MATLAB code currently in use, and recommends NMFS specify why it believes that L–DEO's modeling approaches provide more accurate, realistic, and appropriate Level A and Level B harassment zones than BELLHOP.

Response: NMFS acknowledges the Commission's concerns about L–DEO's current modeling approach for estimating Level A and Level B harassment zones and takes. SIO's application and the **Federal Register** notice of the proposed IHA (84 FR 39896; August 12, 2019) describe the applicant's approach to modeling Level A and Level B harassment zones. The model L–DEO currently uses does not allow for the consideration of environmental and site-specific parameters as requested by the Commission, but as described below, field measurements support the use of the model used.

SIO's application describes L–DEO's approach to modeling Level A and Level B harassment zones. In summary, L–DEO acquired field measurements for several array configurations at shallow, intermediate, and deep-water depths during acoustic verification studies conducted in the northern Gulf of Mexico in 2007 and 2008 (Tolstoy *et al.,* 2009). Based on the empirical data from those studies, L–DEO developed a sound propagation modeling approach that predicts received sound levels as a function of distance from a particular airgun array configuration in deep water. For this survey, L–DEO modeled Level A and Level B harassment zones based on the empirically-derived measurements from the Gulf of Mexico calibration survey (Appendix H of NSF–USGS 2011). L–DEO used the deep-water radii obtained from model results down to a maximum water depth of 2,000 meters (m) (Figures 2 and 3 in Appendix H of NSF–USGS 2011).

In 2015, LDEO explored the question of whether the Gulf of Mexico calibration data described above adequately informs the model to predict exclusion isopleths in other areas by conducting a retrospective sound power analysis of one of the lines acquired during L–DEO's seismic survey offshore New Jersey in 2014 (Crone, 2015). NMFS presented a comparison of the predicted radii (*i.e.,* modeled exclusion zones) with radii based on in situ measurements (*i.e.,* the upper bound [95th percentile] of the cross-line prediction) in a previous notice of issued Authorization for LDEO (see 80 FR 27635, May 14, 2015, Table 1). Briefly, the analysis presented in Crone (2015), specific to the survey site offshore New Jersey, confirmed that in-situ, site specific measurements and estimates of 160 decibel (dB) and 180 dB isopleths collected by the hydrophone streamer of the R/V *Langseth* in shallow water were smaller than the modeled (*i.e.,* predicted) zones for two seismic surveys conducted offshore New Jersey in shallow water in 2014 and 2015. In that particular case, Crone's (2015) results showed that L–DEO's modeled 180 decibel (dB) and 160 dB zones were approximately 28 percent and 33 percent larger, respectively, than the in-situ, site-specific measurements, thus confirming that L–DEO's model was conservative in that case.

The following is a summary of two additional analyses of in-situ data that support L–DEO's use of the modeled Level A and Level B harassment zones in this particular case. In 2010, L–DEO assessed the accuracy of their modeling approach by comparing the sound levels of the field measurements acquired in the Gulf of Mexico study to their model predictions (Diebold *et al.,* 2010). They reported that the observed sound levels from the field measurements fell almost entirely below the predicted mitigation radii curve for deep water (*i.e.,* greater than 1,000 m; 3,280.8 ft) (Diebold *et al.,* 2010). In 2012, L–DEO used a similar process to model distances to isopleths corresponding to Level A and Level B harassment thresholds for a shallow-water seismic survey in the northeast Pacific Ocean offshore Washington State. LDEO conducted the shallow-water survey using a 6,600 in^3 airgun configuration aboard the R/V *Langseth* and recorded the received sound levels on both the shelf and slope using the *Langseth's* 8 km hydrophone streamer. Crone *et al.* (2014) analyzed those received sound levels from the 2012 survey and confirmed that in-situ, site specific measurements and estimates of the 160 dB and 180 dB isopleths collected by the *Langseth's* hydrophone streamer in shallow water were two to three times smaller than L–DEO's modeling approach had predicted. While the results confirmed the role of bathymetry in sound propagation, Crone *et al.* (2014) were also able to confirm that the empirical measurements from the Gulf of Mexico calibration survey (the same measurements used to inform L–DEO's modeling approach for the planned surveys in the northwest Atlantic Ocean) overestimated the size of the exclusion and buffer zones for the shallow-water 2012 survey off Washington State and were thus precautionary, in that particular case.

NMFS continues to work with L–DEO to address the issue of incorporating site-specific information for future authorizations for seismic surveys. However, L–DEO's current modeling approach (supported by the three data points discussed previously) represents the best available information for NMFS to reach determinations for this IHA. As described earlier, the comparisons of L–DEO's model results and the field data collected at multiple locations (*i.e.,* the Gulf of Mexico, offshore Washington State, and offshore New Jersey) illustrate a degree of conservativeness built into L–DEO's model for deep water, which NMFS expects to offset some of the limitations of the model to capture the variability resulting from site-specific factors. Based upon the best available information (*i.e.,* the three data points, two of which are peer-reviewed, discussed in this response), NMFS finds that the Level A and Level B harassment zone calculations are appropriate for use in this particular IHA.

The use of models for calculating Level A and Level B harassment zones and for developing take estimates is not a requirement of the MMPA incidental take authorization process. Further, NMFS does not prescribe specific model parameters nor a specific model for applicants as part of the MMPA incidental take authorization process at this time, although we do review methods to ensure they adequately predict take. There is a level of variability not only with parameters in the models, but also the uncertainty associated with data used in models, and therefore, the quality of the model results submitted by applicants. NMFS considers this variability when evaluating applications and the take estimates and mitigation measures that the model informs. NMFS takes into consideration the model used, and its results, in determining the potential impacts to marine mammals; however, it is just one component of the analysis during the MMPA authorization process as NMFS also takes into consideration other factors associated with the activity (*e.g.,* geographic location, duration of activities, context, sound source intensity, etc.).

Comment 4: The Commission noted that monitoring and reporting requirements adopted need to be sufficient to provide a reasonably accurate assessment of the manner of taking and the numbers of animals taken incidental to the specified activity. Those assessments should account for all animals in the various survey areas, including those animals directly on the trackline that are not detected and how well animals are detected based on the distance from the observer which is achieved by incorporating g(0) and f(0) values. The Commission recommended

that NMFS require L–DEO to use the Commission's method as described in the Commission's Addendum to better estimate the numbers of marine mammals taken by Level A and B harassment for the incidental harassment authorization. The Commission stated that all other NSF-affiliated entities and all seismic operators should use this method as well.

Response: We thank the Commission for their recommendation. NMFS is in the process of determining the appropriate method for deriving post-survey estimates of the total number of animals taken by activities such as Scripps' marine geophysical survey.

Comment 5: The Commission recommended NMFS require SIO to specify in the final monitoring report (1) the number of days the survey occurs and the array is active and (2) the percentage of time and total time the array is active during daylight vs nighttime hours (including dawn and dusk).

Response: NMFS will require SIO to include this information in their final monitoring report.

Comment 6: The Commission recommended that NMFS refrain from using the proposed renewal process for SIO's authorization based on the complexity of analysis and potential for impacts on marine mammals, and the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommends that NMFS use the IHA renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: We appreciate the Commission's input and direct the reader to our recent response to the same comment, which can be found at 84 FR 31032 (June 28, 2019), pg. 31035–31036. If and when SIO requests a Renewal, we will consider the Commission's comment further and address the concerns specific to this project. We will consider this comment further when and if Scripp's requests a renewal.

Comment 7: The Commission noted that the proposed surveys are scheduled to begin immediately after the public comment period closes and expressed concern that NMFS did not have adequate time to consider public comments before issuing the IHA. The Commission recommended NMFS more thoroughly review applications, draft **Federal Register** notices, and draft proposed authorizations prior to submitting any proposed authorizations to the **Federal Register**, as well as require earlier submission of applications and other documentation to ensure sufficient time to prepare the proposed authorization and consider comments received from the public.

Response: NMFS thanks the Commission for its concerns regarding the IHA process. NMFS thoroughly reviewed the comments received and considered all comments in making appropriate revisions to the final IHA. NMFS encourages all applicants to submit applications for IHAs five to eight months in advance of the intended project start date and for rulemakings/LOAs at least nine months, and preferably 15 months, in advance of the intended project start date. More generally, NMFS publishes **Federal Register** notices for proposed IHAs as quickly as possible once the application is received and aims to allow more time on the back end of the comment period, but there are situations where the length of processing times are driven by the exigency of an applicant's activity start date or by the need to work with applicants to ensure we have the necessary information to deem an application adequate and complete. Here, NMFS provided the required 30-day notice for public comment, and has adequately considered the comments received in making the necessary findings for this IHA.

Comment 8: Falklands Conservation requested clarity on the species occurrence determinations in Table 2 in the **Federal Register** notice of proposed IHA (and Table 3 in SIO's IHA application).

Response: The occurrence as noted is for the survey area at the proposed time of the survey and is our professional opinion based on all of the available data for the area, as well as the known population size in the overall area. This is best professional judgement and is mainly meant to serve as a guide to the seismic operator so that they can anticipate what species are likely to be encountered during the survey and which are not. As noted by Falklands Conservation, data are lacking for the area, so it is difficult to make such predictions. The take estimates are not based on the occurrence but on the densities, which as noted by Falklands Conservation, may not always be ideally representative either as they are taken from different areas, but which do represent the best available science paired with best professional judgement.

Comment 9: Falklands Conservation noted that the **Federal Register** notice of proposed IHA inaccurately referred to the Falkland Islands as a ''known or historic breeding area'' for southern right whales. Falklands Conservation also noted that large numbers of southern right whales have been recorded off the northeast coast of the Falklands seasonally since 2017 and suggested that the occurrence of southern right whales might be higher than the ''uncommon'' assessment provided in the **Federal Register** notice. Additionally, Falklands Conservation indicated they did not support the assessment of ''uncommon'' for fin whales and sei whales.

Response: We thank Falklands Conservation for their recommended correction and suggestions. However, no references were provided to support any change in density or abundance estimates for these species, and as noted above, these designations have no impact on the take estimation. As such, we have determined that this comment does not necessitate any changes in our assessment and has no effect on our authorized take or findings.

Comment 10: Falklands Conservation suggested that because the planned survey occurs in mostly international waters where few abundance or density surveys for marine mammals have been conducted, that there are not enough available datasets from comparable areas (with regard to the criteria that influence marine mammals such as water depth, sea surface temperature, and latitudes) for the take requests to be robust.

Response: As noted by Falklands Conservation, there are limited density and abundance surveys available for this region and regions with similar environmental qualities. Accordingly, and as described in the application and elsewhere in this notice, SIO and NMFS used the best available information to determine the appropriate densities for estimating take for this project. Falklands Conservation provided no references to suggest other densities and abundance information should be used in place of those used by SIO and NMFS in the take estimation. Therefore, NMFS has not made any changes to the density and abundance information presented in the **Federal Register** notice of proposed IHA.

Comment 11: Falklands Conservation commented on SIO's discussion of the timing of the survey in their IHA application and suggested that the survey be scheduled outside of the core periods of baleen whale presence.

Response: SIO's specified activity includes the timing of the survey that best represents their goals of acquiring seismic, based on the availability of the survey vessel and other logistical issues.

NMFS has made the necessary findings to issue an IHA for the specified activity included in SIO's request, and there is no justification to require SIO to completely change their specified activity to occur at a different time.

Comment 12: Falklands Conservation questioned whether the proposed mitigation and monitoring measures are sufficient reduce impacts to marine mammals. Specifically, Falklands Conservation noted that since observers are not required during nighttime operations, passive acoustic monitoring (PAM) is the only way to achieve mitigation for protected species at night, as well as during adverse sea conditions. Falklands Conservation recommended requiring PAM to assist visual observation and noted that the **Federal Register** notice of proposed IHA mentioned acoustic monitoring in the summary of the proposed mitigation measures.

Response: The inclusion of acoustic monitoring in the list of proposed mitigation measures was inadvertent. NMFS recognizes that PAM can be an effective tool in marine mammal detection during nighttime operations or when visual observations are otherwise obscured. However, given the small Level A and Level B harassment zones and limited reduction of impacts anticipated to be gained by the use of PAM, in consideration of the cost of implementing PAM systems, we do not require PAM for surveys of this nature and size and it is not warranted here. As described in the Mitigation section, we have included the necessary measures to ensure the least practicable adverse impact on the affected species and stocks and their habitat.

Comment 13: Falklands Conservation requested clarification on the adequacy of night vision equipment to be used in the planned survey.

Response: NMFS does not prescribe any specific equipment be used, but examples of night vision equipment include Exelis PVS–7 night vision goggles, Night Optics D–300 night vision monocular, and FLIR M324XP thermal imaging camera or equivalents.

Comment 14: Falklands Conservation questioned the rationale for requiring a 500-meter (m) exclusion zone for southern right whales, but a 100-m exclusion zone for other endangered cetaceans such as blue whales and sei whales.

Response: For small airgun arrays, such as those utilized by SIO here, NMFS requires a 100-m exclusion zone for all marine mammal species and an extended exclusion zone of 500 m for species or circumstances that warrant additional protection. In the northern hemisphere, North Atlantic right whales and North Pacific right whales are included in the group of species for which we require an extended exclusion zone. While southern right whales are not nearly as imperiled as their northern hemisphere counterparts, NMFS determined that given the similarities between the species, an extended exclusion zone was warranted. The 100-m exclusion zone for other species, including listed cetaceans, is sufficiently protective for these animals, given the sizes of the Level A and Level B harassment zones (up to 6.5 m and 1,400 m, respectively), as described in the Mitigation section.

Comment 15: Falklands Conservation suggested that excepting specific delphinid species from the shutdown requirement does not comply with best practice recommendations which recommend shutting down the acoustic source for all species approaching the zone of impact.

Response: The available information does not suggest that delphinid perceived attraction to vessels is likely to have meaningful energetic effects to individuals such that the effectiveness of such measures outweighs the practicability concerns of requiring the operator to shutdown operations when dolphins approach the vessel. NMFS has included this delphinid exception in numerous recent authorizations and believes it to be an appropriate measure. For additional information, please see NMFS discussion of delphinid shutdown exceptions in the **Federal Register** notice of issuance of IHAs to take marine mammals incidental to geophysical surveys in the Atlantic Ocean (83 FR 63303; December 7, 2018).

Comment 16: The Falkland Islands Director of Natural Resources requested clarification on the meaning of ''take'' in regards to this IHA.

Response: Take is defined under the MMPA as ''to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal'' (16 U.S.C. 1362). As noted on page 39915 of the **Federal Register** notice of proposed IHA (84 FR 39896; August 12, 2019), harassment is the only type of take expected to result from these activities. 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). Additional information on the definition of take is available on NMFS's website at *https://www.fisheries.noaa.gov/national/laws-and-policies/glossary-permits-protected-resources.*

Changes From Proposed to Final IHA

Minor corrections have been made to typographical errors in the estimated take table. Additionally, while no take by Level A harassment was proposed for any species, some take by Level A harassment has been authorized for three species of marine mammals (see Estimated Take section).

Description of Marine Mammals in the Area of Specified Activities

Section 4 of the application summarizes 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 (SARs). 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 planned survey are not assigned to stocks. All abundance estimate values presented in Table 1 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 1 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 1—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.
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	-	44715 [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 planned 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 authorized it.

A detailed description of the species likely to be affected by the planned geophysical surveys, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, information regarding local occurrence, and marine mammal hearing were provided in the **Federal Register** notice for the proposed IHA (84 FR 39896; August 12, 2019). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS's website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects from underwater noise from SIO's planned geophysical surveys have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (84 FR 39896; August 12, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice (84 FR 39896; August 12, 2019) for that information. No instances of serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized 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 primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* seismic airgun) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some small potential for auditory injury (Level A harassment) for high frequency cetaceans (*i.e.,* Kogiidae and Lagenorhynchus spp., and spectacled porpoise). Auditory injury is unlikely to occur for low frequency cetaceans, mid frequency cetaceans, otariid pinnipeds, or phocid pinnipeds given the very small modeled zones of injury for those hearing groups (up to 6.5 m). The mitigation and monitoring measures are expected to minimize the severity of such taking to the extent practicable. As described previously, no mortality is anticipated or 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 authorized take.

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 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 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 2—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 1μPa²s. 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 planned survey would entail the use of a 2-airgun array with a total discharge of 90 in³ 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 in³ 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 planned surveys would acquire data with two 45-in³ 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 in³; 6-m tow depth) and the planned survey (90 in³; 4-m tow depth); whereas the shallow water in the Gulf of Mexico may not exactly replicate the shallow water environment at the planned 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 planned airgun configurations in each water depth category are shown in Table 3.

TABLE 3—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 4—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)	[1] N/A	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)	[1] N/A	203	225.6	207.4

[1] There are no source level values for this airgun configuration for the MF cetaceans and Otariids (maximum peak value is 221dB so less than 230 or 232dB). Therefore, we cannot provide any radial distance or modified peak far-field values for these two hearing groups.

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 5. 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 5. 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 5—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 ($L_{pk,flat}$: 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 planned 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 informed the take calculations.

For the planned 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 planned 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 planned seismic surveys. However, the approach used is based on the best available data. Estimated densities used to inform take estimates are presented in Table 6.

TABLE 6—MARINE MAMMAL DENSITIES IN THE PLANNED 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

TABLE 6—MARINE MAMMAL DENSITIES IN THE PLANNED SURVEY AREA—Continued

Species	Estimated density (#/km²) [a]
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.

TABLE 6—MARINE MAMMAL DENSITIES IN THE PLANNED SURVEY AREA—Continued

Species	Estimated density (#/km²) [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 7), 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 7).

TABLE 7—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)
5-kt survey with 2-m airgun separation.	**Level B Harassment (160 dB)**					
	Deep water	539	18.8	16	1.25	376
	Intermediate water	809	147.32	16	1.25	2,946.4
	Shallow water	1,295	133.44	16	1.25	2,668.8
	Level A Harassment					
	LF cetacean	6.5	2.89	16	1.25	57.8
	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
8-kt survey with 8-m airgun separation.	**Level B Harassment (160 dB)**					
	Deep water	578	25.64	12	1.25	384.6
	Intermediate water	867	284.93	12	1.25	4,273.95
	Shallow water	1,400	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 7 were summed to determine the total ensonified area for all survey activities (Table 8).

TABLE 8—TOTAL ENSONIFIED AREAS (km^2) FOR ALL SURVEYS

Criteria	Total ensonified area (km^2) for all surveys
160 dB Level B (all depths)	13,958.45
160 dB Level B (shallow water)	760.60
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 6), 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 required mitigation measures (see Mitigation section below), Level A take of low frequency cetaceans, mid frequency cetaceans, otariid pinnipeds, and phocid pinnipeds is not expected to occur and has not been authorized. While mitigation is expected to minimize the potential for Level A harassment, some Level A take of high-frequency cetaceans has been authorized. Estimated exposures for the planned survey are shown in Table 9.

TABLE 9—CALCULATED AND AUTHORIZED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED

Species	Calculated Level B	Calculated Level A	Authorized Level B	Authorized 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	7	0	[a] 7	0	7	.....
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
Atlantic spotted dolphin	3,143	0	3,143	0	3,143	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	10,010	0	10,010	14.3
Fraser's dolphin	.....	.....	[a] 283	0	283	.....
Dusky dolphin	1,034	1	1,035	0	1,035	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	2,993	2	2,995	0	2,995	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	1,975	101	2,026	[c] 50	2,076	1.4
Peale's dolphin	400	21	411	[c] 20	421	2.1
Commerson's dolphin	94	46	117	[c] 23	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

TABLE 9—CALCULATED AND AUTHORIZED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF STOCK EXPOSED—Continued

Species	Calculated Level B	Calculated Level A	Authorized Level B	Authorized Level A	Total take	Percent of population
Southern elephant seal	22	0	22	0	22	<0.1

[a] Authorized 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] Authorized take increased to maximum group size from Barlow (2016).
[c] Authorized Level A takes revised from proposed to reflect potential for Level A exposures when mitigation not practicable.

For some marine mammal species, we authorize a different number of incidental takes than the number requested by SIO (see Table 4 in the IHA application for requested take numbers). SIO requested Level A takes of fin whales, sei whales, common and Antarctic minke whales, short-beaked common dolphins, dusky dolphins, long-finned pilot whales, and crabeater seals; however, due to very small zones corresponding to Level A harassment for low-frequency cetaceans, mid-frequency cetaceans, and phocid pinnipeds, we have determined the likelihood of Level A take occurring for species from these functional hearing groups is so low as to be discountable, therefore we do not authorize Level A take of these species. Note that the Level A takes that were calculated for these species have been added to the number of Level B takes.

While we initially discounted the calculated Level A takes of hourglass dolphins, Peale's dolphins, Commerson's dolphins, and spectacled porpoises, due to the very small zone corresponding to Level A harassment for high-frequency cetaceans, after informal discussions with the Commission, we have determined that authorization of some Level A take of hourglass dolphins, Peale's dolphins, and Commerson's dolphins may be warranted, due to their higher relative densities, and have therefore authorized one half of the calculated Level A takes of these species (Table 9). The other half of the calculated Level A takes of these species have been added to their respective Level B takes. While the Level A harassment zone for spectacled porpoises is equal to that of hourglass dolphins, Peale's dolphins, and Commerson's dolphins, due to their lower density, we have determined that the likelihood of Level A take occurring for spectacled porpoises is so low as to be discountable. Therefore, we have not authorized Level A take of this species, and the calculated Level A takes have been added to the number of Level B takes.

It should be noted that the authorized 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.

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 required 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 is required to implement mitigation measures for marine mammals. Mitigation measures that are required to be implemented during the planned 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 must take place during all daytime airgun operations and nighttime start ups (if

applicable) of the airguns. If airguns are operating throughout the night, observations must begin 30 minutes prior to sunrise. If airguns are operating after sunset, observations must continue until 30 minutes following sunset. Following a shutdown for any reason, observations must occur for at least 30 minutes prior to the planned start of airgun operations. Observations must also occur for 60 minutes after airgun operations cease for any reason. Observations must 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 must be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs must be based aboard the *Thompson.* PSOs must be appointed by SIO with NMFS approval. One dedicated PSO must monitor the EZ during all daytime seismic operations. PSO(s) must be on duty in shifts of duration no longer than 4 hours. Other vessel crew must 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 must 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 must 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 must 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 must 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 must establish a minimum EZ with a 100 m radius for the airgun array. The 100-m EZ must 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 must 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 5) 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 is also 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 5). 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 required 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 must 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) must 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 must be enforced for all beaked whales, *Kogia* species, and Southern right whales. SIO must 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 must 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 must be shut down immediately.

Following a shutdown, airgun activity must not resume until the marine mammal has cleared the 100-m EZ. The animal is 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, beaked whales, pilot whales, and Risso's dolphins.

This shutdown requirement must 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 applies solely to specific genera of small dolphins—*Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella, Steno,* and *Tursiops*—and only applies 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, shutdown must 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 is also 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 is required after the array is shut down for any reason for longer than 15 minutes. Ramp-up must begin with the activation of one 45 in^3 airgun, with the second 45 in^3 airgun activated after 5 minutes.

Two PSOs are required to monitor during ramp-up. During ramp up, the PSOs must monitor the EZ, and if marine mammals were observed within the EZ or buffer zone, a shutdown must 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 must not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ is 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 must 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 must be planned to occur during periods of good visibility when possible. However, ramp-up is 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 is required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time must 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 is 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 required measures include the following: Vessel operator and crew must 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 must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone may be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures must be followed during surveys and while in transit.

The vessel must 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 must reduce speed and shift the engine to neutral, and must 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 must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel must 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 must attempt to remain parallel to the

animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds must 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 required measures, NMFS has determined that the required 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.

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 planned 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 must take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs must be based aboard the *Thompson*. PSOs must 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 is required to monitor for marine mammals around the seismic vessel. PSOs must be on duty in shifts of duration no longer than 4 hours. Other crew must also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs must scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7×50 Fujinon) and with the naked eye. At night, PSOs must be equipped with night-vision equipment.

PSOs must 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 must be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They must 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 must 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 must be recorded in a standardized format. Data must be entered into an electronic database. The accuracy of the data entry must be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures allow initial summaries of data to be prepared during and shortly after the field program and 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 must 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 must 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 must be submitted to NMFS within 90 days after the end of

the survey. The report must describe the operations that were conducted and sightings of marine mammals near the operations. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring and would summarize the dates and locations of seismic operations, including percentage of time and total time the array is active during daylight vs nighttime hours (including dawn and dusk), and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report must also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations.

The draft report must also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines must 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 must be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates must be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data must 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 1, given that NMFS expects the anticipated effects of the planned 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 planned seismic survey, even in the absence of required mitigation. Thus the 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.

We authorized a limited number of instances of Level A harassment (Table 9) for three species. However, we believe that any PTS incurred in marine mammals as a result of the planned activity would be in the form of only a small degree of PTS (not total deafness), because of the constant movement of both the *Thompson* and of the marine mammals in the project area, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time (*i.e.,* since the duration of exposure to loud sounds will be relatively short). A small degree of PTS that would not be likely to affect the fitness of any individuals, much less the population. 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 the majority of takes 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 in the **Federal Register** Notice for the Proposed IHA (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. 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 planned 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 planned survey (less than 15 percent each for all marine mammal populations where abundance estimates exist). Additionally, the acoustic ''footprint'' of the planned 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 planned survey area. The seismic array would be active 24 hours per day throughout the duration of the planned survey. However, the very brief overall duration

of the planned survey (28 days) would further limit potential impacts that may occur as a result of the planned activity.

The required 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 required 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 required 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 9), 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 have authorized take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to SIO's planned seismic survey would result in only short-term (temporary and short in duration) behavioral disruption of 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 authorized take to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our 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 planned 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 planned 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 9). 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 planned survey to avoid exposure to sounds from the activity;
- The planned 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 planned survey would be temporary and spatially limited; and
- The required mitigation measures, including visual 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 required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned 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 planned 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 planned survey will occur, NMFS concludes that the authorized 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 planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS 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 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.

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 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 determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

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.

The NMFS Office of Protected Resources Interagency Cooperation Division issued a Biological Opinion on September 11, 2019, under section 7 of the ESA, on the issuance of an IHA to SIO under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of fin whale, sei whale, blue whale, sperm whale, and southern right whale, and is not likely to destroy or modify critical habitat of listed species because no critical habitat exists for these species in the action area.

Authorization

NMFS has issued an IHA to SIO for the potential harassment of small numbers of 49 marine mammal species incidental to a marine geophysical survey in the southwest Atlantic Ocean, provided the previously mentioned mitigation, monitoring, and reporting are incorporated.

Dated: October 7, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22285 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR040

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Long Beach Cruise Terminal Improvement Project in the Port of Long Beach, California

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 Carnival Corporation & PLC (Carnival) for authorization to take marine mammals incidental to the Port of Long Beach Cruise Terminal Improvement Project in Port of Long Beach, California. 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 November 12, 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.Piniak@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/national/marine-mammal-protection/incidental-take-authorizations-construction-activities* 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: Wendy Piniak, 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: *chttps://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* 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. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

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 February 15, 2019, NMFS received a request from Carnival for an IHA to take marine mammals incidental to the Port of Long Beach Cruise Terminal Improvement Project in Port of Long Beach (POLB), California. The application was deemed adequate and complete on July 12, 2019. Subsequent revisions to the application were submitted by Carnival on September 13, 2019. Carnival's request is for take of five species of marine mammals by Level B harassment and one of these five species by Level A harassment. Neither Carnival nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. In-water activities (pile installation and dredging) associated with the project are anticipated to require five months.

Description of Proposed Activity

Overview

Carnival has requested authorization for take of marine mammals incidental to in-water activities associated with the Port of Long Beach Cruise Terminal Improvement Project in POLB, California. The purpose of the project is to make improvements to its existing berthing facilities at the Long Beach Cruise Terminal at the Queen Mary located at Pier H in the POLB, in order to accommodate a new, larger class of cruise ships. The project would also resolve safety issues in the existing parking structure and vessel mooring. Implementation of the project requires installation of two high-capacity mooring dolphins, fenders, and a new passenger bridge system, and dredging at the existing berth and the immediate surrounding area. In-water construction will include installation of a maximum of 49 permanent, 36-inch (91.4 centimeters (cm)) steel pipe piles using impact and vibratory pile driving. Sounds produced by these activities may result in take, by Level A harassment and Level B harassment, of marine mammals located in the POLB, California.

Dates and Duration

In-water activities (pile installation and dredging) associated with the project are anticipated to begin November 15, 2019, and be completed by April 15, 2020, however Carnival is requesting the IHA for one year from November 15, 2019 through November 14, 2020. Pile driving activities would occur for 26 days and dredging activities would occur for 30 days during the proposed project dates. In-water activities will occur during daylight hours only.

Specific Geographic Region

The activities would occur in the POLB, which is located in San Pedro Bay within the southwest portion of the City of Long Beach in southern Los Angeles County, California (Figure 1). The POLB is bounded to the south by hard structure breakwaters, and is a highly industrialized port and the second-busiest container seaport in the United States. The POLB is administered by the City of Long Beach Harbor Department and encompasses 3,200 acres, with 31 miles (50 kilometers (km)) of waterfront, 10 piers, and 80 berths.

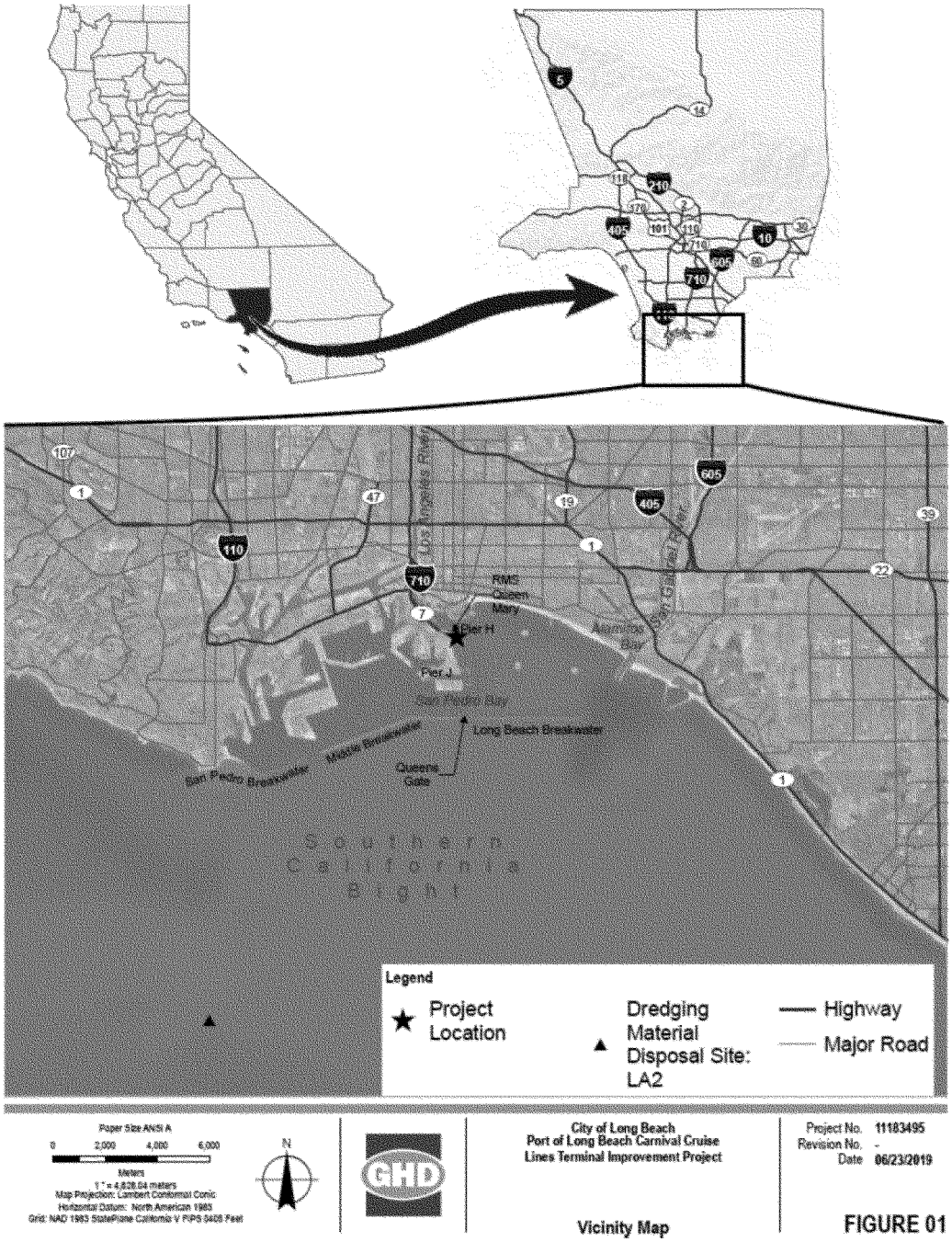

Figure 1. Map of the Port of Long Beach Cruise Terminal Improvement Project area in Port of Long Beach, California.

The site of the project is located adjacent to Royal Mail Ship Queen Mary (Pier J), at Pier H within the Queen Mary Seaport at 231 Windsor Way (see Appendix A of the application for detailed maps of the Project Area). The Queen Mary Seaport is located at the south end of the Interstate 710 Freeway, directly across Queensway Bay from downtown Long Beach (see Appendix C of the application for detailed photographs of the project area and surrounding vicinity). The project site is located near the mouth of the Los Angeles River and several miles from the mouth of the San Gabriel River. The project site is approximately 2.5 miles (4 km) from Queens Gate, the southern entrance to the Port Complex and approximately 3 miles (5 km) from the entrance to Alamitos Bay. The project site lies adjacent to the main navigational channel used by commercial and recreational vessels transiting to the City of Long Beach's shoreline facilities and marinas. The area east of the project site supports an expansive mooring field for cargo ships and barges, with a broad sand beach

area extending from downtown Long Beach to Belmont Shores.

Current bathymetric data for the area indicates the water depth ranges from approximately 28 feet (ft) to 47 ft (8.5 to 14.3 meters (m)) Mean Lower Low Water (MLLW) within the existing berth perimeter. Water depths in this area generally slope from slightly lower bathymetry in the west (near the pier) to deeper depths to the east (see Figure 3 of the application for a detailed benthic map of the Port of Long Beach). Bathymetry at the Port Complex has been significantly altered by filling and dredging. The Port Complex bottom has been dredged to a depth of approximately 20–40 ft (6.1 to 12.2 m) MLLW, while the bathymetry of the east basin retains a more gradual downward slope moving offshore. Adjacent and inshore of the existing berthing structure, the bottom was dredged to depths of roughly 30 to 50 ft (9.1 to 15.2 m), and the bottom slopes downward from Pier H to the southeast. Beyond the berthing structure, the depth increases sharply from roughly 20 to 40 ft (6.1 to 12.2 m) out to the navigation channel, where depths exceed 50 ft (15.2 m) (navigation channel depths between 75 and 90 ft (22.9 to 27.4 m) MLLW) (NOS 2018). Sediments in northern Port Complex are composed of relatively sandy silt and clay and much of the shoreline consists of riprap and manmade structures (MBC Applied Environmental Sciences 2016). Narrow linear strips of kelp are associated with some of the rock protection features; however submerged vegetation and natural rocky substrate are rare. No known eelgrass beds occur at the project site as water depth and turbidity preclude presence in most areas. Adjacent terrestrial habitat is predominantly industrial or recreational including considerable hardscape. Several small parks and beaches bordering the harbor can have heavy human usage and have limited habitat structure or value as haul-out sites (GHD 2019a).

Although water quality in the POLB and San Pedro Bay has improved in the past several decades, it remains degraded and impacted by many anthropogenic sources such as industrial effluent and vessel discharge and untreated run-off. Turbidity is high in the POLB, particularly in the rainy season. The Environmental Protection Agency California State Water Resources Control Board (SWRCB) have listed many areas within the Port Complex as impaired waterbodies under Section 303(d) of the Clean Water Act.

The Port Complex is heavily used by commercial, recreational, and military vessels. Tetra Tech (2011) reported the underwater ambient noise levels in active shipping areas of the POLB were approximately 140 decibels (dB) re: 1 micropascal (μPa) root mean square (rms) and noise levels in non-shipping areas (Terminal Island) were between 120 dB re: 1 μPa (rms) and 132 re: 1 μPa (rms). These underwater ambient noise levels are typical of a large marine bay with heavy commercial boat traffic (Buehler *et al.* 2015). Ship noise in the POLB may mask underwater sounds produced by the proposed activities, and continuous sources of in-water noise (vibratory pile driving and dredging) will likely become indistinguishable from other background noise as they attenuate to near ambient sound pressure levels moving away from the project site.

Detailed Description of Specific Activity

The proposed activities will make improvements to the existing berthing facilities at the Long Beach Cruise Terminal at the Queen Mary located at Pier H in the POLB, in order to accommodate safe and secure moorage for a new, larger class of cruise ships. The project would also resolve safety issues in the existing, adjacent parking structure and vessel mooring. These improvements and activities would include the addition of two high-capacity, pile-founded mooring dolphins to allow for adequate mooring capacity during reasonably anticipated dockside conditions, often including high winds and long-period wave swell actions, which have been anecdotally observed more frequently than in the past. The new dolphins will structurally follow the design of the existing dolphins, which are located off the north and south ends of the dock. All dolphins will connect back to the wharf deck of the marine structure via installed catwalk bridge elements.

A maximum of 49 permanent, 36-inch (91.4 cm) steel pipe piles would be installed using a derrick barge with a pile driver. Piles would be installed approximately two-thirds of the way using a vibratory pile driver, and would be installed the remaining one-third and proofed using an impact pile driver. Proposed active pile driving is planned to occur from November 15, 2019 through April 15, 2020, and may be concurrent with the dredging workdays. The total number of pile driving days would not exceed 26 days (working days may be non-continuous and are expected to be limited to the in water work window proposed for pile driving: November 15, 2019 to April 15, 2020).

Above water, an extension to the existing passenger bridge system for an added ramp section would be constructed to include an additional tower element on the existing wharf deck. This new tower and platform deck would be constructed using the new proposed piles or current piles just south of the existing wharf deck. These new structures would connect to the existing gangway, be approximately 63 ft (19.2 m) above the water's surface, and designed to follow the specifications and design criteria of the existing gangway (adjustable for tidal conditions while remaining compliant with the Americans with Disabilities Act).

Dredging would be conducted to deepen the existing berth from the current depth of 30 ft (9.1 m) MLLW plus 1 foot (0.3 m) of over-dredge to a new depth of 36 ft (11 m) MLLW plus 1 foot (0.3 m) of over-dredge for a total depth of 37 ft (11.3 m) MLLW. Over-dredge is a standard construction design method to compensate for physical conditions and inaccuracies in the dredging process, and allow for efficient dredging practices. Dredging would be conducted with two tugboats and a clamshell dredge. The applicant estimates 30 days of dredging will be required during the proposed November 15, 2019 to April 15, 2020 project dates. Working days may be non-continuous and may be concurrent with pile driving work days. The new depth will increase navigable and mooring margins, accommodate for pitch and roll movement of vessels due to long period wave swells, and assist in managing mooring loads on the dock structure. Because the loudest sound associated with dredging is produced by the tugboat engine, the activity would occur an industrialized port where marine mammals are continuously exposed to vessel engine sounds, and sounds produced by dredging would primarily occur on the same days as pile driving, no authorization for incidental take resulting from dredging is proposed for authorization.

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

Sections 3 and 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 regarding population trends and threats may be found in NMFS' Marine Mammal Stock Assessment Reports

(SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the POLB and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2018). PBR is 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 (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Pacific SARs (*e.g.,* Carretta *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 Final SARs (Carretta *et al.,* 2019) (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT WITHIN PORT OF LONG BEACH, CALIFORNIA DURING THE SPECIFIED ACTIVITY

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Eschrichtiidae:						
Gray whale	*Eschrichtius robustus*	Eastern North Pacific	-, -, N	26,960 (0.05, 25,849, 2016).	801	139
Family Balaenopteridae (rorquals):						
Blue whale	*Balaenoptera musculus*	Eastern North Pacific	E, D, Y	1,647 (0.07, 1,551, 2011)	2.3	≥19
Fin whale	*Balaenoptera physalus*	California/Oregon/Washington	E, D, Y	9,029 (0.12, 8,127, 2014)	81	≥43.5
Humpback whale	*Megaptera novaeangliae*	California/Oregon/Washington	-, -, Y	2,900 (0.05, 2,784, 2014)	16.7	≥40.2
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Short-beaked common dolphin.	*Delphinus delphis*	California/Oregon/Washington	-, -, N	969,861 (0.17, 839,325, 2014).	8,393	≥40
Long-beaked common dolphin.	*Delphinus capensis*	California	-, -, N	101,305 (0.49, 68,432, 2014).	657	≥35.4
Common bottlenose dolphin	*Tursiops truncates*	Coastal California	-, -, N	453 (0.06, 346, 2011)	2.7	≥2.0
Risso's dolphin	*Grampus griseus*	California/Oregon/Washington	-, -, N	6,336 (0.32, 4,817, 2014)	46	≥3.7
Pacific white-sided dolphin	*Lagenorhynchus obliquidens*	California/Oregon/Washington	-, -, N	26,814 (0.28, 21,195, 2014).	191	7.5
Northern right whale dolphin	*Lissodelphis borealis*	California/Oregon/Washington	-, -, N	26,556 (0.44, 18,608, 2014).	179	3.8
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S.	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>320
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina*	California	-, -, N	30,968 (0.157, 27,348, 2012).	1,641	43

1 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.

2 NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable. California sea lion population size was estimated from a 1975–2014 time series of pup counts (Lowry *et al.* 2017), combined with mark-recapture estimates of survival rates (DeLong *et al.* 2017, Laake *et al.* 2018).

3 These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

NOTE—Italicized species are not expected to be taken or proposed for authorization.

All species that could potentially occur in the proposed survey areas are included in Table 1. However, the temporal and/or spatial occurrence of the blue whale, fin whale, Risso's dolphin, Pacific white-sided dolphin, and northern right whale dolphin is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. Blue whales have been observed in the Southern California Bight during their fall migration, however the closest live blue whale sighting record is 4.1 km south of the POLB breakwater (8.5 km

from the project site; OBIS SEAMAP 2019). Given that blue whales are more commonly observed in higher concentrations around the Channel Islands in southern California (Irvine *et al.* 2014), the rarity of live sightings in POLB (five reports of deceased individuals in 20 years, and no live sightings) and all deceased individuals), and that the noise produced by the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB, no takes are anticipated for blue whales. Fin whales occur in the Southern California Bight year round, although they also seasonally range to central California and Baja California before returning to the Southern California Bight (Falcone and Schorr 2013). The closest live fin whale sighting record is 1.5 km south of the Port of Los Angeles breakwater (8.8 km from the project site; OBIS SEAMAP 2019). Given the rarity of live sightings in POLB (in recent past only one dead juvenile has been sighted in POLB and was believed to have been struck by a whale outside the POLB), and that the noise produced by the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB, no takes are anticipated for fin whales. The California, Oregon, and Washington (CA/OR/WA) stock of Risso's dolphins is commonly observed in the Southern California Bight (Carretta *et al.* 2019), however they are infrequently observed very close to shore and no known records exist for this species in the POLB. The closest Risso's dolphin sighting record is 7.2 km south of the Port of Los Angeles breakwater (12.6 km from the project site; OBIS SEAMAP 2019). Given that there have been no sightings of Risso's dolphins in the POLB and that the noise produced by the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB, no takes are anticipated for Risso's dolphins. The CA/OR/WA stock of Pacific white-sided dolphin is seasonally present in colder months outside the POLB breakwater in offshore water. The species was reported by USACE (1992) as present in the POLB, however there are no known occurrence data. The closest Pacific white-sided dolphin sighting record is 2.1 km west of the Port of Los Angeles breakwater (13.8 km from the project site; OBIS SEAMAP 2019). Given that there have been no sightings of Pacific white-sided dolphins in the POLB and that the noise produced by the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB, no takes are anticipated for Pacific white-sided dolphins. The CA/OR/WA stock of northern right whale dolphins rarely occurs nearshore in the Southern California Bight (Carretta *et al.* 2019), and no sightings have occurred in the POLB. The closest northern right whale dolphin sighting record is 26.5 km southwest of the Port of Los Angeles breakwater (32.5 km from the project site; OBIS SEAMAP 2019). Given that there have been no sightings of northern right whale dolphins in the POLB and that the noise produced by the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB, no takes are anticipated for northern right whale dolphins.

Cetaceans

Humpback Whale

The humpback whale is distributed worldwide in all ocean basins. In winter, most humpback whales are found in the subtropical and tropical waters of the Northern and Southern Hemispheres, and then migrate to high latitudes in the summer to feed. The historic summer feeding range of humpback whales in the North Pacific encompassed coastal and inland waters around the Pacific Rim from Point Conception, California, north to the Gulf of Alaska and the Bering Sea, and west along the Aleutian Islands to the Kamchatka Peninsula and into the Sea of Okhotsk and north of the Bering Strait (Johnson and Wolman 1984).

Prior to 2016, humpback whales were listed under the Endangered Species Act (ESA) as an endangered species worldwide. Following a 2015 global status review (Bettridge *et al.* 2015), NMFS established 14 distinct population segments (DPSs) with different listing statuses (81 FR 62259; September 8, 2016) pursuant to the ESA. The DPSs that occur in U.S. waters do not necessarily equate to the existing stocks designated under the MMPA and shown in Table 2. Because MMPA stocks cannot be portioned, *i.e.,* parts managed as ESA-listed while other parts managed as not ESA-listed, until such time as the MMPA stock delineations are reviewed in light of the DPS designations, NMFS considers the existing humpback whale stocks under the MMPA to be endangered and depleted for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status).

Within U.S. west coast waters, three current DPSs may occur: The Hawaii DPS (not listed), Mexico DPS (threatened), and Central America DPS (endangered). The CA/OR/WA stock of humpback whales along the U.S. west coast includes two feeding groups: The California/Oregon feeding group that includes whales from the Central American and Mexican DPSs defined under the ESA (81 FR 62259; September 8, 2016), and the northern Washington and southern British Columbia feeding group that primarily includes whales from the Mexican DPS, but also includes small numbers of whales from the Hawaii and Central America DPSs (Calambokidis *et al.* 2008, Barlow *et al.* 2011, Wade *et al.* 2016). Humpback whales occurring in the project area would include animals from the California/Oregon feeding group. These whales spend the winter/spring in breeding grounds in the coastal waters of Central America and Mexico and migrate to the coast of California and Oregon in the summer/fall to forage on small crustaceans and fish (Calambokidis *et al.* 1989; Steiger *et al.* 1991; Calambokidis *et al.* 1993).

The CA/OR/WA stock of humpback whales showed an increase in abundance from 1990 through approximately 2008 (8 percent growth per year, Calambokidis *et al.* 1999), however more recent estimates using data collected through 2014 indicate a leveling-off of the population size (Calambokidis *et al.* 2017). Threats to the CA/OR/WA stock include entanglements, interactions with fishing gear, ship strike, and impacts of anthropogenic sound on habitat (Carretta *et al.* 2019).

Humpback whales seasonally migrate (spring and fall) past the POLB and are frequently observed in waters outside the POLB outer harbor (MBC Applied Environmental Sciences 2016). Two live humpback whales have been documented in the neighboring Port of Los Angeles (one in June of 2016 and one in April of 2017) in by Harbor Breeze Cruises (HappyWhale 2019, OBIS SEAMAP 2019). Based on humpback whale migration patterns, humpback whales could be present near the project site during near the end of the proposed construction timeline in the spring of 2020, but are most likely to observed outside the POLB.

Gray Whale

Gray whales are commonly observed in the North Pacific Ocean (Carretta *et al.* 2019). Genetic studies indicate there are two population stocks: The Eastern North Pacific stock and the Western North Pacific stock (LeDuc *et al.* 2002; Lang *et al.* 2011a; Weller *et al.* 2013). Most Eastern North Pacific gray whales spend the summer and fall foraging on benthic and epibenthic invertebrates in the Chukchi, Beaufort, and

northwestern Bering Seas, with a small group foraging between Kodiak Island, Alaska and northern California in the summer months (Darling 1984, Gosho *et al.* 2011, Calambokidis *et al.* 2017) and utilize wintering lagoons in Baja California, Mexico.

The population size of the Eastern North Pacific stock of gray whales has increased over the last several decades despite Unusual Mortality Events (UMEs) in 1999 and 2000. Abundance estimates of the Pacific Coast Feeding Group of gray whales which forages along the along the coastal waters of the Pacific coast of North America from California to southeast Alaska, increased from 1998 through 2004, remained stable from 2005–2010, and steadily increased from 2011–2015 (Calambokidis *et al.* 2017). This stock is currently experiencing an UME. As of September 5, 2019, 208 whales have been observed stranded in the U.S., Canada, and Mexico. Preliminary findings from partial necropsies have shown evidence of emaciation. Additional information about this UME can be found at *https://www.fisheries.noaa.gov/national/marine-life-distress/2019-gray-whale-unusual-mortality-event-along-west-coast.*

Subsistence hunters in Russia and the U.S. have traditionally hunted whales from the Eastern North Pacific stock in the Bering Sea. From 2012–2016 the average annual subsistence take was 128 whales (captured during the Russian hunts). The International Whaling Commission approved a 7-year quota (2019–2025) or 980 gray whales, with an annual limit of 140 whales for both Russia and the U.S. Threats to the Eastern North Pacific stock include entanglements, interactions with fishing gear, ship strike, marine debris, and climate change (Carretta *et al.* 2019).

Gray whales seasonally migrate past the POLB. They migrate southward in January and February and northward in March and April (Hildebrand *et al.* 2012). Jefferson *et al.* (2013) estimated an abundance of 221 gray whales in the waters around nearby San Clemente Island, California in the cold water season. At least 19 documented occurrences of gray whales have been recorded in the POLB. Almost all records are from the late winter (February) and early spring (March through April), however, one gray whale was observed near the Southeast Basin in the POLB in December of 2017. Most available records of this species are from just outside the POLB in San Pedro Bay, with three records from August through November and over 40 records in December (HappyWhale 2019, OBIS SEAMAP 2019). Based on gray whale migration patterns, gray whales could be present near the project site during much of the proposed construction time from November through April, but they are more likely to be observed outside the POLB.

Short-Beaked Common Dolphin

Short-beaked common dolphins occur in temperate and tropical waters globally. Short beaked common dolphins from the CA/WA/OR stock are the most common cetacean off the coast of California, occurring year-round and ranging from the coast to at least 300 nautical miles offshore (Carretta *et al.* 2019). They travel in large social pods and are generally associated with oceanic and offshore waters, prey-rich ocean upwellings, and underwater landscape features such as seamounts, continental shelves, and oceanic ridges. Though they are present off the coast of California year-round, their abundance varies with seasonal and interannual changes in oceanographic conditions (increasing with higher temperatures) with peak abundance in the summer and fall (Forney and Barlow 1998, Barlow 2016). Short-beaked common dolphins largely forage on schooling fish and squid. Off the California coast, calving takes place in winter months.

Abundance of the CA/OR/WA stock short-beaked common dolphins has increased since large-scale surveys began in 1991. This stock is known to increase in abundance in California during warm water periods. The most recent survey in 2014 survey was conducted during extremely warm oceanic conditions (Bond *et al.* 2015) and recorded the highest abundance estimate since large-scale surveys began. This observed increase in abundance of short-beaked common dolphins off California likely reflects a northward movement of this transboundary stock from waters off Mexico (distributional shift), rather than an overall population increase due to growth shift (Anganuzzi *et al.* 1993; Barlow 1995; Barlow 2016; Forney and Barlow 1998; Forney *et al.* 1995). The largest threat to the CA/OR/WA stock is interactions with fishing gear, however cooperative international management programs have dramatically reduced overall dolphin mortality in recent decades (IATTC 2015).

Both short- and long-beaked common dolphins have been observed in the vicinity of the project action area. It is often difficult to distinguish between these two species in the field, but generally short-beaked common dolphins are more abundant, making up an estimated 72 percent of individuals observed in the Southern California Bight during a 2008–2013 monitoring efforts (Jefferson *et al.* 2013). In monthly marine mammal monitoring in the POLB from 2013–2014, MBC Applied Environmental Sciences (2016) reported only one pod of common dolphins (40 individuals) in February, 2014. OBIS SEAMAP (2019) has records of common dolphins within 6.7 km of the POLB breakwater and 17.6 km from the project site. Based on the available observations in and surrounding the POLB (all in winter months), common dolphins may be present within the project action area but their presence is likely occasional and of short duration.

Long-Beaked Common Dolphin

Long-beaked common dolphins are found in the Atlantic, Pacific, and Indian Oceans. The distribution of long-beaked common dolphins in the California stock along the U.S. west coast overlaps with that of the short-beaked common dolphin, however long-beaked common dolphins are commonly found only within 50 nautical miles of the coast, from Baja California (including the Gulf of California) northward to central California (Carretta *et al.* 2019). They travel in large social pods and are generally associated with shallow, subtropical, and warm temperate waters close to the coast and on the continental shelf. Though they can be found of the California coast year-round, California represents the northern limit for this stock and animals likely move between U.S. and Mexican waters, with the distribution and abundance varying inter-annually and seasonally with oceanographic conditions (Heyning and Perrin 1994). Off the California coast, calving takes place in winter and spring months. Like short-beaked common dolphins, long-beaked common dolphins largely forage on schooling fish and squid.

While there is no trend analysis available for the California stock of long-beaked common dolphins, abundance estimates for California waters from vessel-based line-transect surveys have been greater in recent years as water conditions have been warmer (Barlow 2016) and long-beaked common dolphins appear to be increasing in abundance in California waters over the last 30 years (Moore and Barlow 2011, 2013). The ratio of strandings and visual observations of long-beaked to short-beaked common dolphin in southern California has varied, suggesting that varying oceanographic conditions affect the proportions of each species present (Heyning and Perrin 1994, Danil *et al.* 2010). The largest threat to the

California stock is interactions with fishing gear, however other mortalities caused by blast trauma from explosions, ingestion of marine debris. Additionally, NMFS has documented long-beaked common dolphin UMEs due to domoic acid toxicity as recently as 2007, and Tatters *et al.* (2012) suggest that increasing anthropogenic CO_2 levels and ocean acidification may increase the toxicity of the diatom responsible for these UMEs.

As previously described, both short- and long-beaked common dolphins have been observed (though infrequently) in the vicinity of the project action area during winter months.

Common bottlenose dolphin

Common bottlenose dolphins are found in temperate and tropical waters throughout the world in offshore and coastal waters including harbors, bays, gulfs, and estuaries. Common bottlenose dolphins in the California coastal stock inhabit waters within one kilometer of shore (Hansen, 1990; Carretta *et al.* 1998; Defran and Weller 1999) from central California south into Mexican waters (at least as far south as San Quintin, Mexico). In southern California near the project action area, individuals are found even closer to shore and are found within 500 meters (m) of the shoreline 99 percent of the time and within 250 m 90 percent of the time (Hanson and Defran 1993). Photo-identification studies show little site fidelity and documented north-south movements with 80 percent of dolphins identified in Santa Barbara, Monterey, and Ensenada have also been identified off San Diego (Defran *et al.* 1999, Feinholz 1996, Defran *et al.* 2015). Bottlenose dolphins forage on a wide variety of fishes, cephalopods, and shrimps (Wells and Scott 1999). The peak periods of calving for the California coastal stock occur in spring and fall.

Mark-recapture abundance estimates from 1987–89, 1996–98, and 2004–05 indicated that the population size remained stable during this period (Dudzik *et al.* 2006). Recent higher estimates based on surveys from 2009–2011 suggest the population may be growing, however it whether this increase is due to population increase or immigration (Weller *et al.* 2016). Threats to the California coastal stock include interactions with fisheries and coastal pollution (Carretta *et al.* 2019).

Common bottlenose dolphins have been observed in both the inner and outer harbors of POLB. They were observed during five of 12 monthly sampling events during the most recent (2013–2014) biological surveys (MBC Applied Environmental Sciences 2016), including the months of November, December, and March which are within the proposed project timeframe. Common bottlenose dolphins were recently sighted near the Queen Mary Dock and elsewhere in the project action area (MBC Applied Environmental Sciences 2016, Laura McCue NOAA, personal communication).

Pinnipeds

California Sea Lion

California sea lions inhabit the eastern North Pacific Ocean from Islas Marias north of Puerto Vallarta, Mexico, north throughout the Gulf of California, and along the Baja California Peninsula north to the Gulf of Alaska. The U.S. stock ranges from the U.S./Mexico border to Canada. They occupy shallow ocean waters and prefer sandy beaches or rocky coves for breeding and haul-out sites, however they also commonly haul out on marina docks, jetties, and buoys. Pupping and breeding occur from May through July outside of the proposed project timeframe. Rookery sites in Southern California include San Miguel Island and to the more southerly Channel Islands of San Nicolas, Santa Barbara, and San Clemente (Lowry *et al.* 2017). California sea lions commonly forage on a variety of prey including fish and squid, and exhibit annual migratory movements between breeding and foraging habitats. From August to December, adult and sub-adult males migrate north along the U.S. west coast to foraging areas along the coasts of California, Oregon, Washington, British Columbia, Canada, and southeast Alaska. In the spring, males migrate southward to breeding rookeries in the Channel Islands and Mexico. Females and pups/juveniles commonly stay near breeding areas (Lowry *et al.* 2017), but some females may migrate as far north as San Francisco Bay in winter, and during El Niño events, have been observed as far north as central Oregon. The California sea lion molts gradually over several months during late summer and fall.

As with most sea lions, a complete population count of all harbor seals in California is not possible as all members of the population are not ashore simultaneously. Population estimates for the U.S. stock have increased since the 1970s and are derived from 3 primary data sources: (1) Annual pup counts (Lowry *et al.* 2017); (2) annual survivorship estimates from mark-recapture data (DeLong *et al.* 2017); and (3) estimates of human-caused serious injuries, mortalities, and bycatch (Carretta and Enriquez 2012a, 2012b, Carretta *et al.* 2016, Carretta *et al.* 2018a, 2018b). Using a logistic growth model and reconstructed population size estimates from 1975–2014, Laake *et al.* (2018) estimated a net productivity rate of 7 percent per year. The population is considered within the range of its optimum sustainable population (OSP) size (Laake *et al.* 2018). From January 2013 through September 2016, a greater than expected number of young malnourished California sea lions stranded along the coast of California and NMFS declared this an UME. Sea lions stranding from an early age (6–8 months old) through two years of age (hereafter referred to as juveniles) were consistently underweight without other disease processes detected. The proposed primary cause of the UME was malnutrition of sea lion pups and yearlings due to ecological factors. These factors included shifts in distribution, abundance and/or quality of sea lion prey items around the Channel Island rookeries during critical sea lion life history events (nursing by adult females, and transitioning from milk to prey by young sea lions). Threats to the U.S. stock include interactions with fisheries, entanglement in marine debris, entrainment in power plant intakes, oil exposure, vessel strikes, dog attacks, and human interactions/harassment (shootings, direct removals) (Carretta *et al.* 2019).

California sea lions have been observed year round in POLB, and they have recently been observed in both the inner and outer harbors of POLB (MBC Applied Environmental Sciences 2016, Laura McCue NOAA, personal communication). The closest known pinniped regular use haul-out site used for basking is along the breakwater approximately 3 km south of the project site, however pinnipeds may also haul out on buoys or rip rap that are less than 1 km from the project site (see Appendix A, Figure 4 of the application).

Harbor Seal

Harbor seals are widely distributed in the North Atlantic and Pacific Oceans. In the North Pacific Ocean two sub-species occur: *Phoca vitulina stejnegeri* in the western North Pacific near Japan and *Phoca vitulina richardii* in the eastern North Pacific, including areas around the project site (Carretta *et al.* 2019). Three stocks are currently recognized along the west coast of the continental U.S.: 1) California, 2) Oregon and Washington outer coast waters, and 3) inland waters of Washington (Carretta *et al.* 2019). The

California stock of Pacific harbor seals is found in the project action area and inhabits coastal and estuarine areas including sand bars, rocky shores, and beaches along the entire coast of California, including the offshore islands, forming small, relatively stable populations. Pacific harbor seals are do not make extensive pelagic migrations like other pinnipeds, but do travel distances of 300–500 km to forage or find appropriate breeding habitat (Herder 1986; Harvey and Goley 2011). Harbor seals are rarely found more than 10.8 nm from shore (Baird 2001) and are generally are non-migratory (Burns 2002; Jefferson *et al.* 2008) and solitary at sea. Harbor seals spend more than 80 percent of their time in the upper 164 ft (50 m) of the water column (Womble *et al.* 2014) and forage most commonly on fish, shellfish, and crustaceans.

The California stock of harbor seals breeds along the California coast between from March to May and pupping occurs between April and May (Alden *et al.* 2002; Reeves *et al.* 2002). Molting occurs from late May through July or August and lasts approximately 6 weeks. Between fall and winter, harbor seals spend less time on land, but they usually remain relatively close to shore while at sea. The peak haul-out period for harbor seals in California is May through July (Carretta *et al.* 2019).

As with most seals, a complete population count of all harbor seals in California is not possible as all seals do not haul out simultaneously. A complete pup count (as is done for other pinnipeds in California) is also not possible because harbor seals enter the water almost immediately after birth. Population size is estimated by counting the number of seals hauled out during the peak haul-out period (May to July) and by multiplying this count by a correction factor equal to the inverse of the estimated fraction of seals on land (Carretta *et al.* 2019). Harvey and Goley (2011) calculated a correction factor of 1.54 (CV=0.157) based on 180 seals radio-tagged in California. Population counts of harbor seals increased from 1981 to 2004, when the maximum count in California was recorded. More recent counts in 2009 and 2012 have lower than the 2004 maximum count. Threats to the California stock include interactions with fisheries, entanglement in marine debris, ship strikes, research-related deaths, entrainment in power plants, and human interactions/harassment (shootings, stabbing/gaff wounds, human-induced abandonment of pups) (Carretta *et al.* 2019).

Harbor seals have been observed year round in POLB and have been observed occasionally following cruise ships to forage on organisms churned up from the benthos by ship propellors and food thrown from decks by passengers (MBC Applied Environmental Sciences 2016, M. Peters, Carnival Cruise Lines, personal communication). The closest known pinniped regular use haul-out site used for basking is along the breakwater approximately 3 km south of the project site, however pinnipeds may also haul out on buoys or rip rap that are less than 1 km from the project site (see Appendix A, Figure 4 of the application).

Additional information on the biology and local distribution of these species can be found in the NMFS Marine Mammal Stock Assessment Reports, which may be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

Habitat

No ESA-designated critical habitat overlaps with the project area. A migration Biologically Important Area (BIA) for gray whales overlaps with the project area, however as previously described, gray whales are rarely observed in the POLB and the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB.

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 2.

TABLE 2—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. Seven marine mammal species (5 cetacean and 2 pinniped (1 otariid and 1 phocid) species) have the reasonable potential to co-occur with the proposed activities (Table 1). Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), three are classified as mid-frequency cetaceans (*i.e.,* all *delphinid* species), and none are classified as high-frequency cetaceans.

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 Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

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 shipping 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 the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving, and dredging. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI 1986; NIOSH 1998; ANSI 2005; NMFS 2018). Non-impulsive sounds (*e.g.* aircraft, vessels, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). 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).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push the pile into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure level (SPL) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards 2002; Carlson *et al.* 2005).

The likely or possible impacts of Carnival's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and dredging.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and dredging is the primary means by which marine mammals may be harassed from Carnival's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.* 2007). Exposure to in-water construction noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior) and/or lead to non-observable physiological responses such an increase in stress hormones ((Richardson *et al.,* 1995; Gordon *et al.,* 2004; Nowacek *et al.,* 2007; Southall *et al.,* 2007; Gotz *et al.,* 2009). Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and dredging noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.* 2004; Southall *et al.* 2007). Here we discuss physical auditory effects (threshold shifts), followed by behavioral effects and potential impacts on habitat.

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 (*i.e.,* permanent hearing impairment, certain non-auditory physical or physiological effects) only briefly as we do not expect that there is a reasonable likelihood that Carnival's activities would result in such effects (see below for further discussion). NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.* 2014b), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.* 1958, 1959; Ward 1960; Kryter *et al.* 1966; Miller 1974; Ahroon *et al.* 1996; Henderson *et al.* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Based on data from cetacean TTS measurements (see Southall *et al.* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.* 2000; Finneran *et al.* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SELcum) in an accelerating fashion: At low exposures with lower SELcum, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher higher SELcum, the growth curves become steeper and approach linear relationships with the noise SEL.

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 (similar to those discussed in auditory masking, below). 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 takes place during a time when the animal is traveling through the open ocean, 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. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise (*Phocoena phocoena*), and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran 2015). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. 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 Table 5 in NMFS (2018). Installing piles requires a combination of impact pile driving and vibratory pile driving. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—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. Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). 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). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. 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 above, 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; Finneran *et al.,* 2003). 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).

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; Costa *et al.,* 2003; 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.

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, 2005b, 2006; Gailey *et al.,* 2007).

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 (Eubalaena glacialis) 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.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

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 (Eschrictius robustus) are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). 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.,* Blackwell *et al.,* 2004; 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.

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 sufficient 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).

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). 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.,* pile driving, 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.

Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. POLB is an active, industrialized harbor. POLB is an active port of call for not only cruise ships, but hosts numerous recreational and commercial vessels; therefore, background sound levels in the POLB are already elevated by these activities.

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.,* 2007b; 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.

Underwater Acoustic Effects

Potential Effects of Dredging Sound

Based on existing reference values, the dredge/tug engine would produce the highest SPLs during dredging activities. Tugboat engine noise was estimated to be 170 ± 5 dB (rms) at 1 m (Veirs *et al.* 2016). As previously described, POLB is an industrialized harbor. POLB is an active port of call for not only cruise ships, but hosts numerous recreational and commercial vessels including tugboats; therefore, background sound levels in the POLB are elevated by sounds produced by these vessels. The sounds produced by tugboat engines are of similar frequencies to the sounds produced by other vessel engines, and are anticipated to diminish to background noise levels (or be masked by background noise levels) in the Port relatively close to the project site. Further, any marine mammals inhabiting the POLB are exposed nearly continuously to the sounds produced by vessels. The dredging area is located close to the dock (See Figure 8 of the application), and the applicants plan to implement a 10 m shutdown zone around dredging activities. Finally, the applicants note that sounds produced by tugboats associated with dredging would primarily occur on the same days as pile driving, and therefore would potentially impact the same individuals. These animals would previously have been 'taken' because of exposure to underwater sounds produced by pile driving. Thus, in these cases, behavioral harassment of these animals would already accounted for in these estimates of potential take. Therefore, for the reasons described above, we do not believe that authorization of incidental take resulting from dredging is warranted, and impacts of dredging are not discussed further.

Potential Effects of Pile Driving Sound

The effects of sounds from pile driving might include one or more of the following: Temporary or permanent hearing impairment, non-auditory physical or physiological effects, behavioral disturbance, and masking (Richardson *et al.,* 1995; Gordon *et al.,* 2003; Nowacek *et al.,* 2007; Southall *et al.,* 2007). The effects of pile driving on marine mammals are dependent on several factors, including the type and depth of the animal; the pile size and type, and the intensity and duration of the pile driving sound; the substrate; the standoff distance between the pile and the animal; and the sound propagation properties of the environment. Impacts to marine mammals from pile driving activities are expected to result primarily from acoustic pathways. As such, the degree of effect is intrinsically related to the frequency, received level, and duration of the sound exposure, which are in turn influenced by the distance between the animal and the source. The further away from the source, the less intense the exposure should be. The substrate and depth of the habitat affect the sound propagation properties of the environment. In addition, substrates that are soft (*e.g.,* sand) would absorb or attenuate the sound more readily than hard substrates (*e.g.,* rock), which may reflect the acoustic wave. Soft porous substrates would also likely require less time to drive the pile, and possibly less forceful equipment, which would ultimately decrease the intensity of the acoustic source.

In the absence of mitigation, impacts to marine species could be expected to include physiological and behavioral responses to the acoustic signature (Viada *et al.,* 2008). Potential effects from impulsive sound sources like pile driving can range in severity from effects such as behavioral disturbance to temporary or permanent hearing impairment (Yelverton *et al.,* 1973). Due to the nature of the pile driving sounds in the project, behavioral disturbance is the most likely effect from the proposed activity. Marine mammals exposed to high intensity sound repeatedly or for prolonged periods can experience hearing threshold shifts. PTS constitutes injury, but TTS does not (Southall *et al.,* 2007).

Non-Auditory Physiological Effects

Non-auditory physiological effects or injuries that theoretically might occur in marine mammals exposed to strong underwater sound include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage (Cox *et al.,* 2006; Southall *et al.,* 2007). Studies examining such effects are limited. In general, little is known about the potential for pile driving to cause non-auditory physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would presumably be limited to short distances from the sound source and to activities that extend over a prolonged period. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007) or any meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in those ways. We do not expect any non-auditory physiological effects because of mitigation that prevents animals from approach the source too closely, as well as source levels with very small Level A harassment isopleths. Marine mammals that show behavioral avoidance of pile driving, including some odontocetes and some pinnipeds, are especially unlikely to incur on-auditory physical effects.

Disturbance Reactions

Responses to continuous sound, such as vibratory pile installation, have not been documented as well as responses to pulsed sounds. With both types of pile driving, it is likely that the onset of pile driving could result in temporary,

short term changes in an animal's typical behavior and/or avoidance of the affected area. These behavioral changes may include (Richardson *et al.,* 1995): Changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located; and/or flight responses (*e.g.,* pinnipeds flushing into water from haul-outs or rookeries). Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff 2006). If a marine mammal responds to a stimulus by changing its behavior (*e.g.,* through relatively minor changes in locomotion direction/speed or vocalization behavior), the response may or may not constitute taking at the individual level, and is unlikely to affect the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on animals, and if so potentially on the stock or species, could potentially be significant (*e.g.,* Lusseau and Bejder 2007; Weilgart 2007).

The biological significance of many of these behavioral disturbances is difficult to predict, especially if the detected disturbances appear minor. However, the consequences of behavioral modification could be expected to be biologically significant if the change affects growth, survival, or reproduction. Significant behavioral modifications that could potentially lead to effects on growth, survival, or reproduction include:

- Drastic changes in diving/surfacing patterns (such as those thought to cause beaked whale stranding due to exposure to military mid-frequency tactical sonar);
- Longer-term habitat abandonment due to loss of desirable acoustic environment; and
- Longer-term cessation of feeding or social interaction.

The onset of behavioral disturbance from anthropogenic sound depends on both external factors (characteristics of sound sources and their paths) and the specific characteristics of the receiving animals (hearing, motivation, experience, demography) and is difficult to predict (Southall *et al.,* 2007).

Auditory Masking

Natural and artificial sounds can disrupt behavior by masking. The frequency range of the potentially masking sound is important in determining any potential behavioral impacts. Because sound generated from in-water pile driving is mostly concentrated at low frequency ranges, it may have less effect on high frequency echolocation sounds made by porpoises. The most intense underwater sounds in the proposed action are those produced by impact pile driving. Given that the energy distribution of pile driving covers a broad frequency spectrum, sound from these sources would likely be within the audible range of marine mammals present in the project area. Impact pile driving activity is relatively short-term, with rapid pulses occurring for less than fifteen minutes per pile. The probability for impact pile driving resulting from this proposed action masking acoustic signals important to the behavior and survival of marine mammal species is low. Vibratory pile driving is also relatively short-term, with rapid oscillations occurring for approximately 31.5 minutes per pile. It is possible that vibratory pile driving resulting from this proposed action may mask acoustic signals important to the behavior and survival of marine mammal species, but the short-term duration and limited affected area would result in insignificant impacts from masking. Any masking event that could possibly rise to Level B harassment under the MMPA would occur concurrently within the zones of behavioral harassment already estimated for vibratory and impact pile driving, and which have already been taken into account in the exposure analysis. Active pile driving is anticipated to occur for less than four hours per day and for 26 days between November 15, 2019 and April 15, 2020, so we do not anticipate masking to significantly affect marine mammals.

Airborne Acoustic Effects

Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. Based on the location of the construction for the parking garage, levels of expected construction noise, and lack any pinniped haul-outs in the immediate vicinity of the project site, airborne noise associated with parking facility renovation are not expected to have any impact on pinnipeds. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals would already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

The area likely impacted by the project is relatively small compared to the available habitat for all impacted species and stocks, and does not include any ESA-designated critical habitat. As previously mentioned a migration BIA for gray whales overlaps with the project area, however gray whales are rarely observed in the POLB and the proposed project's in-water activities are not anticipated to propagate large distances outside the POLB. Carnival's proposed construction activities in the POLB are of short duration and would not result in permanent negative impacts to habitats used directly by marine mammals, but could have localized, temporary impacts on marine mammal habitat and their prey by increasing underwater and airborne SPLs and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving, elevated levels of underwater noise would ensonify the POLB where both fish and mammals occur and could affect foraging success. Airborne sounds produced by construction activities would not be detectable at the nearest known pinniped regular use haul-out site used for basking is along the breakwater

(approximately 3 km south of the project site).

There are no known foraging hotspots or other ocean bottom structure of significant biological importance to marine mammals present in the marine waters of the project area. Therefore, the main impact issue associated with the proposed activity would be temporarily elevated sound levels and the associated direct effects on marine mammals, as discussed previously in this document. The primary potential acoustic impacts to marine mammal habitat are associated with elevated sound levels produced by vibratory and impact pile driving in the area. Physical impacts to the environment such as construction debris are unlikely.

In-water pile driving and dredging activities would also cause short-term effects on water quality due to increased turbidity. The POLB is degraded and turbidity levels are generally high in the POLB, particularly in the rainy season. Carnival would employ standard construction best management practices (BMPs; see Section 11 of the application), and deploy silt fences for onshore activities, thereby reducing any potential impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

Pile installation and dredging may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. In general, turbidity associated with pile installation is localized to about a 25-foot (7.6 m) radius around the pile (Everitt *et al.* 1980). Large cetaceans are not expected to be close enough to the project activity areas to experience effects of turbidity, and any small cetaceans and pinnipeds could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals.

Essential Fish Habitat (EFH) for several species or groups of species overlaps with the project area including: Groundfish, coastal pelagic species, krill, finfish, dorado, and common thresher shark. NMFS (West Coast Region) reviewed the proposed action for potential effects to EFH pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The consultation identified project related activities that may adversely affect EFH including direct impacts to benthic habitat and organisms including dredging, increased turbidity, and underwater noise generation associated with pile installation and related construction work. However, they noted that the proposed project includes adequate conservation measures to address these impacts. For example, surveys for *Caulerpa taxifolia* will be performed in accordance with the *Caulerpa* Control Protocol to avoid the potential spread of that invasive alga. In addition, a ''soft start'' procedure and the use of bubble curtains will reduce the impacts of underwater acoustic noise associated with pile driving activities. In addition to the adverse effects identified above, the proposed project will increase overwater coverage by 5,340 square feet (1,628 square m) and will increase the amount of artificial hard structure within the marine environment. In general, increased overwater coverage would permanently reduce the quality of EFH and aquatic functions of waters of the United States. NMFS has completed an EFH Programmatic Consultation for Overwater Structures with the USACE Los Angeles District South Coast Branch, which summarizes the various adverse impacts to EFH and aquatic resources. NMFS does not believe the proposed project would result in a substantial adverse effect to EFH on an individual basis. However, NMFS noted in the consultation that the U.S. Army Corps of Engineers should consider the cumulative impacts of the proposed project and explicitly identify the conditions for which compensatory mitigation for lost aquatic functions would be deemed appropriate.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving or dredging stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity.

The duration of the construction activities is relatively short. Pile driving activities would occur for 26 days and dredging activities would occur for 30 days during the proposed project dates. These activities are anticipated to overlap, reducing the total number of construction days, and in-water activities will occur during daylight hours only. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In-water Construction Effects on Potential Prey (Fish)—Construction activities would produce continuous (*i.e.,* vibratory pile driving and dredging) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that 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 (summarized in Popper and Hastings 2009). Hastings and Popper (2005) reviewed several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented physical and behavioral effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge 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 (summarized in Popper *et al.* 2014).

The most likely impact to fish from pile driving activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

In summary, given the short daily duration of sound associated with individual pile driving and dredging events and the relatively small and currently industrialized areas being affected, pile driving and dredging activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine mammals, or to contribute to adverse impacts on 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 primarily be by Level B harassment, as use of the acoustic sources (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, for phocids (harbor seals) because predicted auditory injury zones are larger than for mid-frequency species and otariids. Auditory injury is unlikely to occur for mid-frequency cetaceans and otariids. The proposed mitigation and monitoring measures (see *Mitigation* and *Monitoring and Reporting* sections below) are expected to minimize the severity of such taking to the extent practicable. With implementation of the proposed mitigation and monitoring measures (see *Proposed Mitigation* section), no Level B harassment or Level A harassment is anticipated for low-frequency cetaceans (humpback whales and gray whales). 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. Carnival's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are 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). Carnival's proposed activity includes the use includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources.

These thresholds are provided in Table 3 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 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 219 dB; $L_{E,p,LF,24h}$: 183 dB	$L_{E,p,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 230 dB; $L_{E,p,MF,24h}$: 185 dB	$L_{E,p,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	$L_{p,0\text{-pk,flat}}$: 202 dB; $L_{E,p,HF,24h}$: 155 dB	$L_{E,p,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	$L_{p,0\text{-pk,flat}}$: 218 dB; $L_{E,p,PW,24h}$: 185 dB	$L_{E,p,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	$L_{p,0\text{-pk,flat}}$: 232 dB; $L_{E,p,OW,24h}$: 203 dB	$L_{E,p,OW,24h}$: 219 dB.

* Dual metric 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 are recommended for consideration.

Note: Peak sound pressure level ($L_{p,0\text{-pk}}$) has a reference value of 1 μPa, and weighted cumulative sound exposure level ($L_{E,p}$) has a reference value of 1μPa^{2}s. In this table, thresholds are abbreviated to be more reflective of International Organization for Standardization standards (ISO 2017). The subscript ''flat'' is being included to indicate peak sound pressure are flat weighted or unweighted within the generalized hearing range of marine mammals (*i.e.,* 7 Hz to 160 kHz). 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 weighted 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 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 sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the POLB including hard structure breakwaters which bound the southern portion of the POLB and preclude sound from transmitting beyond the outer harbor of the POLB (see Figure 5 of the application). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

Where

TL = transmission loss in dB

B = transmission loss coefficient; for practical spreading equals 15

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6 dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of fifteen is often used under conditions, such as the project site at Pier H in the POLB where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate distances to the Level A harassment and Level B harassment thresholds for the 36 inch steel piles proposed in this project, NMFS used acoustic monitoring data from other locations. In their application, Carnival presented several reference sound levels based on underwater sound measurements documented for other pile driving projects of the west coast of the U.S. (see Tables 1.3 and 1.5 of the application). Empirical data from a recent sound source verification (SSV) study conducted as part of the Anacortes Ferry Terminal Project, in the state of Washington were used to estimate the sound source levels (SSLs) for impact pile driving and vibratory pile driving. The Anacortes Ferry Terminal Project were generally assumed to best approximate the construction activities and environmental conditions found in the Carnival's proposed project in that the Anacortes Ferry Terminal Project also involved driving 36 inch piles into a similar substrate type (sand and silt) with a diesel hammer of similar power (ft-lbs) (WSDOT 2018). Carnival also presented several references for the number of piles installed per day and the number of strikes (impact pile driving) or minutes (vibratory pile driving) required to install each pile from similar projects on the U.S. west coast. As the Anacortes Ferry Terminal Project was assumed to be most similar to Carnival's proposed project (and generally had the highest values), number of strikes (impact pile driving) or minutes (vibratory pile driving) required to install each pile from this Anacortes Ferry Terminal Project were used to calculate Level A harassment and Level B harassment isopleths (WSDOT 2018). Based on data from these projects, the applicant anticipates that a maximum of 5 piles could be installed via impact pile driving per day and 5 piles could be installed via vibratory pile driving per day.

Carnival used NMFS' Optional User Spreadsheet, available at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance,* to input project-specific parameters and calculate the isopleths for the Level A harassment and Level B harassment zones for impact and vibratory pile driving. When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment 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 stationary sources pile driving, the NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS.

Table 4 provides the sound source values and input used in the User Spreadsheet to calculate harassment isopleths for each source type. For the impact pile driving source level, Carnival used levels measured at the Anacortes Ferry Terminal Project (peak SPL [SPLpk]: 207 dB re: 1 μPa at 10 m and single strike sound exposure level [SELs-s]: 175 dB re: 1 μPa at 10 m at the 90th percentile) as reported in WSDOT (2019, Table 7–14). For the vibratory pile driving source level, Carnival also used levels measured at the Anacortes Ferry Terminal Project (SPL: 170 dB re: 1 μPa (rms) at 11 m 175 dB) as reported in WSDOT (2019, Table 7–15). Carnival has proposed to implement bubble curtains (*e.g.* pneumatic barrier typically comprised of hosing or PVC piping that disrupts underwater noise propagation; see *Proposed Mitigation* section below) and has reduced the source levels of both impact and vibratory pile driving by 7 dB (a conservative estimate based on several studies including Austin *et al.* 2016). For impact pile driving, isopleths calculated using the cumulative SEL metric (SELs-s) will be used as it produces larger isopleths than SPLpk. Isopleths for Level B harassment

associated with impact pile driving (160 dB) and vibratory pile driving (120 dB) were also calculated and are can be found in Table 5.

TABLE 4—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING HARASSMENT ISOPLETHS

User spreadsheet parameter	Impact pile driving	Vibratory pile driving
Spreadsheet Tab Used	(E.1) Impact pile driving	(A.1) Drilling/Vibratory pile driving.
Source Level (SELs-s or SPL rms)	168 SELs-s [a b]	163 dB SPL rms[a,b].
Source Level (SPLpk)	207	N/A.
Weighting Factor Adjustment (kHz)	2	2.5.
Number of piles	5	5.
Number of strikes per pile	675	N/A.
Number of strikes per day	2,700	N/A.
Estimate driving duration (min) per pile	N/A	31.5.
Activity Duration (h) within 24-h period	N/A	2.625.
Propagation (xLogR)	15 Log R	15 Log R.
Distance of source level measurement (meters)	10	11.
Other factors	Using bubble curtain	Using bubble curtain.

a. WSDOT (2019).
b. Austin *et al.* 2016.

TABLE 5—CALCULATED DISTANCES TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT ISOPLETHS DURING PILE DRIVING

Source	Level A harassment zone (meters)					Level B harassment zone (meters)	Level B harassment zone ensonified area (km^2)
	Low-frequency cetacean	Mid-frequency cetacean	High-frequency cetacean	Phocid pinniped	Otariid pinniped	Cetaceans & Pinnipeds	Cetaceans & Pinnipeds
Impact Pile Driving	224.7	8.0	267.6	120.2	8.8	292.7	0.39
Vibratory Pile Driving	19.4	1.7	28.7	11.8	0.8	8,092.1	27.42
Source	PTS Onset Isopleth—Peak (meters)						
Impact Pile Driving	1.6	N/A	21.5	1.8	N/A		

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. Marine mammal densities were obtained from MBC Applied Environmental Sciences (2016) and Jefferson *et al.* (2013). MBC Applied Environmental Sciences (2016) conducted marine mammal and bird visual surveys in the POLB over a 12-month period from September, 2013 to August, 2014. The survey area included a substantial portion of the project action area. MBC Applied Environmental Sciences (2016) conducted point count surveys on one day each month within a number of distinct study units including one encompassing approximately half of the existing Carnival dock. These data are relatively recent, and occurred in the POLB in the habitats and locations potentially impacted by the proposed activity, and as such as they are the best available survey data for the project action area. MBC Applied Environmental Sciences (2016) reported raw sightings numbers per month per species. To estimate density from the MBC Applied Environmental Sciences (2016) data, the two-dimensional area of their combined survey area (based on their sampling quadrants) was calculated using GIS and graphics in their report showing the limits of each sampling quadrant. The maximum monthly observed number of observations for each species observed and the total study area (30.35 km^2) was used to calculate density (Table 6). During POLB surveys, MBC Applied Environmental Sciences (2016) observed common dolphins (not identified to species, however to be conservative, this number was used for both species), common bottlenose dolphins, California sea lions, and harbor seals.

Jefferson *et al.* (2013) reported the results of aerial visual marine mammal surveys from 2008–2013 in the Southern California Bight, including areas around the Channel Islands. Although the survey area did not include the POLB, it did include nearshore waters not far to the south of the Port. Density estimates were based on airborne transects and utilized distance sampling methods. Jefferson *et al.* (2013) provided data for all observed marine mammal species including some not likely to occur nearshore or in the project area; however it represents the most detailed, recent, and comprehensive long term dataset for the region and the best information available on densities for gray and humpback whales in southern California (Jefferson *et al.* 2013) (Table 6). The density estimates for the remaining species for which take is anticipated were higher in the POLB MBC Applied Environmental Sciences (2016) surveys, and these higher density estimates were used to estimate takes (presented in bold in Table 6).

TABLE 6—MARINE MAMMAL DENSITY INFORMATION

[Species densities used for take calculations are denoted by asterisks *]

Common name	Stock	POLB Max monthly number 2013–2014 (MBC applied environmental sciences 2016)	Max density (km^2) (MBC applied environmental sciences 2016) [1]	Max density (km^2) (Jefferson *et al.* 2013)
Gray whale	Eastern North Pacific	0	0	*0.00142
Humpback whale	CA/OR/WA	0	0	*0.01162
Short-beaked common dolphin	CA/OR/WA	40[2]	*1.32	1.26097
Long-beaked common dolphin	California	40[2]	*1.32	0.50897
Common bottlenose dolphin	Coastal California	5	*0.17	0.02584
California sea lion	U.S.	95	*3.13	0.10345
Harbor seal	California	42	*1.38	0

[1] Surface area of MBC Applied Environmental Sciences survey region estimated as 30.35 km^2 via GIS. Density as # marine mammals/km^2.
[2] Only identified as "Common Dolphin" and not identified to the species level.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

Level B Harassment Calculations

The following equation was used to calculate potential take due to Level B harassment per species: *Level B harassment zone/pile installation method * density * # of pile driving days.* As described above, there will be a maximum of 26 days of pile driving and it is anticipated that a maximum of 5 piles could be installed via impact pile driving per day and 5 piles could be installed via vibratory pile driving per day. We used the maximum density estimate reported by either MBC Applied Environmental Sciences (2016) or Jefferson *et al.* (2013) (Table 6). Therefore, the resulting take estimates assume all pile driving conducted when species are in their highest densities in the POLB producing conservative estimates (see Table 7). We present the number of estimated takes due to Level B harassment by impact and vibratory pile driving separately in Table 7, however as these activities are anticipated to occur on the same day (but not at the same time), individuals impacted by impact pile driving are also impacted by vibratory pile driving. As each individual can only be taken once in 24 hours, we conservatively propose to authorize the larger estimate of takes due to vibratory pile driving. Note that while a small number of takes by Level B harassment are estimated using these calculations for gray whales and humpback whales, no takes are proposed for authorization as the applicants have proposed mitigation measures (shutdowns; see *Proposed Mitigation* section below) that would preclude take of these species.

Level A Harassment Calculations

Carnival intends to avoid Level A harassment take by shutting down pile driving activities at approach of any marine mammal to the representative Level A harassment (PTS onset) ensonification zone up to a practical shutdown monitoring distance. As small and cryptic harbor seals may enter the Level A harassment zone (120.2 m for impact pile driving) before shutdown mitigation procedures can be implemented, and some animals may occur between the maximum Level A harassment ensonification zone (120.2 m for impact pile driving) and the maximum shutdown zone (50 m, see *Proposed Mitigation* section), we conservatively estimate that 5 of the Level B harassment takes calculated above for harbor seals have the potential to be takes by Level A harassment (Table 7).

TABLE 7—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM PROPOSED CARNIVAL PROJECT ACTIVITIES

Common name	Stock	Density (km^2)	Activity	Level B harassment zone (km^2)	Estimated take daily	Days of activity	Total level B take	Level A take	Total Proposed take	Proposed take as percentage of stock
Gray whale	Eastern North Pacific.	0.00142	Impact pile driving.	0.39	<0.01	26	0.01	0	0	0.00
			Vibratory pile driving.	27.42	0.04	26	1.01			
Humpback whale	CA/OR/WA	0.01162	Impact pile driving.	0.39	0.00	26	0.12	0	0	0.00
			Vibratory pile driving.	27.42	0.32	26	8.28			
Short-beaked common dolphin.	CA/OR/WA	1.32	Impact pile driving.	0.39	0.51	26	13.38	0	942	0.10
			Vibratory pile driving.	27.42	36.19	26	941.05			
Long-beaked common dolphin.	California	1.32	Impact pile driving.	0.39	0.51	26	13.38	0	942	0.92
			Vibratory pile driving.	27.42	36.19	26	941.05			
Common bottlenose dolphin.	Coastal California.	0.17	Impact pile driving.	0.39	0.07	26	1.72	0	122	26.93

TABLE 7—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK, RESULTING FROM PROPOSED CARNIVAL PROJECT ACTIVITIES—Continued

Common name	Stock	Density (km^2)	Activity	Level B harassment zone (km^2)	Estimated take daily	Days of activity	Total level B take	Level A take	Total Proposed take	Proposed take as percentage of stock
			Vibratory pile driving.	27.42	4.66	26	121.20			
California sea lion	U.S	3.13	Impact pile driving.	0.39	1.22	26	31.74	0	2,232	0.87
			Vibratory pile driving.	27.42	85.82	26	2231.44			
Harbor seal	California	1.38	Impact pile driving.	0.39	0.54	26	13.99	5	984	3.18
			Vibratory pile driving.	27.42	37.84	26	983.83			

There are a number of reasons why the estimates of potential incidents of take are likely to be conservative. We used conservative estimates of density to calculate takes for each species. Additionally, in the context of stationary activities such as pile driving, and in areas where resident animals may be present, this number represents the number of instances of take that may occur to a small number of individuals, with a notably smaller number of animals being exposed more than once. While pile driving can occur any day throughout the in-water work window, and the analysis is conducted on a per day basis, only a fraction of that time is actually spent pile driving. The potential effectiveness of mitigation measures in reducing the number of takes is also not quantified in the take estimation process. For these reasons, these take estimates may be conservative, especially if each take is considered a separate individual animal.

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.

In addition to the measures described later in this section, Carnival will employ the following standard mitigation measures:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving (*e.g.,* standard barges, etc.), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the following activities: (1) Movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.,* stabbing the pile);
- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile driving will shut down immediately if such species are observed within or entering the monitoring zone (*i.e.,* Level B harassment zone); and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following measures would apply to Carnival's mitigation requirements:

Establishment of Shutdown Zone for Level A Harassment—For all pile driving activities, Carnival would establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Conservative shutdown zones of 300 m and 8,100 m for impact and vibratory pile driving respectively would be implemented for low-frequency cetaceans to prevent incidental harassment exposure for these activities. Monitoring of such a large area is practicable in the POLB because the jetties create confined entrances to the Port and Protected Species Observers (PSOs) monitoring at these entrances can ensure no animals enter to Port and shutdown zones (see Figures 3 and 4 of the applicant's Marine Mammal Mitigation and Monitoring Plan for proposed location of PSOs). For impact and vibratory pile driving, Carnival would implement shutdown zones of 10 m for mid-frequency cetaceans and otariid pinnipeds and 50 m for phocid

pinnipeds. These shutdown zones would be used to prevent incidental Level A harassment exposures from impact pile driving for mid-frequency cetaceans and otariid pinnipeds, and to reduce the potential for such take for phocid pinnipeds (Table 8). The placement of PSOs during all pile driving activities (described in detail in the *Monitoring and Reporting Section*) will ensure shutdown zones are visible. The 50 m zone is the practical distance Carnival anticipates phocid pinnipeds can be effectively observed in the project area.

TABLE 8—MONITORING AND SHUTDOWN ZONES FOR EACH PROJECT ACTIVITY

Source	Monitoring zone (m)	Shutdown zone (m)
Impact Pile Driving	300	Low-frequency cetaceans: 300. Phocid pinnipeds: 50. Mid-frequency cetaceans and otariid pinnipeds: 10.
Vibratory Pile Driving	8,100	Low-frequency cetaceans: 8,100. Phocid pinnipeds: 50. Mid-frequency cetaceans and otariid pinnipeds: 10.

Establishment of Monitoring Zones for Level B Harassment—Carnival would establish monitoring zones to correlate with Level B harassment zones which are areas where SPLs are equal to or exceed the 160 dB re: 1 μPa (rms) threshold for impact pile driving and the 120 dB re: 1 μPa (rms) threshold during vibratory pile driving. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Carnival would implement a 300 m monitoring zone for impact pile driving and an 8,100 m monitoring zone for vibratory pile driving (Table 8). Placement of PSOs on vessels at entrances to POLB outside the breakwaters will allow PSOs to observe marine mammals traveling into the POLB (see Figures 3 and 4 of the applicant's Marine Mammal Mitigation and Monitoring Plan for proposed location of PSOs). As the applicants anticipate impact and vibratory pile driving to occur in close temporal succession, the applicants propose to use a total of 7 observers for all pile driving activities.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving activities.

Pile driving energy attenuator—Use of a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) would be implemented by Carnival during impact and vibratory pile driving of all steel pipe piles. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains would meet the following requirements:

- The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.
- The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.
- The bubble curtain shall be operated such that there is proper (equal) balancing of air flow to all bubblers.
- The applicant shall require that construction contractors train personnel in the proper balancing of air flow to the bubblers and corrections to the attenuation device to meet the performance standards. This shall occur prior to the initiation of pile driving activities.

Pre-Activity Monitoring—Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and non-permitted species are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment monitoring zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence again.

Timing and Environmental Restrictions—Carnival would only conduct pile driving activities during daylight hours. To ensure the monitoring zone for low-frequency cetaceans can be adequately monitored to preclude all incidental take of these species, pile driving activities may not be conducted in conditions with limited visibility (heavy fog, heavy rain, and Beaufort sea states above 4) that would diminish the PSOs ability to adequately monitor this zone.

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.

Marine Mammal Visual Monitoring

Monitoring shall be conducted by NMFS-approved observers. Trained observers shall be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven. Pile driving activities include the time to install a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A total of seven PSOs would be based on land and vessels. During all pile driving activities observers will be stationed at the project site (Pier H) and six other locations in the POLB and at the entrance to the POLB (see Figures 3 and 4 of the applicant's Marine Mammal Mitigation and Monitoring Plan for proposed location of PSOs). These stations will allow full monitoring of the impact and vibratory pile driving monitoring zones.

PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Carnival would adhere to the following PSO qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) Carnival shall submit observer CVs for approval by NMFS.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Observers will be required to use approved data forms (see proposed data collection forms in the applicant's Marine Mammal Mitigation and Monitoring Plan). Among other pieces of information, Carnival will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and description of specific actions that ensued and resulting behavior of the animal, if any. In addition, Carnival will attempt to distinguish between the number of individual animals taken and the number of incidences of take. We require that, at a minimum, the following information be collected on the sighting forms:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity, and if possible, the correlation to SPLs;
- Distance from pile driving activities to marine mammals and distance from

the marine mammals to the observation point;

- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

A draft report would be submitted to NMFS within 90 days of the completion of marine mammal monitoring, or 60 days prior to the requested date of issuance of any future IHA for projects at the same location, whichever comes first. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days (and associated PSO data sheets), and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and an extrapolated total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, Carnival would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the West Coast Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with Carnival to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. Carnival would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that Carnival discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), Carnival would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with Carnival to determine whether modifications in the activities are appropriate.

In the event that Carnival discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), Carnival would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS West Coast Stranding Hotline and/or by email to the West Coast Regional Stranding Coordinator, within 24 hours of the discovery. Carnival would provide photographs, video footage (if available), or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

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' 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).

Pile driving activities associated with the Port of Long Beach Cruise Terminal Improvement Project, as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) or Level A harassment (auditory injury), incidental to underwater sounds generated from pile driving. Potential takes could occur if individuals are present in the ensonified zone when pile driving occurs. Level A harassment is only anticipated for harbor seals.

No serious injury or mortality is anticipated given the nature of the activities and measures designed to minimize the possibility of injury to marine mammals. The potential for these outcomes is minimized through the construction method and the implementation of the planned mitigation measures. Specifically, vibratory and impact hammers will be the primary methods of installation. Piles will first be installed using vibratory pile driving. Vibratory pile driving produces lower SPLs than impact pile driving. The rise time of the sound produced by vibratory pile driving is slower, reducing the probability and severity of injury. Impact pile driving produces short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks. When impact pile driving is used, implementation of soft start and shutdown zones significantly reduces any possibility of injury. Given sufficient ''notice'' through use of soft starts (for impact driving), marine mammals are expected to move away from a sound source that is annoying prior to it becoming potentially injurious. Carnival will use seven PSOs stationed strategically to increase detectability of marine mammals, enabling a high rate of success in implementation of shutdowns to avoid injury for most species.

Carnival's proposed activities are localized and of relatively short duration (a maximum of 26 days of pile driving for 49 piles). The project area is also very limited in scope spatially, as all work is concentrated on a single pier.

Localized and short-term noise exposures produced by project activities may cause short-term behavioral modifications in pinnipeds and mid-frequency cetaceans. Moreover, the proposed mitigation and monitoring measures are expected to further reduce the likelihood of injury, as it is unlikely an animal would remain in close proximity to the sound source, as well as reduce behavioral disturbances.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Southern California, which have taken place with no known long-term adverse consequences from behavioral harassment. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory pile driving associated with the proposed project may produce sounds above ambient at greater distances from the project site, thus intruding on some habitat, the project site itself is located in an industrialized port, the majority of the ensonified area is within in the POLB, and sounds produced by the proposed activities are anticipated to quickly become indistinguishable from other background noise in port as they attenuate to near ambient SPLs moving away from the project site. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that a small number of harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving (*i.e.,* the low-frequency region below 2 kHz), not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal's threshold would increase by a few dBs, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. 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 through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammal habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammal foraging opportunities in a limited portion of the foraging range. However, because of the short duration of the activities, the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

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 Level A harassment exposures (harbor seals only) are anticipated to result only in slight PTS, within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The specified activity and ensonification area is very small relative to the overall habitat ranges of all species and does not include habitat areas of special significance (BIAs or ESA-designated critical habitat); and
- The presumed efficacy of the proposed mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

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.

Table 7 demonstrates the number of animals that could be exposed to received noise levels that could cause Level B harassment and Level A harassment (harbor seals only) for Carnival's proposed activities in the project area site relative to the total stock abundance. Our analysis shows that less than one-third of each affected stock could be taken by harassment (Table 7). The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

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 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.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Carnival for conducting Port of Long Beach Cruise Terminal Improvement Project in Port of Long Beach, California from November 15, 2019 to November 14, 2020, 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 Port of Long Beach Cruise Terminal Improvement Project. We also request at this time comment on the potential 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 decisions on the request for this IHA or a subsequent Renewal.

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).

(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.

Dated: October 7, 2019.

Catherine G. Marzin,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22252 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XV108

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) Southern Resident Killer Whale (SRKW) Workgroup (Workgroup) will host a webinar that is open to the public.

DATES: The webinar will be held Tuesday, October 29, 2019, at 9 a.m. and will end at 2 p.m. or when business for the day has been completed.

ADDRESSES: A public listening station is available at the Pacific Council office (address below). To attend the webinar, use this link: *https://www.gotomeeting.com/webinar* (click ''Join'' in top right corner of page); (1) Enter the Webinar ID: 526–133–259; (2) Enter your name and email address (required). You must use your telephone for the audio portion of the meeting by dialing this TOLL number: 1 (914) 614–3221; (3) Enter the Attendee phone audio access code: 294–147–773. 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 *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.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Robin Ehlke, Pacific Council; telephone: (503) 820–2410.

SUPPLEMENTARY INFORMATION: The purpose of the webinar will be to prepare for the Pacific Council's upcoming November meeting in Costa Mesa, CA; review the Workgroup's draft Risk Assessment; discuss data needs; and document development, work plans, and progress made on assigned tasks. The Workgroup may also discuss and prepare for future Workgroup and Council meetings. The Pacific Council's Salmon Advisory Subpanel will be invited to attend in order to provide additional input and comments on the Workgroup's draft Risk Assessment report as needed.

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

The public listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2411) at least 10 days prior to the meeting date.

Dated: October 8, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–22291 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR058

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Alaska Fisheries Science Center Fisheries Research

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a Letter of Authorization (LOA) has been issued to the NMFS Alaska Fisheries Science Center (AFSC) for the take of marine mammals incidental to fisheries research conducted in multiple specified geographical regions.

DATES: Effective from October 7, 2019, through October 7, 2024.

ADDRESSES: The LOA and supporting documentation is available online: *www.fisheries.noaa.gov/action/incidental-take-authorization-noaa-fisheries-afsc-fisheries-and-ecosystem-research.* In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Paragraphs 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1371(a)(5)(A) and (D)) direct the Secretary of Commerce 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 authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 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.''

Except with respect to certain activities not pertinent here, 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).

Summary of Request

On September 6, 2017, we received an adequate and complete request from AFSC for authorization to take marine mammals incidental to fisheries research activities. On August 1, 2018 (83 FR 37638), we published a notice of proposed rulemaking in the **Federal Register**, requesting comments and information related to the proposed rule for thirty days. The final rule was published in the **Federal Register** on September 5, 2019 (84 FR 46788). For detailed information on this action, please refer to those documents. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during fisheries research activities in the specified geographic regions.

AFSC conducts fisheries research using trawl gear used at various levels in the water column, hook-and-line gear (including longlines with multiple hooks), gillnets, and other gear. If a marine mammal interacts with gear deployed by AFSC, the outcome could potentially be Level A harassment, serious injury (*i.e.,* any injury that will likely result in mortality), or mortality. We pooled the estimated number of incidents of take resulting from gear interactions and assessed the potential impacts accordingly. AFSC also uses various active acoustic devices in the conduct of fisheries research, and use of these devices has the potential to result in Level B harassment of marine mammals. Level B harassment of pinnipeds hauled out on land may also occur as a result of visual disturbance from vessels conducting AFSC research. AFSC is authorized to take individuals of 19 species by Level A harassment, serious injury, or mortality and of 25 species by Level B harassment.

Authorization

We have issued an LOA to AFSC authorizing the take of marine mammals incidental to fishery research activities, as described above. Take of marine mammals will be minimized through implementation of the following mitigation measures: (1) Required monitoring of the sampling areas to detect the presence of marine mammals before deployment of certain research gear; and (2) implementation of a ''move-on'' rule in certain circumstances that is expected to reduce the potential for physical interaction with marine mammals. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The AFSC will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: October 7, 2019.

Catherine G. Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–22251 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2019–0037]

Grant of Interim Extension of the Term of U.S. Patent No. 6,406,699–ECI® (ELIAS Cancer Immunotherapy)

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of Interim Patent Term Extension.

SUMMARY: The United States Patent and Trademark Office has issued an order granting interim extension for a one-year interim extension of the term of U.S. Patent No. 6,406,699.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755; or by email to *Mary.Till@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to one year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On September 23, 2019, TVAX Biomedical I, LLC, the patent owner of record, timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 6,406,699. The patent claims a method of using a veterinary biological product in the cancer immunotherapy treatment ECI® (ELIAS Cancer Immunotherapy), which is the subject of a request for licensure from the United States Department of Agriculture, Center for Veterinary Biologics. The application for patent term extension indicates that PCN 96A7.50 is a product license that was assigned to the request for license from TVAX Biomedical I, LLC on November 7, 2017.

Review of the patent term extension application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Because the regulatory review period will continue beyond the original expiration date of the patent, October 5, 2019, interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 6,604,699 is granted for a period of one year from the original expiration date of the patent.

Robert Bahr,

Deputy Commissioner for Patent Examination Policy, United States Patent and Trademark Office.

[FR Doc. 2019–22329 Filed 10–10–19; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* November 10, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 6/7/2019, 8/16/2019, 8/30/2019 and 9/6/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and a service and impact of the additions on the current or most recent contractors, the Committee has determined that the products and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and service to the Government.

2. The action will result in authorizing small entities to furnish the products and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and a service are added to the Procurement List:

Products

NSN(s)—Product Name(s):
MR 13067—Container, Clip Top, Ice Pack, Assorted Colors
MR 13068—Container, Multi-Pack, Assorted Colors
MR 13069—Container, Noodles, Assorted Colors
MR 13070—Mug, Soup, 24 oz, Assorted Colors
MR 13071—Mug, Thermal, Assorted Colors
MR 13072—Container, Snap Top, Assorted Colors
Mandatory Source of Supply: West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
8540–00–291–0389—Towel, Multifold, 3 Panel, Natural
Mandatory Source of Supply: Outlook Nebraska, Inc, Omaha, NE
Mandatory For: Total Government Requirement
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2

NSN(s)—Product Name(s):
MR 10781—Holder, Sponge, Duo, Includes Shipper 20781
Mandatory Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSN(s)—Product Name(s):
8540–01–169–9010—Towel, Paper, Absorbent, White, Roll, 11″ x 9″
Mandatory Source of Supply: Outlook Nebraska, Inc, Omaha, NE
Mandatory For: Total Government Requirement
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

Service

Service Type: Janitorial and related services
Mandatory for: GSA PBS Region 8, Old Chamber Building, 2nd Floor Judges Space, Billings, MT
Mandatory Source of Supply: Community Option Resource Enterprises, Inc. (COR Enterprises), Billings, MT
Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R8

Deletions

On 8/30/2019 and 9/6/2019, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

NSN(s)—Product Name(s):
8465–00–177–4976—Sleevelet, Upper Arm, High-Visibility Safety, Orange Mesh with Silver Reflective, 8–3/4″
Mandatory Source of Supply: Bestwork Industries for the Blind, Inc., Cherry Hill, NJ
Contracting Activity: GSA/FSS GREATER SOUTHWEST ACQUISITI, FORT WORTH, TX

NSN(s)—Product Name(s):
8415–01–538–6681—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Regular
8415–01–538–6683—Wind Jacket, ECWCS Gen III, Layer IV, U.S. Army, Universal Camouflage, X-Large/Long
Mandatory Source of Supply: Blind Industries & Services of Maryland, Baltimore, MD
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
8030–00–524–9487—Compound, Corrosion Preventative, Type II, Class I, 55 Gallons
Mandatory Source of Supply: The Lighthouse for the Blind, St. Louis, MO
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
7510–01–660–3734—Toner Cartridge, Remanufactured, Standard Yield, Black, HP LaserJet M5025 MFP/5035/M5035X/M5035xsMFP
Mandatory Source of Supply: Alabama Industries for the Blind, Talladega, AL
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–22305 Filed 10–10–19; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add a product and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes products previously furnished by such agencies.

DATES: Comments must be received on or before: November 10, 2019.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: *For further information or to submit comments contact:* Michael R. Jurkowski, Telephone: (703) 603–2117, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN—Product Name:
7510–00–SAM–1696—Pushpins, Magnetic, Assorted Colors
Mandatory Source of Supply: Eastern Carolina Vocational Center, Inc., Greenville, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FAS ADMIN SVCS ACQUISITION BR(2)

Service

Service Type: Custodial Service
Mandatory for: US Air Force, Area B, Wright Patterson AFB, OH
Mandatory Source of Supply: CW Resources, Inc., New Britain, CT
Contracting Activity: DEPT OF THE AIR FORCE, FA8601 AFLCMC PZIO

Deletions

The following products are proposed for deletion from the Procurement List:

Products

NSNs—Product Names:
MR 1173—Refill, Sweeper Set, Dry Cloths, 16 Count
MR 1175—Refill, Sweeper Set, Wet Cloths, 24 Count
Mandatory Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: Military Resale-Defense Commissary Agency

NSNs—Product Names:
MR 339—Slicer, Banana, Plastic
MR 400—Bag, Shopping Tote, Laminated, Small, ''Live Spicy''
MR 401—Bag, Shopping Tote, Laminated, Small, ''Live Fresh''
MR 408—Bag, Insulated, Thermal, Reusable, Small
Mandatory Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: Military Resale-Defense Commissary Agency

Patricia Briscoe,

Deputy Director, Business Operations (Pricing and Information Management).

[FR Doc. 2019–22304 Filed 10–10–19; 8:45 am]

BILLING CODE 6353–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2019–0024]

Resubmission of Petition Requesting Approval of Vacuum Diffusion Technology as an ''Other System'' Under the Virginia Graeme Baker Pool and Spa Safety Act

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) received a resubmitted petition from PSD Industries, LLC (petitioner, or PSD Industries), requesting that the Commission approve Vacuum Diffusion Technology (VDT) as an ''Other System'' under the Virginia Graeme Baker Pool and Spa Safety Act (VGB Act). The

CPSC invites written comments concerning this petition.

DATES: Submit comments by December 10, 2019.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2019–0024, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *www.regulations.gov.* The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov,* including any personal identifiers, contact information, or other personal information provided. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted by mail/hand delivery/courier.

Docket: For access to the docket to read background documents or comments received, go to: *http://www.regulations.gov,* insert docket number CPSC–2019–0024 into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Alberta Mills, Secretary, Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301–504–7479; email: *AMills@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Section 1404(c)(1)(A)(ii) of the VGB Act requires that each public pool and spa in the United States with a single main drain other than an unblockable drain be equipped, at a minimum, with one or more of the following anti-entrapment devices or systems: (1) Safety vacuum release system; (2) Suction-limiting vent system; (3) Gravity drainage system; (4) Automatic pump shut-off system; (5) Drain disablement; or (6) any other system (''other system''), determined by the Commission to be equally effective as, or better than, these systems at preventing or eliminating the risk of injury or death associated with pool drainage systems. 15 U.S.C. 8003(c)(1)(A)(ii).

On June 23, 2015, PSD Industries submitted a petition, docketed as VGBA 15–1, requesting that the Commission classify VDT as an anti-entrapment device or system under the VGBA. Petitioner defined ''VDT'' as: ''a system that removes the intense vacuum draw from the intake point of a pumping system by occluding the intake orifice from swimmers and diffusing the vacuum from a potential blockage immediately in multiple directions from the blockage.'' The petition stated that VDT protects against limb, hair, and mechanical entrapment, and mitigates evisceration. CPSC staff recommended that the Commission deny the petition. Staff determined that VDT was not as effective as the anti-entrapment devices and systems listed in the VGBA because VDT did not protect against full body entrapment, mechanical entrapment, or evisceration and could be a potential source of hair and possibly, mechanical entrapment. The Commission voted to deny the petition.[1]

PSD Industries has resubmitted its prior petition with additional materials and explanation. The resubmitted petition contains additional information based on third party testing conducted by Penn State University's Applied Research Laboratory. Petitioner asserts that ''VDT demonstrably and unequivocally prevents hair, limb, and mechanical entrapments.'' Additionally, petitioner asserts that protection against full-body entrapment is not a requirement to be ''equally effective as, or better than'' the enumerated anti-entrapment systems under the VGBA.

By this notice, CPSC seeks comments concerning this petition. The petition is available at: *http://www.regulations.gov,* under Docket No. CPSC–2019–0024, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the petition by writing or calling the Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2019–22292 Filed 10–10–19; 8:45 am]

BILLING CODE 6355–01–P

[1] March 25, 2016 Record of Commission Action, available at: *https://www.cpsc.gov/content/rca-petition-to-vgba-15-1-petition-for-classification-of-''vacuum-diffusion-technology''-as-an.*

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m.–11:30 a.m., October 16, 2019.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

STATUS: Closed. During the closed meeting, the Board Members will discuss issues dealing with potential Recommendations to the Secretary of Energy. The Board is invoking the exemptions to close a meeting described in 5 U.S.C. 552b(c)(3) and (9)(B) and 10 CFR 1704.4(c) and (h). The Board has determined that it is necessary to close the meeting since conducting an open meeting is likely to disclose matters that are specifically exempted from disclosure by statute, and/or be likely to significantly frustrate implementation of a proposed agency action. In this case, the deliberations will pertain to potential Board Recommendations which, under 42 U.S.C. 2286d(b) and (h)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively.

MATTERS TO BE CONSIDERED: The meeting will proceed in accordance with the closed meeting agenda which is posted on the Board's public website at *www.dnfsb.gov.* Technical staff may present information to the Board. The Board Members are expected to conduct deliberations regarding potential Recommendations to the Secretary of Energy.

CONTACT PERSON FOR MORE INFORMATION: Glenn Sklar, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: October 9, 2019.

Bruce Hamilton,

Chairman.

[FR Doc. 2019–22456 Filed 10–9–19; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–8779–000]

Romero, Miguel; Notice of Filing

Take notice that on October 7, 2019, Miguel Romero, submitted for filing, application for authorization to hold interlocking positions, pursuant to

section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (2018) and Part 45 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR part 45 (2019).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on October 28, 2019.

Dated: October 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22295 Filed 10–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–7–000.

Applicants: Dougherty County Solar LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of Dougherty County Solar LLC.

Filed Date: 10/4/19.

Accession Number: 20191004–5174.

Comments Due: 5 p.m. ET 10/25/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–43–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5479, Queue No. AC1–145 to be effective 9/5/2019.

Filed Date: 10/7/19.

Accession Number: 20191007–5081.

Comments Due: 5 p.m. ET 10/28/19.

Docket Numbers: ER20–44–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, SA No. 5481, Queue No. AC1–065/AC2–110/AD2–039 to be effective 9/5/2019.

Filed Date: 10/7/19.

Accession Number: 20191007–5107.

Comments Due: 5 p.m. ET 10/28/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–10–000.

Applicants: Eco Green Generation LLC.

Description: Form 556 of Eco Green Generation LLC [Clean Power #1].

Filed Date: 10/2/19.

Accession Number: 20191002–5225.

Comments Due: None-Applicable.

Docket Numbers: QF20–12–000.

Applicants: Eco Green Generation LLC.

Description: Form 556 of Eco Green Generation LLC [Clean Power #2].

Filed Date: 10/3/19.

Accession Number: 20191003–5209.

Comments Due: None-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22297 Filed 10–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP19–1530–001.

Applicants: Spire STL Pipeline LLC.

Description: Tariff Amendment: Spire STL Limited Amendment Tariff Filing to be effective 11/15/2019.

Filed Date: 10/3/19.

Accession Number: 20191003–5059.

Comments Due: 5 p.m. ET 10/15/19.

Docket Numbers: RP20–42–000.

Applicants: Gulf South Pipeline Company, LP.

Description: § 4(d) Rate Filing: Update Form of Service Agmt for Storage Services to be effective 11/7/2019.

Filed Date: 10/7/19.

Accession Number: 20191007–5002.

Comments Due: 5 p.m. ET 10/21/19.

Docket Numbers: RP20–43–000.

Applicants: Texas Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Update Forms of Service Agmt for Storage Services to be effective 11/7/2019.

Filed Date: 10/7/19.

Accession Number: 20191007–5003.

Comments Due: 5 p.m. ET 10/21/19.

Docket Numbers: RP20–44–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rate—ConEd release to FFC 799965 eff 10–29–2019 to be effective 10/29/2019.

Filed Date: 10/7/19.

Accession Number: 20191007–5033.

Comments Due: 5 p.m. ET 10/21/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22298 Filed 10–10–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CD20–1–000]

Fremont Irrigation Company; Notice of Preliminary Determination of a Qualifying Conduit Hydropower Facility and Soliciting Comments and Motions To Intervene

On October 1, 2019, Freemont Irrigation Company filed a notice of intent to construct a qualifying conduit hydropower facility, pursuant to section 30 of the Federal Power Act (FPA). The proposed Mill Meadow Hydro Plant Project would have an installed capacity of 2,000 kilowatts (kW), and would be located along the applicant's existing irrigation pipeline near Loa, Wayne County, Utah.

Applicant Contact: Brent Gardner, Alpha Engineering Company, 43 South 100 East, Suite 100, St. George, UT 84770, Phone No. (435) 628–6500, Email: *brentgardner@alphaengineering.com.*

FERC Contact: Christopher Chaney, Phone No. (202) 502–6778, Email: *christopher.chaney@ferc.gov.*

Qualifying Conduit Hydropower Facility Description: The proposed project would consist of: (1) A 2,000 kW twin-jet Turgo turbine unit within an approximately 50-foot by 40-foot powerhouse; and (2) appurtenant facilities. The proposed project would have an estimated annual generation of up to 6,500 megawatt-hours.

A qualifying conduit hydropower facility is one that is determined or deemed to meet all of the criteria shown in the table below.

TABLE 1—CRITERIA FOR QUALIFYING CONDUIT HYDROPOWER FACILITY

Statutory provision	Description	Satisfies (Y/N)
FPA 30(a)(3)(A)	The conduit the facility uses is a tunnel, canal, pipeline, aqueduct, flume, ditch, or similar manmade water conveyance that is operated for the distribution of water for agricultural, municipal, or industrial consumption and not primarily for the generation of electricity..	Y
FPA 30(a)(3)(C)(i)	The facility is constructed, operated, or maintained for the generation of electric power and uses for such generation only the hydroelectric potential of a non-federally owned conduit.	Y
FPA 30(a)(3)(C)(ii)	The facility has an installed capacity that does not exceed 40 megawatts	Y
FPA 30(a)(3)(C)(iii)	On or before August 9, 2013, the facility is not licensed, or exempted from the licensing requirements of Part I of the FPA.	Y

Preliminary Determination: The proposed Mill Meadow Hydro Plant Project will not alter the primary purpose of the conduit, which is to transport water for irrigation. Therefore, based upon the above criteria, Commission staff preliminarily determines that the proposal satisfies the requirements for a qualifying conduit hydropower facility, which is not required to be licensed or exempted from licensing.

Comments and Motions to Intervene: Deadline for filing comments contesting whether the facility meets the qualifying criteria is 30 days from the issuance date of this notice. Deadline for filing motions to intervene is 30 days from the issuance date of this notice.

Anyone may submit comments or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.214. Any motions to intervene must be received on or before the specified deadline date for the particular proceeding.

Filing and Service of Responsive Documents: All filings must (1) bear in all capital letters the COMMENTS CONTESTING QUALIFICATION FOR A CONDUIT HYDROPOWER FACILITY or MOTION TO INTERVENE, as applicable; (2) state in the heading the name of the applicant and the project number of the application to which the filing responds; (3) state the name, address, and telephone number of the person filing; and (4) otherwise comply with the requirements of sections 385.2001 through 385.2005 of the Commission's regulations.[1] All comments contesting Commission staff's preliminary determination that the facility meets the qualifying criteria must set forth their evidentiary basis.

The Commission strongly encourages electronic filing. Please file motions to intervene and comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Locations of Notice of Intent: Copies of the notice of intent can be obtained directly from the applicant or such copies can be viewed and reproduced at the Commission in its Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the web at *http://www.ferc.gov/docs-filing/elibrary.asp* using the eLibrary link. Enter the docket number (*i.e.,* CD20–1) in the docket number field to access the document. For assistance, call toll-free 1–866–208–

[1] 18 CFR 385.2001–2005 (2019).

3676 or email *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659.

Dated: October 7, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–22296 Filed 10–10–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9047–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 09/30/2019 10 a.m. ET Through 10/07/2019 10 a.m. ET

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20190245, Draft, BLM, ID, Tri-State Fuel Breaks Project, Comment Period Ends: 11/25/2019, Contact: Lance Okeson 208–384–3486

EIS No. 20190246, Final, USFS, MT, Gold Butterfly, Review Period Ends: 11/12/2019, Contact: Matt Anderson 406–363–7121

EIS No. 20190247, Final, BR, CA, Long-Term Water Transfers, Review Period Ends: 11/12/2019, Contact: Russ Grimes 916–978–5051

EIS No. 20190248, Draft, TVA, TN, Allen Fossil Plant Ash Impoundment Closure Draft Environmental Impact Statement, Comment Period Ends: 11/25/2019, Contact: W. Douglas White 865–632–2252

EIS No. 20190249, Final, FHWA, OR, Salem River Crossing Project (OR99E-Business, OR22, OR221), Contact: Emily Cline 503–939–3742. Pursuant to 23 U.S.C. 139(n)(2), FHWA has issued a combined FEIS and ROD. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20190250, Draft, USFS, WY, 2020 Thunder Basin National Grassland Plan Amendment, Comment Period Ends: 01/09/2020, Contact: Monique Nelson 307–275–0956

EIS No. 20190251, Final, BLM, AK, Final Environmental Impact Statement for the Proposed Haines Amendment to the Ring of Fire Resource Management Plan, Review Period Ends: 11/12/2019, Contact: Marnie Graham 907–822–3217

Amended Notice

EIS No. 20150082, Final, BR, CA, Long-term Water Transfers, Contact: Russ Grimes 916–978–5051. Revision to FR Notice Published 03/27/2015; Officially Withdrawn per request of the submitting agency.

Dated: October 8, 2019.

Cindy S. Barger,

Acting Director, Office of Federal Activities.

[FR Doc. 2019–22293 Filed 10–10–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket No. II–2019–4; FRL–10001–06–Region 2]

Clean Air Act Operating Permit Program; Petition on State Operating Permit for Newark Bay Cogeneration Partnership LP

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Order on Petition on Clean Air Act Title V Operating Permit.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated August 16, 2019, responding to a petition related to a Clean Air Act (CAA) title V operating permit issued by the New Jersey Department of Environmental Protection (NJDEP) to Newark Bay Cogeneration Partnership LP for the Newark Bay Cogeneration facility located in Essex County, New Jersey, Operating Permit No. BOP160001, PI No. 07617.

ADDRESSES: The EPA requests that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view copies of the final Order, the Petition, and other supporting information. You may review copies of the final Order, the Petition, and other supporting information at the EPA Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. You may view the hard copies Monday through Friday, from 9:00 a.m. to 3:00 p.m., excluding federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before the visiting day. Additionally, the final Order and Petition are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database*.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, EPA Region 2, 212–637–4019, *Chan.Suilin@epa.gov.*

SUPPLEMENTARY INFORMATION: Section 505(b)(1) of the CAA affords the EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of the EPA's 45-day review period if the EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

The EPA received a petition from the Ironbound Community Corporation dated March 18, 2019 relating to the Permit. The petition was submitted under CAA § 505(b)(2) asking EPA to object to the Permit.

On August 16, 2019, the EPA Administrator issued an Order denying the Petition. The Order explains the basis for the EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a title V petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than December 10, 2019.

Dated: September 23, 2019.

Peter Lopez,

Regional Administrator, Region 2.

[FR Doc. 2019–22328 Filed 10–10–19; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Notice of Open Meeting the Advisory Committee of the Export-Import Bank of the United States (EXIM)

Time and Date: Wednesday, October 30, 2019 from 11:00 a.m. until 2:30 p.m. (EDT).

Place: 811 Vermont Avenue NW, Room 1126, Washington, DC 20571.

Agenda: Discussion of EXIM programs and comments for inclusion in the report on competitiveness of the

Export-Import Bank of the United States to Congress.

Public Participation: The meeting will be open to public participation, and time will be allotted for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, you may contact India Walker at *external@exim.gov* to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please email India Walker at *external@exim.gov* no later than 5:00 p.m. EDT on Monday, October 28, 2019.

Members of the Press: For members of the Press planning to attend the meeting, a photo ID must be presented at the guard's desk as part of the clearance process into the building please email *external@exim.gov* to be placed on an attendee list.

Further Information: For further information, contact the External Engagement team, at *external@exim.gov*.

Joyce Stone,

Program Specialist, Office of the General Counsel.

[FR Doc. 2019–22262 Filed 10–10–19; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice of a New System of Records.

SUMMARY: The Federal Communications Commission (FCC or Commission or Agency) proposes to add a new system of records, FCC/WCB–2, Toll Free Number Auction System, to its inventory of records systems subject to the Privacy Act of 1974, as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records maintained by the Agency. As its initial undertaking, the system will collect and process the bidder information necessary to administer the auction of approximately 17,000 numbers in the 833 toll free code (''833 Auction''). The FCC has established Somos, Inc., the Toll Free Numbering Administrator (''Somos''), as the auctioneer of the 833 Auction.

DATES: This system of records will become effective on October 11, 2019. Written comments on the system's routine uses are due by November 12, 2019. The routine uses will become effective on November 12, 2019, unless written comments are received that require a contrary determination.

ADDRESSES: Send comments to Leslie F. Smith, Privacy Manager, Information Technology (IT), Room 1–C216, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, (202) 418–0217, or *Leslie.Smith@fcc.gov* (and to obtain a copy of the Narrative Statement that includes details of this proposed new system of records).

SUPPLEMENTARY INFORMATION: In an order it released on September 27, 2018, the Commission established a framework for the auctioning of certain numbers in the recently-opened 833 toll free code and appointed Somos as the auctioneer of these numbers. Toll Free Assignment Modernization, Toll Free Access Codes, WC Docket No. 17–192, CC Docket No. 95–155, Report and Order, 33 FCC Rcd 9274 (2018). This auction is an experiment in the use of competitive bidding to assign toll free numbers, and is the first time the FCC will allocate toll free telephone numbers via an auction process. In order to make sure that the 833 Auction is conducted in a fair and transparent manner, parties interested in participating in the auction (which may include ''individuals'' as that term is defined in the Privacy Act) will be required to disclose certain information and make certain certifications during an application process. This information will be used to determine the parties' eligibility to participate in the auction and to administer the 833 Auction, including the awarding of numbers to winning bidders. In addition, this system will also include information about parties that subsequently purchase auctioned numbers in the secondary market. This system of records includes both the 833 Auction and possible future auctions of telephone numbers that may be conducted in a similar manner.

SYSTEM NAME AND NUMBER:

FCC/WCB–2, Toll Free Number Auction System.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION(S):

Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554; for the 833 Auction described in the ''Supplementary Information'' section above, the system will be located at Somos Corporation, 2411 Dulles Corner Park, Suite 250, Herndon, VA 20171.

SYSTEM MANAGER(S):

Wireline Communication Bureau (WCB), Federal Communications Commission (FCC), 445 12th Street SW, Washington, DC 20554;

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 251(e) of the Communications Act of 1934, as amended, gives the FCC authority to create or designate impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. 47 U.S.C. 251(e). Pursuant to this authority, the Commission has issued rules on the administration of toll free numbering. 47 CFR 52.101–111. These rules allow the Commission to assign toll free numbers using a variety of methods, including competitive bidding. 47 CFR 52.111.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to assign toll free numbers in a market-based and equitable manner. It flows from and is consistent with the FCC's statutory responsibility to administer telecommunications numbering. In order to carry out this purpose, the FCC-designated auctioneer will collect information from parties that are interested in bidding for toll free numbers, will take steps to verify the parties' identities, and will determine whether the parties are eligible to participate in auctions such as the 833 Auction. Interested parties will also be required to certify that they will follow the rules that the FCC has established to ensure a fair and transparent auction process. The auctioneer will then use the information to conduct the auction and collect payments from winning bidders. In addition, this system will also include information about parties that subsequently purchase auctioned numbers in the secondary market.

CATEGORIES OF INDIVDUALS COVERED BY THE SYSTEM:

The categories of individuals in this system include, but are not limited to, individuals who have registered for an auction identification number, filled out an auction application form, and actually participated in toll free number auctions such as the 833 Auction. It may also include individuals who purchase auctioned numbers in the secondary market.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in this system include, but are not limited to, names, physical address, email address, telephone number, and an assigned unique identifying number for each auction applicant and for individuals who purchase auctioned numbers in the secondary market.

RECORD SOURCE CATEGORIES:

The sources for the majority of information in this system of records are the individual applicants interested in participating in toll free number auctions such as the 833 Auction. In order to ensure that the auction operates in a fair manner, the auctioneer may use a commercial identity verification service to verify the identity of individuals when they initially register for the auctions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FCC as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. Public Access—In accordance with auction rules published by the Commission, the identities of auction applicants may be disclosed prior to auctions such as the 833 Auction. Additional information related to the numbers on which auction participants bid and the amount of such bids may be released after the auction has concluded.

2. Third-Party Identity Verification Service—To a third-party commercial identity verification service when individuals attempt to register for toll free number auctions such as the 833 Auction, in order to determine that the registrant is a real person.

3. Adjudication and Litigation—To disclose information to the Department of Justice (DOJ), or to a court or adjudicative body before which the FCC is authorized to appear, when: (a) The FCC or any component thereof; or (b) any employee of the FCC in his or her official capacity; or (c) any employee of the FCC in his or her individual capacity where the DOJ or the FCC have agreed to represent the employee; or (d) the United States is a party to litigation or have an interest in such litigation, and the use of such records by the DOJ or the FCC is deemed by the FCC to be relevant and necessary to the litigation.

4. Law Enforcement and Investigation—To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation or order, where the FCC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

5. Congressional Inquiries—To provide information to a Congressional office from the record of an individual in response to an inquiry from that Congressional office made at the written request of that individual.

6. Government-wide Program Management and Oversight—To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

7. Breach Notification—To appropriate agencies, entities, and persons when: (a) The Commission suspects or has confirmed that there has been a breach of the system of records; (b) the Commission has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Commission (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. Assistance to Federal Agencies and Entities—To another Federal agency or Federal entity, when the Commission determines that information from this system is reasonably necessary to assist the recipient agency or entity in: (a) Responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, program, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

9. FCC/Auctioneer Program Management—To FCC and auctioneer employees to conduct official duties associated with the management and operation of toll free number auctions such as the 833 Auction, as directed by the Commission.

10. Third Party Contractors—To an employee of a third-party contractor or subcontractor engaged by the FCC or the auctioneer to, among other things, develop and test the web-based auction application, store and process bidder registration and application information in a cloud-based computing environment, and operate the actual auction process.

11. Audits and Investigations—To auditors or other investigative personnel hired by the FCC or the auctioneer to examine, among other topics, (1) the performance of the auctioneer in toll free number auctions such as the 833 Auction, and (2) the efficiency and integrity of toll free number auctions such as the 833 Auction.

REPORTING TO A CONSUMER REPORTING AGENCY:

In addition to the routine uses listed above, the Commission may share information from this system of records with a consumer reporting agency regarding an individual who has not paid a valid and overdue financial debt owed to the Commission, following the procedures set out in the Debt Collection Act, 31 U.S.C. 3701(e).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Information in this system of records will include primarily electronic records, files, and documents pertaining to toll free number auctions such as the 833 Auction. The FCC, the auctioneer, and their contractors and subcontractors, as applicable, will jointly manage the electronic data.

A limited number of paper records, files, and documents will be maintained for various, short-term uses, as necessary. These documents will be stored in file cabinets in FCC offices and at the offices of the auctioneer and their contractors or subcontractors. The information in the paper formats will be secured in file cabinets and other storage facilities are locked when not in use and/or at the end of the business day. These paper documents are destroyed by shredding when no longer needed. Records are maintained in secure, limited access areas.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Information in this system can be retrieved by various identifiers, including, but not limited to, the individual applicant's name, physical address, email address, telephone number, or auction identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The FCC is developing a records retention and disposal schedule for these records that will be submitted to the National Archives and Records Administration (NARA) for review and approval. No records will be destroyed until NARA has approved this new records schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The electronic data, records, and files will be stored within the auctioneer's accreditation boundaries. The FCC will oversee the auctioneer's management of this system. Access to the electronic files is restricted to the FCC staff and its contractors and subcontractors, and to the employees of the auctioneer and its contractors and subcontractors, who carry out the auction activities. Other FCC employees, auctioneer employees, contractors and subcontractors may be granted access only on a need-to-know basis. The data are protected by the auctioneer's security safeguards, a comprehensive and dynamic set of information technology (IT) safety and security protocols and features that are designed to meet all Federal IT standards, including, but not limited to, those required by the Federal Information Security Modernization Act of 2014 (FISMA), the Office of Management and Budget (OMB), and the National Institute of Standards and Technology (NIST). The electronic files and records are destroyed by electronic erasure or destruction, as applicable, when no longer needed.

Employees of the FCC and of the auctioneer may print paper copies of these electronic records for various, short-term uses, as necessary. These paper document copies are stored in locked file cabinets when not in use. Physical entry by unauthorized persons where this information is stored is restricted through use of locks, passwords, and other security measures. Only authorized FCC and auctioneer employees may have access to these documents. These paper documents are destroyed by shredding when no longer needed.

RECORDS ACCESS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about themselves should follow the Notification Procedure below.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to request access to and/or amendment of records about them should follow the Notification Procedure below.

NOTIFICATION PROCEDURES:

Individuals wishing to determine whether this system of records contains information about them may do so by writing to Leslie F. Smith, Privacy Manager, Information Technology, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, or email *Leslie.Smith@fcc.gov.*

Individuals must furnish reasonable identification by showing any two of the following: Social security card; passport; driver's license; employee identification card; Medicare card; birth certificate; bank credit card; and/or other positive means of identification, or by signing an identity statement stipulating that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

Individuals requesting access must also comply with the FCC's Privacy Act regulations regarding verification of identity and access to records (47 CFR part 0, subpart E).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

This is a new system of records.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2019–22258 Filed 10–10–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 17–208]

Meeting of the Federal Advisory Committee on Diversity and Digital Empowerment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces, and provides an agenda for, the first meeting of the Federal Communications Commission's (Commission) re-chartered Advisory Committee on Diversity and Digital Empowerment (ACDDE). The charter for the ACDDE has been renewed for a two-year period beginning July 5, 2019.

DATES: Wednesday, October 30, 2019, beginning at 10:00 a.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jamila Bess Johnson, Designated Federal Officer (DFO) of the ACDDE, (202) 418–2608, *Jamila-Bess.Johnson@fcc.gov;* Julie Saulnier, Deputy DFO of the ACDDE, (202) 418–1598, *Julie.Saulnier@fcc.gov;* or Jamile Kadre, Deputy DFO of the ACDDE, (202) 418–2245, *Jamile.Kadre@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Agenda: The agenda for the meeting will include introducing members of the ACDDE, including the Committee Chair and Vice Chair, and establishing working groups that will assist the ACDDE in carrying out its work. This agenda may be modified at the discretion of the ACDDE Chair and the DFO. As will be discussed, the Committee's mission is to provide recommendations to the Commission on how to empower disadvantaged communities and accelerate the entry of small businesses, including those owned by women and minorities, into the media, digital news and information, and audio and video programming industries, including as owners, suppliers, and employees.

This meeting is open to members of the public. The Commission will accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will also provide audio and video coverage of the meeting over the internet at *www.fcc.gov/live.* Oral statements at the meeting by parties or entities not represented on the ACDDE will be permitted to the extent time permits and at the discretion of the ACDDE Chair and the DFO. Members of the public may submit comments to the ACDDE in the Commission's Electronic Comment Filing System ECFS, at *www.fcc.gov/ecfs.* Comments to the ACDDE should be filed in Docket No. 17–208.

Open captioning will be provided for this event. Other reasonable accommodations for persons with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fulfill the request. Please allow at least five days' notice; last minute requests will be accepted but may not be possible to accommodate.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

[FR Doc. 2019–22254 Filed 10–10–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0484]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before December 10, 2019. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.ongele@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0484.

Title: Part 4 of the Commission's Rules Concerning Disruptions to Communications.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 965 respondents; 26,795 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i)–(j) & (o), 201(b), 214(d), 218, 251(e)(3), 301, 303(b), 303(g), 303(r), 307, 309(a), 316, 332, 403, 615a–1, and 615c.

Total Annual Burden: 53,590 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In accordance with 47 CFR 4.2, reports and information contained therein are presumed confidential. The filings are shared with the Department of Homeland Security through password-protected real time access to NORS. Other persons seeking disclosure must follow the procedures delineated in 47 CFR Sections 0.457 and 0.459 of the Commission's rules for requests for and disclosure of information. This information collection does not affect the confidential treatment of information provided to the Commission through outage reports filed in NORS.

Needs and Uses: The general purpose of the Commission's Part 4 rules is to gather sufficient information regarding disruptions to telecommunications to facilitate FCC monitoring, analysis, and investigation of the reliability and security of voice, paging, and interconnected Voice over internet Protocol (interconnected VoIP) communications services, and to identify and act on potential threats to our Nation's telecommunications infrastructure. The Commission uses this information collection to identify the duration, magnitude, root causes, and contributing factors with respect to significant outages, and to identify outage trends; support service restoration efforts; and help coordinate with public safety officials during times of crisis. The Commission also maintains an ongoing dialogue with reporting entities, as well as with the communications industry at large, generally regarding lessons learned from the information collection in order to foster a better understanding of the root causes of significant outages and to explore preventive measures in the future so as to mitigate the potential scale and impact of such outages.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2019–22256 Filed 10–10–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, October 15, 2019, to consider the following matters:

SUMMARY AGENDA:

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of Minutes of a Board of Directors' Meeting Previously Distributed.

Memorandum and resolution re: Final Rule: Company-Run Stress Testing Requirements for FDIC-supervised State Nonmember Banks and State Savings Associations.

Memorandum and resolution re: Notice of Proposed Rulemaking: Removing Transferred OTS Regulation, Part 390, Subpart S—State Savings Associations—Operations.

Reports of the Office of Inspector General.

DISCUSSION AGENDA:

Memorandum and resolution re: Final Rule on Tailoring Capital and Liquidity Rule for Domestic and Foreign Banking Organizations.

Memorandum and resolution re: Amendments to 12 CFR 381—Final Rule.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

This Board meeting will be Webcast live via the internet and subsequently made available on-demand approximately one week after the event. Visit *http://fdic.windrosemedia.com* to view the live event. Visit *http://fdic.windrosemedia.com/index.php?category=FDIC+Board+Meetings* after the meeting. If you need any technical assistance, please visit our Video Help page at: *https://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated at Washington, DC, on October 8, 2019.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2019–22394 Filed 10–9–19; 11:15 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION NOTICE OF PREVIOUS ANNOUNCEMENT: 84 FR 52106.

PREVIOUSLY ANNOUNCED TIME, DATE, AND PLACE OF THE MEETING: Thursday, October 17, 2019 at 10:00 a.m., 1050 First Street NE, Washington, DC (12th Floor).

CHANGES IN THE MEETING: The October 17, 2019 Open Meeting was canceled.

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2019–22427 Filed 10–9–19; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843), and interested persons may express their views in writing on the standards enumerated in section 4. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than November 12, 2019.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Community Bancshares of America, Inc., Kansas City, Missouri;* to become a bank holding company by acquiring Northeast Kansas Bancshares, Inc., and thereby indirectly acquire Kendall State Bank, both of Valley Falls, Kansas. In connection with this application, Community Bancshares of America, Inc., has applied to engage in general insurance activities through the acquisition of Northeast Kansas Bancshares, Inc., pursuant to section 4 of the Bank Holding Company Act and 12 CFR 225.28(b)(11)(iii)(A).

B. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Eagle Bancorp Montana, Inc., Helena, Montana;* to merge with Western Holding Company of Wolf Point and thereby indirectly acquire Western Bank of Wolf Point, both of Wolf Point, Montana. In connection with this application, Eagle Bancorp Montana, Inc. has applied to acquire Western Financial Services, Wolf Point, Montana, and thereby engage in the activity of facilitating deferred payment contracts for certain agricultural products pursuant to section 4 of the Bank Holding Company Act and 12 CFR 225.28(b)(8)(ii)(B)(3).

Board of Governors of the Federal Reserve System, October 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–22322 Filed 10–10–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than October 28, 2019.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Betty Jean Neighbor Irrevocable Trust dated December 28, 2012, Gene R. Neighbor as Family Business Advisor, both of Marion, Iowa; Douglas N. Neighbor Irrevocable Trust dated December 29, 2012, Marva J. Neighbor as Family Business Advisor, both of Marion, Iowa; Gene R. Neighbor Irrevocable Trust dated December 29, 2012, Betty J. Neighbor as Family Business Advisor, both of Marion, Iowa; Irene Kay Neighbor Irrevocable Trust dated December 28, 2012, Kent M. Neighbor as Family Business Advisor, both of Winthrop, Iowa; Kent M. Neighbor Irrevocable Trust dated*

December 29, 2012, Irene K. Neighbor as Family Business Advisor, both of Winthrop, Iowa; and Marva J. Neighbor Irrevocable Trust dated December 28, 2012, Douglas N. Neighbor as Family Business Advisor, both of Marion, Iowa; together with Justin M. Waring, Marion, Iowa; Amber K. Waring, Toddville, Iowa; Shannon M. Waring, Woodbury, Minnesota; Brandon K. Waring, Toddville, Iowa; Callie I. Neighbor, Center Point, Iowa; Chloe A. Neighbor, Center Point, Iowa; Allyssa K. Dierks, Central City, Iowa; Jordan S. Neighbor, Marion, Iowa; Austin K. Neighbor, Marion, Iowa; Jenna L. Neighbor, Center Point, Iowa; Grant E. Neighbor, Central City, Iowa; Luke C. Neighbor, Central City, Iowa; and 11 minor grandchildren; to be approved as members acting in concert with the Neighbor Family Control Group to retain voting shares of Neighbor Insurance Agency, Inc., and thereby indirectly retain voting shares of Farmers State Bank, both of Marion, Iowa.

Board of Governors of the Federal Reserve System, October 8, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–22321 Filed 10–10–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington DC 20551–0001, not later than November 13, 2019.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *Central Bancompany, Inc., Jefferson City, Missouri;* to acquire Platte County Bancshares, Inc., and thereby indirectly acquire Platte Valley Bank of Missouri, both of Platte City, Missouri.

B. Federal Reserve Bank of Minneapolis (Chris Wangen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Keweenaw Financial Corporation, Hancock, Michigan;* to merge with North Star Financial Holdings, Inc., and thereby indirectly acquire Main Street Bank, both of Bingham Farms, Michigan.

C. Federal Reserve Bank of New York (Ivan Hurwitz, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to *Comments.applications@ny.frb.org:*

1. *The Adirondack Trust Company Employee Stock Ownership Trust, Saratoga Springs, New York;* to acquire fifty additional voting shares of 473 Broadway Holding Corporation and two thousand additional voting shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

Board of Governors of the Federal Reserve System, October 7, 2019.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2019–22233 Filed 10–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval South Carolina Medicaid State Plan Amendments (SPAs) 16–0012–A, 17–0006–A, and 18–0011–A

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of hearing: Reconsideration of disapproval.

SUMMARY: This notice announces an administrative hearing to be held on November 20, 2019, at the Department of Health and Human Services, Division of Medicaid Field Operations, South, Centers for Medicare & Medicaid Services, Division of Medicaid and Children's Health Operations, 61 Forsyth St., Suite 4T20, Atlanta, Georgia 30303–8909 to reconsider CMS's decision to disapprove South Carolina's Medicaid SPAs 16–0012–A, 17–0006–A, and 18–0011–A.

DATES: Requests to participate in the hearing as a party must be received by the presiding officer by October 28, 2019.

FOR FURTHER INFORMATION CONTACT: Benjamin R. Cohen, Presiding Officer, CMS, 1508 Woodlawn Drive, Suite 100, Baltimore, Maryland 21207, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove South Carolina's Medicaid state plan amendments (SPAs) 16–0012–A, 17–0006–A, and 18–0011–A, which were submitted to the Centers for Medicare & Medicaid Services (CMS) on December 21, 2016, June 28, 2017, and June 29, 2018, respectively, and disapproved on July 9, 2019. These SPAs requested CMS approval to add new eligible physicians associated with Greenville Memorial Hospital and Palmetto Health Richland to the current physician teaching supplemental payment methodology. Specifically, SPAs 16–0012–A, 17–0006–A, and 18–0011–A proposed to use amounts transferred from the Greenville Health Authority to the state Medicaid Agency for use as the non-federal share of the proposed payments. The source of the transfers would be from the ''Setoff Debt Collection Program,'' which garnishes state individual income tax refunds to satisfy medical debt liabilities for services furnished by certain providers, rather than state or local tax revenue as required by Section 1903(w)(6)(A) of the Social Security Act. The revenue collected from the Setoff Debt Collection Program is derived from previously uncollected patient revenue.

The issues to be considered at the hearing are whether South Carolina SPAs 16–0012–A, 17–0006–A, and 18–0011–A are inconsistent with the requirements of:

- Section 1902(a)(2) of the Act, which provides that the state plan must assure adequate funding for the non-federal share of expenditures from state or local sources, such that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan.
- Sections 1903(a) and 1905(b) of the Act, which provide that states receive a statutorily determined Federal Medicaid Assistance Percentage (FMAP) for

allowable state expenditures on medical assistance.

• Section 1903(w)(6)(A) of the Act, which allows states to use funds derived from state or local taxes, which are then transferred from units of government to the Medicaid Agency, as the non-federal share of Medicaid payments unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-federal share under section 1903 of the Act.

Section 1116 of the Act and federal regulations at 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish in the **Federal Register** a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the state Medicaid agency of additional issues that will be considered at the hearing, we will also publish that notice in the **Federal Register**.

Any interested individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled or moved, the presiding officer will notify all participants.

The notice to South Carolina announcing an administrative hearing to reconsider the disapproval of its SPAs reads as follows:

Joshua D. Baker,

Director, South Carolina Department of Health and Human Services, Post Office Box 8206, Columbia, SC 29202–8206.

Dear Mr. Baker:

I am responding to the request for reconsideration (dated September 5, 2019) of the decision to disapprove South Carolina's state plan amendments (SPAs) 16–0012–A, 17–0006–A, and 18–0011–A, which we received on September 6, 2019. South Carolina SPAs 16–0012–A, 17–0006–A, and 18–0011–A were submitted to the Centers for Medicare & Medicaid Services (CMS) on December 21, 2016, June 28, 2017, and June 29, 2018, respectively, and disapproved on July 9, 2019. I am scheduling a hearing on the request for reconsideration to be held on November 20, 2019 at the Department of Health and Human Services, Division of Medicaid Field Operations, South, Centers for Medicare & Medicaid Services, Division of Medicaid and Children's Health Operations, 61 Forsyth St., Suite 4T20, Atlanta, Georgia 30303–8909.

I am designating Mr. Benjamin R. Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786–3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date and location that has been established and provide names of the individuals who will represent the State at the hearing. If the hearing date or location is not acceptable, Mr. Cohen can set another date mutually agreeable to the parties and may designate another location, with due regard for the convenience and necessity of the parties and their representatives. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR part 430.

These SPAs requested CMS approval to add new eligible physicians associated with Greenville Memorial Hospital and Palmetto Health Richland (since merged into a single entity, Prisma Health) to the current physician teaching supplemental payment methodology. Specifically, SPAs 16–0012–A, 17–0006–A, and 18–0011–A proposed to use intergovernmental transfers from the Greenville Health Authority to the state Medicaid Agency as the non-federal share of the proposed payments.[1] The source of the transfers would be from the ''Setoff Debt Collection Program,'' which garnishes state individual income tax refunds to satisfy medical debt liabilities for services furnished by certain providers, rather than state or local tax revenue as required by Section 1903(w)(6)(A) of the Social Security Act (the Act). The revenue collected from the Setoff Debt Collection Program is derived from previously uncollected patient revenue.

The issues to be considered at the hearing are whether South Carolina SPAs 16–0012–A, 17–0006–A, and 18–0011–A are inconsistent with the requirements of:

• Section 1902(a)(2) of the Act, which provides that the state plan must assure adequate funding for the non-federal share of expenditures from state or local sources, such that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan.

• Sections 1903(a) and 1905(b) of the Act, which provide that states receive a statutorily determined Federal Medicaid Assistance Percentage (FMAP) for allowable state expenditures on medical assistance.

• Section 1903(w)(6)(A) of the Act, which allows States to use funds derived from State or local taxes, which are then transferred from units of government to the Medicaid Agency, as the non-federal share of Medicaid payments unless the transferred funds are derived by the unit of government from donations or taxes that would not otherwise be recognized as the non-federal share under section 1903 of the Act.

In the event that CMS and the State come to agreement on resolution of the issues that formed the basis for disapproval, these SPAs may be moved to approval prior to the scheduled hearing.

Sincerely,

Seema Verma,

Administrator.

cc: Benjamin R. Cohen.

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714. Medicaid Assistance Program.)

Dated: October 4, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2019–22319 Filed 10–8–19; 4:15 pm]

BILLING CODE 4120–01–P

[1] As reflected in the July 9, 2019 disapproval letter, CMS did not examine, or reach a conclusion with respect to, whether the Greenville Health Authority is a unit of government eligible to make an intergovernmental transfer.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[OMB No. 0915–0307—Extension]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than November 12, 2019.

ADDRESSES: Submit your comments, including the Information Collection Request Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Ryan White HIV/AIDS Program Core Medical Services Waiver Application Requirements, OMB No. 0915–0307—Extension.

Abstract: Title XXVI of the Public Health Service (PHS) Act, as amended by the Ryan White HIV/AIDS Treatment Extension Act of 2009, also known as the Ryan White HIV/AIDS Program (RWHAP), requires that grant recipients expend funds on core medical services including antiretroviral drugs for individuals with HIV who are eligible under the statute. In addition, after reserving statutory permissible amounts for administrative and clinical quality management costs from the total award amount, at least 75 percent of the remainder is to be expended on core medical services.[1] For a grant recipient under the RWHAP Parts A, B, or C to be exempted from this requirement, a waiver must be requested from HRSA for review and approval in accordance with statute.

On October 25, 2013, HRSA published revised standards for core medical services waiver requests in the **Federal Register** (78 FR 63990). These revised standards allow grant recipients flexibility to adjust resource allocation based on the current situation in their local environments. These standards ensure that grant recipients receiving waivers demonstrate the availability of core medical services, including antiretroviral drugs, for persons with HIV served under the HRSA RWHAP. The core medical services waiver request process applies to RWHAP grant applicants and recipients under Parts A, B, and C of Title XXVI of the PHS Act. Core medical services waivers are effective for a 1-year period. Grant applicants may submit a waiver request before, or with the annual grant application, and grant recipients can submit up to four months after the grant award has been made.

A 60-day notice was published in the **Federal Register** on August 15, 2019, vol. 84, No. 158; pp. 41726–27. There were no public comments.

Need and Proposed Use of the Information: HRSA uses the documentation submitted in core medical services waiver requests to determine if the grant applicant or recipient meets the statutory requirements for waiver eligibility including: (1) No waiting lists for AIDS Drug Assistance Program services; and (2) evidence of core medical services availability within the grant recipient's jurisdiction, state, or service area to all persons with HIV identified and eligible under Title XXVI of the PHS Act.[2]

Likely Respondents: Ryan White HIV/AIDS Program Parts A, B, and C grant applicants and recipients.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Waiver Request	20	1	20	5.5	110
Total	20		20		110

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–22274 Filed 10–10–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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 Institute of General Medical Sciences Special Emphasis Panel Review of NIGMS Support of Competitive Research (SCORE) Award Applications.

Date: November 8, 2019.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, (301) 594–2771, *johnsonrh@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Review of Limited Competition: NIGMS Legacy Community-Wide Scientific Resources (R24) Applications.

Date: November 13, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of General Medical Sciences, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca H. Johnson, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18C, 45 Center Drive, Bethesda, MD 20892, (301) 594–2771 *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical

[1] Sections 2604(c)(1), 2612(b)(1), and 2651(c)(1) of the PHS Act.

[2] Sections 2604(c)(2), 2612(b)(2), and 2651(c)(2) of the PHS Act.

Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: October 7, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22237 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Draft NTP Technical Reports on Toxicology and Carcinogenesis Studies of HMB and PFOA; Availability of Documents; Request for Comments; Notice of Peer-Review Meeting

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Toxicology Program (NTP) announces the availability of two draft NTP Technical Reports on toxicology and carcinogenesis studies scheduled for peer review for the following substances: 2-hydroxy-4-methoxybenzophenone and perfluorooctanoic acid. The peer-review meeting will be held by webcast only and available to the public for remote viewing. Registration is required for attendance by webcast and to present oral comments. Information about the meeting and registration is available at *https://ntp.niehs.nih.gov/go/36051.*

DATES:

Meeting: December 12, 2019, 10:00 a.m. Eastern Standard Time (EST) to adjournment. The meeting may end earlier or later than 5:00 p.m. EST.

Document Availability: The two draft NTP reports will be available by October 15, 2019 at *https://ntp.niehs.nih.gov/go/36051.*

Written Public Comment Submissions: Deadline is November 20, 2019.

Registration for Oral Comments: Deadline is December 3, 2019.

Registration to View Webcast: Deadline is December 12, 2019.

ADDRESSES:

Meeting Location: Webcast.

Meeting Web Page: The draft reports, preliminary agenda, registration, and other meeting materials will be available at *https://ntp.niehs.nih.gov/go/36051.*

Webcast: The URL for viewing the peer-review meeting webcast will be provided to registrants.

FOR FURTHER INFORMATION CONTACT: Email *NTP-Meetings@icf.com.* Dr. Elizabeth Maull, NIEHS/DNTP, is the Designated Federal Official. Phone: (984) 287–3157, Fax: (301) 480–3008. Email: *maull@niehs.nih.gov.*

SUPPLEMENTARY INFORMATION:

Meeting Attendance Registration: The meeting is open to the public with time set aside for oral public comment. Registration to view the webcast is by December 12, 2019, at *https://ntp.niehs.nih.gov/go/36051.* The URL for the webcast will be provided in the email confirming registration. Individuals with disabilities who need accommodation to view the webcast should contact Sophie Hearn by phone: (919) 293–1648 or email: *NTP-Meetings@icf.com.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Request for Comments: NTP invites written and oral public comments on the draft reports that address scientific or technical issues. Guidelines for public comments are available at *https://ntp.niehs.nih.gov/ntp/about_ntp/guidelines_public_comments_508.pdf.*

The deadline for submission of written comments is November 20, 2019, to enable review by the peer-review panel and NTP staff prior to the meeting. Written public comments should be submitted through the meeting website at *https://ntp.niehs.nih.gov/go/36051.* Persons submitting written comments should include name, affiliation, mailing address, phone, email, and sponsoring organization (if any). Written comments received in response to this notice will be posted on the NTP website and the submitter will be identified by name, affiliation, and sponsoring organization (if any). Comments that address scientific/technical issues will be forwarded to the peer-review panel and NTP staff prior to the meeting.

Oral public comment at this meeting is welcome, with time set aside for the presentation of oral comments on the draft reports. The agenda will allow for two oral public comment periods—one comment period per report (up to 6 commenters, up to 5 minutes per speaker). Persons wishing to make an oral comment are required to register online at *https://ntp.niehs.nih.gov/go/36051* by December 3, 2019. Registration is on a first-come, first served basis. Each organization is allowed one time slot per report. The access number for the teleconference line will be provided to registrants by email prior to the meeting. Commenters will be notified approximately one week before the peer-review meeting about the actual time allotted per speaker.

If possible, oral public commenters should send a copy of their slides and/or statement or talking points to Sophie Hearn by email: *NTP-Meetings@icf.com* by December 3, 2019. Written statements can supplement and may expand the oral presentation.

Meeting Materials: The draft NTP reports and preliminary agenda will be available on the NTP website at *https://ntp.niehs.nih.gov/go/36051* prior to the meeting. NTP expects that the draft reports should be available on the website by October 15, 2019. Additional information will be posted when available or may be requested in hardcopy from Sophie Hearn by phone: (919) 293–1648 or email: *NTP-Meetings@icf.com.* Individuals are encouraged to access the meeting web page to stay abreast of the most current information regarding the meeting.

Following the meeting, a report of the peer review will be prepared and made available on the NTP website.

Background Information on NTP Peer-Review Panels: NTP panels are technical, scientific advisory bodies established on an ''as needed'' basis to provide independent scientific peer review and advise NTP on agents of public health concern, new/revised toxicological test methods, or other issues. These panels help ensure transparent, unbiased, and scientifically rigorous input to the program for its use in making credible decisions about human hazard, setting research and testing priorities, and providing information to regulatory agencies about alternative methods for toxicity screening. NTP welcomes nominations of scientific experts for upcoming panels. Scientists interested in serving on an NTP panel should provide their current curriculum vitae to Sophie Hearn by email: *NTP-Meetings@icf.com.*

The authority for NTP panels is provided by 42 U.S.C. 217a; section 222 of the Public Health Service Act, as amended. The panel is governed by the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

This peer review is being conducted by a panel via webcast. Peer-review of future draft reports will be conducted in accordance with Department of Health and Human Services peer-review policies (*https://aspe.hhs.gov/hhs-information-quality-peer-review*) and

Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664, January 4, 2005).

Dated: September 27, 2019.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2019–22273 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Institute of Mental Health Special Emphasis Panel; Member Conflicts: Mental Health Services.

Date: October 31, 2019.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Karen Gavin-Evans, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6153, MSC 9606, Bethesda, MD 20892, 301–451–2356, *gavinevanskm@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; PsychENCODE: Non-coding Functional Elements in the Human Brain and their Role in the Development of Psychiatric Disorders.

Date: November 13, 2019.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Vinod Charles, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: October 7, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22239 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, NIDCR Clinical Trials and Studies SEP.

Date: November 8, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yun Mei, MD, Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892 *yun.mei@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, NIDCR RFA–20–001.

Date: November 14, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Guo He Zhang, MPH, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Boulevard, Suite 672, Bethesda, MD 20892 *zhanggu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: October 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22236 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Healthcare Delivery and Methodologies Integrated Review Group, Nursing and Related Clinical Sciences Study Section.

Date: October 31–November 1, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW, Washington, DC 20036.

Contact Person: Mark Allen Vosvick, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, Bethesda, MD 20892, 301–402–4128, *mark.vosvick@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuroscience AREA Grant Applications.

Date: October 31–November 1, 2019.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue NW, Washington, DC 20036.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, 301–694–7084, *crosland@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: AIDS and AIDS-Related Applications.
Date: November 1, 2019.
Time: 9:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Barna Dey, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, Bethesda, MD 20892, 301–451–2796, *bdey@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22275 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Hallmarks of Aging and AD II.
Date: November 12, 2019.
Time: 10:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *nijaguna.prasad@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 7, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22234 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.
Date: November 5, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, VA 22182.
Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20782, 301–402–4788, *sarita.sastry@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Brain Injury and Chronic Neurodegeneration.
Date: November 6, 2019.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Paula Elyse Schauwecker, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5211, Bethesda, MD 20892, 301–760–8207, *schauweckerpe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Review: Research Career Enhancement Award.
Date: November 6, 2019.
Time: 5:00 p.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry and Chemical Biology.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: David R. Jollie, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301)–435–1722 *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry and Chemical Biology.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Anita Szajek, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–827–6276, *anita.szajek@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology Lifespan Development, STEM Education.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Palomar Hotel, 2121 P Street NW, Washington, DC 20037.
Contact Person: Elia E. Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, Bethesda, MD 20892, 301–827–7189, *femiaee@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared Instrumentation: High-End or Shared Light Microscope Systems (S10).
Date: November 7–8, 2019.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Canopy by Hilton, 940 Rose Avenue, North Bethesda, MD 20852.
Contact Person: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for

Scientific Review, 6701 Rockledge Drive, Bethesda 20892, 301–402–4179, *thomas.cho@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Neurodevelopment, Synaptic Plasticity and Neurodegeneration.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.
Contact Person: Mary Schueler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7846, Bethesda, MD 20892, 301–451–0996, *marygs@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowship: Infectious Diseases and Microbiology.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Georgetown, 1221 22nd Street NW, Washington, DC 20037.
Contact Person: Tamara Lyn McNealy, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, Bethesda, MD 20892, 301–827–2372 *tamara.mcnealy@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Exploration of Antimicrobial Therapeutics and Resistance.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bayside, 4875 North Harbor Drive, San Diego, CA 92106.
Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: The Cancer Biotherapeutics Development (CBD).
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Laura Asnaghi, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 6200, Bethesda, MD 20892, 301–443–1196, *laura.asnaghi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.
Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, 301.402.9607, *Jan.Li@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Digestive Sciences.
Date: November 7, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.
Contact Person: Reigh-Yi Lin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4152, Bethesda, MD 20892, 301–827–6009, *lin.reigh-yi@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 17–142: International Research in Infectious Diseases, including AIDS.
Date: November 7, 2019.
Time: 8:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Heidi B. Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–379–5632 *hfriedman@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Innovative Immunology Research.
Date: November 7–8, 2019.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: David B. Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Projects: Biomedical Technology Research Resource (P41).
Date: November 7–8, 2019.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.
Contact Person: Joseph Thomas Peterson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9694, *petersonjt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Behavioral, Neurological, and Aging Epidemiology.
Date: November 7, 2019.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Delia Olufokunbi Sam, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22241 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed 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: Center for Scientific Review Special Emphasis Panel; PAR17–094: Maximizing Investigators' Research Award (R35).
Date: October 31–November 1, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW, Washington, DC 20036.
Contact Person: Michael L. Bloom, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC, 7804 Bethesda, MD 20892, 301–451–0132, *bloomm2@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Learning, Memory, Language, Communication and Related Neuroscience.
Date: November 4, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz Carlton Hotel, 1150 22nd Street NW, Washington, DC 20037.
Contact Person: Susan Gillmor, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 240–762–3076, *susan.gillmor@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Physiology and Pathobiology of Cardiovascular and Respiratory Systems.
Date: November 4–5, 2019.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: The William F. Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.
Contact Person: Richard D. Schneiderman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, Bethesda, MD 20817, 301–402–3995, *richard.schneiderman@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Risks, Prevention and Health Behavior.
Date: November 4–5, 2019.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Martha M. Faraday, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC, 7808 Bethesda, MD 20892, (301) 435–3575, *faradaym@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Alzheimer's Disease and Its Related Dementias.
Date: November 4, 2019.
Time: 11:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, Bethesda, MD 20892, 301–594–9088, *karen.nieveslugo@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Shared and High-End Instruments: NMR and Crystallography.
Date: November 5, 2019.
Time: 8:00 a.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Nuria E. Assa-Munt, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC, 7806 Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Molecular Virology, Cell Biology, and Drug Development Study Section.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.
Contact Person: Kenneth A. Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC, 7852 Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Garden Inn, Washington DC/Georgetown, 2201 M Street NW, Washington, DC 20037.
Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions Study Section.
Date: November 7–8, 2019.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.
Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC, 7770 Bethesda, MD 20892, (301) 257–2638 *steeleln@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Cellular and Molecular Biology of Neurodegeneration Study Section.
Date: November 7–8, 2019.
Time: 8:30 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Marines' Memorial Club & Hotel, 609 Sutter Street, San Francisco, CA 94102.
Contact Person: Laurent Taupenot, Ph.D. Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC, 7850 Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22235 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.
Date: November 26, 2019.
Time: 2:00 p.m. to 5:00 p.m.
Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. Prior to the meeting, an agenda will be posted to the MDCC website: *https://mdcc.nih.gov/*.

Registration: To register please contact Emily Carifi: *Emily.Carifi@nih.gov*.

WebEx/Phone Access:

Join WebEx Meeting: Join Webex meeting, Meeting number (access code): 621 291 684, Meeting password: GBY8DRM3.

Join from a video system or application, Dial *621291684@nih.webex.com*, You can also dial 173.243.2.68 and enter your meeting number.

Join by phone, 1–650–479–3208 Call-in toll number (US/Canada), Global call-in numbers.

Place: National Institutes of Health, Neuroscience Center Building (NSC), 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Glen Nuckolls, Ph.D., Program Director, NINDS/NIH, NSC Building, 6001 Executive Blvd., Rm 2203, Bethesda, MD 20892, 301–496–5876, *nuckollg@ninds.nih.gov*.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Dated: October 7, 2019.

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22240 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK–RC2 SEP.

Date: October 29, 2019.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Xiaodu Guo, M.D., Ph.D., Scientific Review Officer, Review Branch, Division of Extramural, NIDDK, National Institutes of Health, Room 7023, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Special Emphasis Panel 1.

Date: October 30, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *kozelp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Special Emphasis Panel: Kidney, Urology and Hematology.

Date: October 31, 2019.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter J. Kozel, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7009, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4721, *kozelp@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel: Review of Institutional Training Grants in Digestive Diseases and Nutrition.

Date: November 5–6, 2019.

Time: 5:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites Alexandria Old Town, 1900 Diagonal Road, Alexandria, VA 22314.

Contact Person: Lan Tian, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7016, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–7050, *tianl@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 7, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22242 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye 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 Eye Institute Special Emphasis Panel; NEI Individual Training Grant Applications (K08, K23, K99).

Date: November 4, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, Division of Extramural Activities (DEA), 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jeanette M. Hosseini, Ph.D., Scientific Review Officer, National Eye Institute, NIH, 6700 B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (301) 451–2020, *jeanetteh@mail.nih.gov.*

Name of Committee: National Eye Institute Special Emphasis Panel; NEI Clinical Applications.

Date: November 18, 2019.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Ashley Fortress, Ph.D., Scientific Review Officer, National Eye Institute, NIH, 6700 B Rockledge Drive, Suite 3400, Bethesda, MD 20892, (301) 451–2020 *ashley.fortress@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: October 7, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–22238 Filed 10–10–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2018–0498]

Collection of Information Under Review by Office of Management and Budget; OMB Control Number: 1625–0071

AGENCY: Coast Guard, DHS.

ACTION: Thirty-Day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval for reinstatement, with changes, of the following collection of information: 1625–0071, Recreational Boat Safety Defect Report, previously titled Boat Owner's Report, Possible Safety Defect Report. Our ICR describes the information we seek to collect from the public. This request provides a second 30-day comment period addressing the changes we made in response to public comments that we received on the last notice requesting comments. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 12, 2019.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2018–0498] to the Coast Guard using the Federal eRulemaking Portal at *https://www.regulations.gov.* Alternatively, you may submit comments to OIRA using one of the following means:

(1) *Email: OIRA-submission@omb.eop.gov.*

(2) *Mail:* OIRA, 725 17th Street NW, Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax:* 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

A copy of the ICR is available through the docket on the internet at *https://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–612), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–372–8405, for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. Consistent with the requirements of Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs, and Executive Order 13777, Enforcing the Regulatory Reform Agenda, the Coast Guard is also requesting comments on the extent to which this request for information could be modified to reduce the burden on respondents. These comments will help OIRA determine whether to approve the ICR referred to in this notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2018–0498], and must be received by November 12, 2019.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0071.

Previous Request for Comments

The Coast Guard published a 60-day notice (84 FR 5459, February 21, 2019) and a 30-day notice (84 FR 19097, May 3, 2019) requesting comments, as required by 44 U.S.C. 3506(c)(2). The 30-day notice elicited two comments which can be viewed at *https://www.regulations.gov* in the docket USCG–2018–0498. This request provides a second 30-day comment period to address the public comments that we received and to solicit comments on the changes we made to the information collection request in response to the comments.

The first commenter noted that there is a workgroup developing recommendations for improving recreational boating incident reporting and opening communication between the Coast Guard and all levels of enforcement. The commenter noted that the current form requires the owner of the vessel to fill out the form and submit it to the Coast Guard, but there is no efficient way for the states to require recreational boat owners who are unwilling or unable to submit the safety defect report to the Coast Guard.

The Coast Guard supports allowing additional entities to report safety defects, and proposes to change the name of the report from ''Consumer Safety Defect Report'' to ''Recreational Boat Safety Defect Report''. The respondants for this new form will expand from receiving information from consumers (boat owners) to receiving information from any source, including boat owners, law enforcement, marine investigators, boat manufacturers, and the public. We will change the ''who is reporting'' section of the form to include places for names, addresses, and contact info for a company or agency and add check boxes for these additional sources to identify themselves as on the report, such as owner, manufacturer, law enforcement officer, investigator, and other. We will also collect vessel type, hull material, propulsion type, engine drive type and fuel using the 33 CFR 173/174 terms for those categories.

The second commenter said that the reporting form should not have negative financial impacts on small business, service providers, or individuals and that someone should compensate these entities for their research. The commenter also noted that associated equipment can be dangerous to owners and operators. We agree that defective equipment is dangerous to vessel owners and operators. The purpose of submitting a safety defect report to the Coast Guard is so that the Coast Guard can look into the accuracy of the report and advise manufacturers in repairing defects in their equipment before they become catastrophic defects. The Safety Defect Report is not intended to cause negative financial impact on those entities. Safety defect reporting advances our maritime safety missions by asking vessel operators, and other entities, to report any suspected safety defects to the Coast Guard. The commenter did not give any suggestions on how to improve the collection of information or the form. No changes to this collection have been made at this time as a result of the second comment

Information Collection Request

Title: Recreational Boat Safety Defect Report.

OMB Control Number: 1625–0071.

Summary: The collection of information provides a means for boat owners, law enforcement officers, marine investigators, boat manufacturers and members of the public who believe a recreational boat or piece of associated equipment contains a substantial risk defect or fails to comply with Federal safety standards to report the deficiencies to the Coast Guard for investigation and possible remedy.

Need: Title 46 U.S.C. 4310 gives the Coast Guard the authority to require manufacturers of recreational boats and certain items of associated equipment to notify owners and remedy: (1) Defects that create a substantial risk of personal injury to the public; and (2) failures to comply with applicable Federal safety standards.

Forms: CG–5578, Recreational Boat Safety Defect Report.

Respondents: Recreational boat owners, law enforcement officers, marine investigators, boat manufacturers and members of the public who use, build, enforce safety standards or investigate accidents of recreational boats and designated associated equipment.

Frequency: One time.

Hour Burden Estimate: The estimated burden has decreased from 18 hours to 12 hours a year due to a decrease in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 8, 2019.

James D. Roppel,

Chief, Office of Information Management, U.S. Coast Guard.

[FR Doc. 2019–22294 Filed 10–10–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–25]

60-Day Notice of Proposed Information Collection: HUD Certified Housing Counselor Registration—Office of Housing Counseling

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: HUD Certified Housing Counselor Registration.

OMB Approval Number: 2502–0614.

OMB Expiration Date: 1/31/2020.

Type of Request (*i.e.,* new, revision, or extension of a currently approved collection): Revision of a currently approved collection.

Form Number: None.

Description of the need for the information and proposed use: The information will be collected on the Office of Housing Counseling, HUD Housing Counselor Certification Training and Examination website, *www.HUDHousingCounselors.com,* and with client authorization, the information will be transferred to the HUD Federal Housing Administration Connection. The information collected will be used to certify housing counselors.

Respondents (i.e., affected public): Individuals or households.

Estimated Number of Respondents: 7,500.

Estimated Number of Responses: 7,500.

Frequency of Response: Once.

Average Hours per Response: .25.

Total Estimated Burden: 1,875 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Authority: Section 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: September 20, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–22334 Filed 10–10–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–04]

Notice of Proposed Information Collection for Public Comment: Continuum of Care Homeless Assistance—Technical Submission

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* December 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410; telephone (202) 708–5015 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Information Collection:

OMB Approval Number: 2506–0183.

Type of Request: Extension of currently approved collection.

Form Number: HUD–40090–3a.

Description of the need for the information and proposed use: This submission is to request an extension of a currently approved collection for reporting burden associated with the Technical Submission phase of the Continuum of Care (CoC) Program Application. This submission is limited to the Technical Submission process under the CoC Program interim rule, as authorized by the HEARTH Act. Applicants who are successful in the CoC Program Competition are required to submit more detailed technical information before grant agreement. The information to be collected will be used to ensure that technical requirements are met prior to the execution of a grant agreement. The technical requirements relate to a more extensive description of the budgets for administration costs, timelines for project implementation, match documentation and other project specific documentation, and information to support the resolution of grant conditions. HUD will use this detailed information to determine if a project is financially feasible and whether all proposed activities are eligible. All information collected is used to carefully consider conditional applicants for funding. If HUD collects less information, or collected it less frequently, the Department could not make a final determination concerning the eligibility of applicants for grant funds and conditional applicants would not be eligible to sign grant agreements and receive funding. To see the regulations for the CoC Program and applicable supplementary documents, visit HUD's Homeless Resource Exchange page at *https://www.hudexchange.info/programs/coc/*. The statutory provisions and the implementing interim rule (also found at 24 CFR part 587) that govern the program require the information provided by the Technical Submission.

Respondents (i.e., affected public): Applicants that are successful in the

Continuum of Care Homeless Assistance Grant competition.

Estimated Number of Respondents: 750.

Estimated Number of Responses: 750.

Frequency of Response: 1 time annually.

Average Hours per Response: 8.

Total Estimated Burdens: The total number of hours needed for all reporting is 126,000 hours.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Exhibit 3 CoC Technical Submissions *e-snaps* Forms, formerly HUD–40090–3(a–b)	750	1	750	8	6,000	47.52	285,120
Submission Subtotal	750	1	750	8	6,000	47.52	285,120
Total Grant Program Application Collection							
Total	750	1	750	8	6,000	47.52	285,120

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 20, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–22332 Filed 10–10–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–05]

60-Day Notice of Proposed Information Collection: Emergency Solutions Grant Data Collection

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 10, 2019.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Norm Suchar, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW, Room 7262, Washington, DC 20410; telephone (202) 708–5015 (This is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Emergency Solutions Grants Program Recordkeeping Requirements.

OMB Approval Number: 2506–0089.

Type of Request (*i.e.,* new, revision or extension of currently approved collection): Extension.

Form Number:

Description of the need for the information and proposed use: This submission is to request an extension of a currently approved collection for the reporting burden associated with program and recordkeeping requirements that Emergency Solutions Grants (ESG) program recipients will be expected to implement and retain. This submission is limited to the recordkeeping burden under the ESG entitlement program. To see the regulations for the ESG program and applicable supplementary documents, visit the ESG page on the HUD Exchange at *https://www.hudexchange.info/programs/esg/.* The statutory provisions and the implementing interim regulations (also found at 24 CFR 576) that govern the program require these recordkeeping requirements.

Respondents (*i.e.,* affected public): ESG recipient and subrecipient lead persons.

Estimated Number of Respondents: The ESG record keeping requirements include 18 distinct activities. Each activity requires a different number of respondents ranging from 20 to 78,000. There are 78,000 unique respondents.

Estimated Number of Responses: 526,116.

Frequency of Response: Each activity also has a unique frequency of response, ranging from once annually to monthly.

Average Hours per Response: Each activity also has a unique associated number of hours of response, ranging from 15 minutes to 12 hours and 45 minutes.

Total Estimated Burdens: The total number of hours needed for all reporting is 387,522 hours.

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours	Hourly rate **	Burden cost per instrument
A	B	C	D	E	F		
576.100(b)(2) Emergency Shelter and Street Outreach Cap	360	1	360	1.0	360	39.96	14,385.60
576.400(a) Consultation with Continuums of Care	360	1	360	6.0	2,160	39.96	86,313.60
576.400(b) Coordination with other Targeted Homeless Services	2,360	1	2,360	8.0	18,880	39.96	754,444.8
576.400(c) System and Program Coordination with Mainstream Resources	2,360	1	2,360	16.0	37,760	39.96	1,508,890
576.400(d) Centralized or Coordinated Assessment	2,000	1	2,000	3.0	6,000	39.96	239,760
576.400(e) Written Standards for Determining the Amount of Assistance	808	1	808	5.0	4,040	39.96	161,438.4
576.400(f) Participation in HMIS	78,000	1	78,000	0.5	39,000	39.96	1,558,440
576.401(a) Initial Evaluation	50,000	1	50,000	1.0	50,000	39.96	1,998,000
576.401(b) Recertification	20,000	2	40,000	0.5	20,000	39.96	799,200
576.401 (d) Connection to Mainstream Resources	78,000	3	234,000	0.25	58,500	39.96	2,337,660
576.401(e) Housing retention plan	50,000	1	50,000	.75	37,500	39.96	1,498,500
576.402 Terminating Assistance	808	1	808	4.0	3,232	39.96	129,150.7
576.403 Habitability review	52,000	1	52,000	0.6	31,200	39.96	1,246,752
576.405 Homeless Participation	2,360	12	28,320	1.0	28,320	39.96	1,131,667
576.500 Recordkeeping Requirements	2,360	1	2,360	12.75	30,090	39.96	1,202,396
576.501(b) Remedial Actions	20	1	20	8	160	39.96	6,393.6
576.501(c) Recipient Sanctions	360	1	360	12	4,320	39.96	172,627.2
576.501(c) Subrecipient Response	2,000	1	2,000	8	16,000	39.96	639,360
Total	78,000		546,116		387,522		15,485,378.90

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency'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 those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: September 20, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–22333 Filed 10–10–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19X.LLAKA02000.L16100000. DS0000.LXSS043L0000.241A]

Notice of Availability of the Final Environmental Impact Statement for the Haines Amendment to the Ring of Fire Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 as amended, and the Federal Land Policy and Management Act of 1976 as amended, the Bureau of Land Management (BLM), Glennallen Field Office, Glennallen, Alaska, has prepared the Final Environmental Impact Statement (EIS) for the Haines Amendment to the Ring of Fire Resource Management Plan (RMP) for the BLM-managed public lands in the Haines area of Alaska and, by this notice, is announcing its availability.

DATES: Planning regulations state that any person who meets the conditions as described in the regulations at 43 CFR 1610.5–2 may protest the BLM's Final EIS/Proposed Haines Amendment to the Ring of Fire RMP. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies or notification of the electronic availability of the Final EIS/Proposed Haines Amendment to the Ring of Fire RMP are being sent to affected Federal, State, Tribal, and local government agencies and other stakeholders. Copies of the Final EIS/Proposed RMP are available for public inspection at BLM Glennallen Field Office, Milepost 186.5 Glenn Highway, Glennallen, AK 99588; BLM Alaska Public Information Center, Federal Building, 222 West 7th Avenue, Anchorage, AK 99513; Haines Borough Public Library, 111 3rd Ave., Haines, AK 99827; Municipality of Skagway Borough, 700 Spring Street, Skagway, AK 99840; BLM Anchorage District Office, 4700 BLM Road, Anchorage, AK 99507; and Alaska Resources Library and Information Services, 3211 Providence Drive, Suite 111, Anchorage, AK 99507. A link to the BLM's ePlanning page with the Final EIS/Proposed RMP can be found at *www.blm.gov/alaska/rof-haines-amendment.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Protest Coordinator, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Delivery: BLM Director (210) Attention: Protest Coordinator, 20 M Street SE, Room 2134LM, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bruce Loranger, BLM Anchorage District Office, telephone: 907–267–1221, email: *bloranger@blm.gov*. People who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Haines Planning Area encompasses approximately 920,000 acres in Southeast Alaska, bounded by the Canadian Border to the north and west, Glacier Bay National Park to the southwest, and the Tongass National Forest to the south and east. This Planning Area consists mainly of steep and remote mountainous terrain, with bedrock and glaciers that restrict road and trail access. Of the total acreage within the Planning Area, the BLM manages approximately 316,000 acres. The size of the Planning Area has changed since the 2008 signing of the Ring of Fire RMP Record of Decision (ROD) due to the conveyance of several sections of BLM-managed lands to the State of Alaska. The purpose of this planning effort is to identify which designations, associated management practices, and implementation actions best fulfill the resource and multiple-use needs within the Haines Planning Area. It is also intended to evaluate an Area of Critical Environmental Concern, as required by the Ring of Fire RMP ROD. In addition, this planning effort considered the results of a multi-year, BLM-funded study of goat and bear habitat in the Haines area by the Alaska Department of Fish and Game, completed in 2017. This amendment revises the applicable portions of the Ring of Fire RMP and provides a plan which is consistent with evolving law, regulations, and policy.

The BLM conducted public outreach to inform the public and answer questions regarding the Proposed Haines Amendment to the Ring of Fire RMP/EIS. A Notice of Intent (NOI) to prepare the Draft RMP Amendment/Draft EIS was published in the **Federal Register** in March 2009. The NOI initiated a 90-day formal scoping period that lasted until June 26, 2009. Public meetings were held during the scoping period in the communities of Haines, Skagway, and Anchorage. In 2018, an additional 60-day public outreach that closed May 30 was offered and public meetings were held in the communities of Haines, Skagway, and Juneau. In addition to both public meetings, BLM consulted with and solicited comments from local, state, and federal governments, special interest groups, and Native American tribes. In May of 2019, the Supplemental Draft EIS for the Haines Amendment to the Ring of Fire Resource Management Plan was published for a 90-day public comment period. An open house was held in Haines on June 20, 2019. Additional consultation and cooperating agency meetings were held in Haines in June 2019. Public involvement is further described in Chapter 5 of the Final EIS.

Instructions for filing a protest regarding the Final EIS/Proposed Haines Amendment to the Ring of Fire RMP may be found in the ''Dear Reader'' letter and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *protest@blm.gov*.

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

(*Authority:* 16 U.S.C. 3120(a); 40 CFR 1506.6(b))

Chad B. Padgett,

Acting State Director, Alaska.

[FR Doc. 2019–22250 Filed 10–10–19; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[19XL.LLIDB03000.DF0000.LFHFFR650000.241A.4500136018]

Notice of Availability for the Tri-State Fuel Breaks Project Draft Environmental Impact Statement, Idaho and Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Boise District Office, Boise, Idaho, and the BLM Vale District Office, Vale, Oregon, have prepared a Draft Environmental Impact Statement (EIS) titled Tri-state Fuel Breaks Project Draft Environmental Impact Statement (DOI–BLM–ID–B000–2015–0001–EIS) (Draft EIS) and, by this notice, are announcing the opening of the comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft EIS within 45 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public-participation activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Draft EIS by any of the following methods:

- *Email: blm_id_tristate@blm.gov.*
- *Fax:* 208–384–3489.
- *Mail:* 3948 South Development Ave., Boise, ID 83705.

The Draft EIS and accompanying background documents are available on the project website: *https://go.usa.gov/xPruu.*

FOR FURTHER INFORMATION CONTACT: Lance Okeson, Project Lead, telephone: 208–384–3300; 3948 South Development Ave., Boise, ID 83705; email: *blm_id_tristate@blm.gov.* Contact Mr. Okeson to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Okeson during normal business hours. FRS is available 24 hours a day, 7 days a week, to leave a message or a question. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Southwest Idaho, southeast Oregon, and northern Nevada (the Tri-state area) comprise one of the largest intact strongholds of Greater Sage-grouse habitat in the Northern Great Basin. This area supports habitat for big game and other sagebrush-obligate species and provides for a variety of multiple-use activities. Multiple science-based assessments dating back to 2010 have identified the project area as a landscape particularly threatened by wildfire and the consequent spread of invasive annual grasses. The 2010 Rapid Eco-regional Assessment of the Northern Basin and Range and Snake River Plain identified the Tri-state area as being at high risk for large-scale wildfires. Wildfires in this remote area can grow quickly and affect hundreds of thousands of acres of sage-steppe habitat and working landscapes within a matter of days. The 2012 Long Draw Fire (558,198 acres), the 2014 Buzzard Complex Fire (395,747 acres), the 2015 Soda Fire (285,360 acres), the 2018 Martin Fire (435,569 acres), and the 2018 Sugar Loaf Fire (233,462 acres)—all of which were in or near the project area—each impacted over a hundred thousand acres within 24 hours.

The shrub-steppe landscapes within this area represent one of the most imperiled ecosystems in the United States. The Secretary of the Interior's 2017 Wildland Fire Directive requires incorporation of fuels management into resource management planning. Secretarial Order 3372 calls for active management of public lands to reduce the risk of catastrophic wildfire to America's forests and rangelands. Management of wildfire has been identified as one of the key issues for maintaining sage-grouse populations in sagebrush-dominated landscapes.

Purpose and Need

The purpose of the proposed BLM action is to provide safe areas and strategic opportunities in the Tri-state area to more rapidly and effectively protect sagebrush-steppe habitat and other natural and cultural resources and socioeconomic values from wildfires by creating and maintaining fuel breaks along a network of established roads through mechanical, biological, chemical, and prescribed fire treatments. Fuel breaks reduce fuel accumulations and disrupt fuel continuity to modify fire behavior and provide for firefighter safety and efficiency, in order to reduce the spread of wildfire across the sagebrush-steppe ecosystems within the project area.

Alternatives

Under the No Action Alternative (Alternative 1), a fuel-break network would not be created. Fuels adjacent to roadways would not be treated to reduce fuel accumulations and disrupt fuel continuity. Fire suppression personnel would continue to use existing paved and other improved BLM and county roads and natural topographic features to hold and control wildfire.

Under all action alternatives, fuel breaks would only be implemented alongside existing roads. Fuel breaks would extend up to, but no farther than, 200 feet from both sides of roadways. Environmental constraints such as adjacent vegetation, terrain, soil type, and resource concerns would dictate width (≤200 feet) and treatment type in a given area. The methods for fuel break creation and maintenance analyzed in the Draft EIS include mowing, hand cutting, seeding (including seedbed preparation techniques), herbicide treatment, prescribed fire (*e.g.,* pile burning), and targeted grazing. These methods may be implemented in combination or as stand-alone treatments as necessary to meet the treatment objectives. Depending on available funding, implementation could occur over 15 years.

Alternative 2 contains the highest number and density of fuel breaks of all action alternatives. The BLM would implement and maintain a fuel break network along approximately 1,539 miles of existing roads: 731 miles in Idaho and 808 miles in Oregon. No fuel breaks would be constructed in designated wilderness. Fuel breaks may be established along the non-wilderness side of boundary roads adjacent to designated wilderness. Fuel breaks may be established along boundary roads surrounding lands with wilderness characteristics and wilderness study areas (WSAs).

Alternative 3 was developed to protect natural resources and socioeconomic values from large wildfires while minimizing impacts to social and cultural resources. Alternative 3 emphasizes avoidance of cultural resources and limiting impacts to special management areas (*e.g.,* wilderness and WSAs) and lands with wilderness characteristics. The fuel-break network would span 1,063 miles

of existing roads: 505 miles in Idaho and 558 miles in Oregon. No fuel breaks would be constructed in designated wilderness. Fuel breaks may be established along the non-wilderness side of boundary roads adjacent to designated wilderness. Fuel breaks may only be established along boundary roads of lands with wilderness characteristics and WSAs.

Alternative 4 emphasizes protection to wildlife and their habitat while providing a network of fuel breaks that meets the purpose and need. The fuel-break network for this alternative would span 910 miles of existing roads: 450 miles in Idaho and 460 miles in Oregon. Fuel-break construction in relation to wilderness, lands with wilderness characteristics, and WSAs would be identical to Alternative 2.

A preferred alternative has not been identified for the Draft EIS, but will be identified for the Final EIS, as per 40 CFR 1502.14(e). The Final EIS will reflect changes or adjustments based on public comments received on the Draft EIS, and any new information that is identified. The preferred alternative in the Final EIS may include portions of any analyzed alternatives. For this reason, the BLM encourages comments on all alternatives and management actions described in the Draft EIS.

You may submit written comments on the Draft EIS to the BLM at any public meeting or through any of the methods identified in the **ADDRESSES** section. All comments must be received by the end of the comment period. Comments submitted must include the commenter's name and street address. Whenever possible, please include reference to either the page or section in the document to which the comment applies.

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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

(Authority: 40 CFR 1506.6 and 40 CFR 1506.10)

Lara Douglas,

Boise District Manager, Idaho,

Donald N. Gonzalez,

Vale District Manager, Oregon/Washington.

[FR Doc. 2019–22112 Filed 10–10–19; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK940000.L14100000.BX0000.19X. LXSS001L0100]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. These surveys were executed at the request of the BLM, and are necessary for the management of these lands.

DATES: The BLM must receive protests by November 12, 2019.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 8th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Douglas N. Haywood, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–5481; *dhaywood@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Copper River Meridian, Alaska

T. 45 S, R. 66 E, accepted October 3, 2019.
T. 46 S, R. 66 E, accepted October 3, 2019.

Seward Meridian, Alaska

T. 27 N, R. 21 W, accepted September 19, 2019.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. Chap. 3.

Douglas N. Haywood,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2019–22259 Filed 10–10–19; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–PCE–COR–NTS–NPS0027721; PPWOPCADT0, PPMPSPD1T.Y00000 (199); OMB Control Number 1024–0283]

Agency Information Collection Activities; Application for Designation as National Recreation Trail or National Water Trail

AGENCY: National Park Service, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the National Park Service (NPS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 10, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to Phadrea Ponds, Acting NPS Information Collection Clearance Officer, 1201 Oakridge Drive Fort Collins, CO 80525; or by email at *phadrea_ponds@nps.gov;* or by telephone at 970–267–7231. Please reference OMB Control Number 1024–0283 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Peter Bonsall, Acting National Trails System Program Specialist, Acting National Recreation Trails Coordinator for the Department of the Interior 12795 W. Alameda Parkway, Lakewood, CO 80228; or by email at *peter_bonsall@nps.gov;* or by telephone at 303–969–2620. Please reference OMB Control Number 1024–0283 in the subject line of your comments.

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.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the NPS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the NPS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the NPS 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. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you 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 purpose of this information collection is to assist the NPS in submitting suitable trails or trail systems to the Secretary of the Interior for designation as National Recreation Trails (NRT). This collection is also used to recommend exemplary water trails to the Secretary of the Interior for designation as National Water Trails (NWT) to be included in the National Water Trails System (NWTS). The NPS is authorized to administer the NRT program in section 4 of the National Trails System Act, 16 U.S.C. 1243. Secretarial Order No. 3319 established National Water Trails as a class of National Recreation Trails and directed that such trails collectively be considered in a National Water Trails System.

National Recreation Trail designation provides national recognition to local and regional trails or trail systems, acknowledging local and state efforts to build and maintain viable trails and trail systems. This recognition function is shared by the Secretary of Agriculture for trails on National Forest lands and waters as well as the Secretary of the Interior for all other trails.

The National Water Trails System is focused on building a national network of exceptional water trails that can be sustained by an ever growing and vibrant water trail community. The NWTS connects Americans to the nation's waterways and strengthens the conservation and restoration of those waterways.

The NPS uses two web-based forms, ''Application for Designation as National Water Trail'' (Form 10–1002), and ''Application for Designation as National Recreation Trail'' (Form 10–1003), to evaluate for the adherence to requirements and criteria to be designated as National Recreation Trails or National Water Trails. The forms collect the following information: (1) Justification, (2) Contact information, (3) Owner consent and State support (4) Photographs and maps (5) Best management practices, and (6) Additional supporting materials.

Title of Collection: Application for Designation as National Recreation Trail or National Water Trail.

OMB Control Number: 1024–0283.

Form Number: 10–1002, ''Application for Designation as National Water Trail'' and 10–1003, ''Application for Designation as National Recreation Trail''.

Type of Review: Extension of a currently approved collection.

Description of Respondents: Private individuals; businesses; educational institutions; nonprofit organizations; state, tribal, and local governments; and Federal agency land units.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

	Annual respondents	Total annual responses	Avg. time per response (hours)	Total annual burden hours (rounded)
Application for Designation—National Recreation Trails				
Individual	1	1	8	8
Private Sector	5	5	8	40
State, Local, or Tribal Governments	6	8	8	64
Application for Designation—National Water Trails				
Individual	1	1	11	11
Private Sector	2	2	11	22
State, Local, or Tribal Governments	3	3	11	33

	Annual respondents	Total annual responses	Avg. time per response (hours)	Total annual burden hours (rounded)
Amendments/Updates—National Recreation Trails				
Individual	1	1	.5	1
Private Sector	1	1	.5	1
State, Local, or Tribal Governments	3	3	.5	2
Amendments/Updates—National Water Trails				
Individual	1	1	.5	1
Private Sector	1	1	.5	1
State, Local, or Tribal Governments	1	1	.5	1
Total	26	28		185

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Phadrea Ponds,

Acting Information Collection Clearance Officer, National Park Service.

[FR Doc. 2019–22311 Filed 10–10–19; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments; Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Argon Plasma Coagulation System Probes, Their Components, and Other Argon Plasma Coagulation System Components for use Therewith, DN 3414*; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Erbe Elektromedizin GmbH and Erbe USA, Inc. on October 7, 2019. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain argon plasma coagulation system probes, their components, and other argon plasma coagulation system components for use therewith. The complaint names as respondents: Olympus Corporation of Japan; Olympus Corporation of the Americas of Center Valley, PA; Olympus America, Inc. of Center Valley, PA; Olympus Surgical Technologies Europe of Germany; Olympus Winter & Ibe GmbH of Germany; Olympus KeyMed Group Limited of the United Kingdom; KeyMed (Medical & Industrial Equipment) Ltd. of the United Kingdom; Olympus Bolton of the United Kingdom; and Olympus Surgical Technologies Europe/Cardiff of the United Kingdom. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There

will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3414'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures).[1] Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: October 7, 2019.

Jessica Mullan,

Attorney Advisor.

[FR Doc. 2019–22267 Filed 10–10–19; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Request for Petitions for Duty Suspensions and Reductions

AGENCY: United States International Trade Commission.

ACTION: Notice requesting members of the public who can demonstrate they are likely beneficiaries of duty suspensions or reductions to submit to the Commission petitions and disclosure forms.

SUMMARY: As required by section 3(b)(1) of the American Manufacturing Competitiveness Act of 2016, the Commission is publishing notice requesting members of the public who can demonstrate that they are likely beneficiaries of duty suspensions or reductions to submit petitions for duty suspensions and reductions. Consistent with the Act, the Commission will accept petitions submitted during the 60-day period beginning on October 11, 2019, and ending at 5:15 p.m. EST on December 10, 2019. All petitions must be submitted via the Commission's designated secure web portal. At a later date the Commission will publish notice of the opportunity for the public to submit comments on the petitions filed.

DATES:

October 11, 2019: Opening date for filing petitions for duty suspensions and reductions.

December 10, 2019, 5:15 p.m., EST: Closing date and time for filing petitions for duty suspensions and reductions.

ADDRESSES: All Commission offices are located in the United States International Trade Commission Building, 500 E Street SW, Washington, DC. The public file for this proceeding may be viewed on the Commission's MTB Petition System (MTBPS) at *https://mtbps.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: For general inquiries, contact Jennifer Rohrbach at *mtbinfo@usitc.gov.* For filing inquiries, contact the Office of Secretary, Docket Services division, U.S. International Trade Commission, telephone (202) 205–3238.

The media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819 or *margaret.olaughlin@usitc.gov*). General information concerning the Commission may be obtained by accessing its internet server (*http://www.usitc.gov*).

Background

The American Manufacturing Competitiveness Act of 2016 (the Act), 19 U.S.C. 1332 note, establishes a process for the submission and consideration of requests for temporary duty suspensions and reductions. The Act requires the Commission to initiate the process by publishing a notice requesting members of the public who can demonstrate that they are likely beneficiaries of duty suspensions or reductions to submit petitions and Commission disclosure forms to the Commission. The Act establishes the information to be contained in a petition and sets out the process the Commission is to follow. The Act requires the Commission to publish its notice requesting petitions no later than October 15, 2019, and to allow the public to file petitions during the 60-day period following publication of the notice. After the period for filing petitions closes, the Commission is required to publish the petitions on its website and provide notice to the public of the opportunity to submit comments on the petitions.

The Act requires the Commission to submit preliminary and final reports to the House Committee on Ways and Means and the Senate Committee on Finance (Committees) on the petitions received. The reports are to include the Commission's analysis and recommendations regarding the petitions, including determinations regarding whether there is domestic production of the article, whether the duty suspension or reduction can likely be administered by the U.S. Customs and Border Protection, whether the estimated loss in revenues due to the duty suspension or reduction does not exceed $500,000, and whether the duty suspension or reduction will be available to any person importing the article. The Commission is required to classify the petitions into categories based on whether (1) the petition meets the requirements for inclusion in a miscellaneous tariff bill; (2) the Commission recommends inclusion in

such a bill with specified technical changes, changes in product scope, or adjustment in the amount of duty reduction; (3) the Commission recommends against inclusion in a bill because the petition does not meet the petitioning requirements or the petitioner is not a likely beneficiary; or (4) the Commission otherwise recommends not including the petition. The Committees and the Congress will make the final decision regarding the imported articles to be included in a bill.

The Act also requires the U.S. Department of Commerce (Commerce), with input from U.S. Customs and Border Protection (CBP) and other Federal agencies, to submit a report to the Commission and to the Committees. This report is to include information related to domestic production and technical changes that are necessary for purposes of administration when articles are presented for importation.

Procedures for Filing a Petition

The Commission has promulgated rules of practice and procedure regarding the process for filing petitions and has also made available a handbook and other materials to assist members of the public in filing petitions. The rules, as amended, are published at 19 CFR part 220 (84 FR 44692, Aug. 27, 2019) and are available at *https://gov.ecfr.io/cgi-bin/text-idx?SID=2fb26f9e6c52f71f3c0081573eaabf0e&mc=true&node=pt19.3.220&rgn=div5.* The rules, handbook, and other materials are also posted on the Commission's website at *https://www.usitc.gov/mtb_landing.htm.* Highlights of the filing procedures are presented below only as an overview; persons who are considering filing a petition should consult the Commission's rules, handbook, and other materials.

Who may file. As provided for in the Act and in the Commission's rules, only members of the public who can demonstrate that they are a likely beneficiary of the duty suspension or reduction may file petitions for duty suspensions or reductions. The Act defines ''likely beneficiary'' to mean ''an individual or entity likely to utilize, or benefit directly from the utilization of, an article that is the subject of a petition for a duty suspension or reduction.''

Method for filing. Petitions for duty suspensions and reductions must be filed electronically via the Commission's designated secure web portal and in the format designated by the Commission in that portal. The portal contains a series of prompts and links that will assist persons in providing the required information (this information concerns both the petitions and related disclosure forms, so there will be only one submission). The Commission will not accept petitions submitted in paper or in any other form or format. Petitions, including any attachments thereto, must otherwise comply with the Commission's rules as further explained in the Commission's Handbook on MTB Filing Procedures. Persons seeking duty suspensions or reductions on more than one imported product must submit separate petitions for each product.

Persons filing petitions should be prepared to complete their entire petition when they enter the portal and because the portal will not allow them to edit, amend, or complete the petition at a later time. Should a person filing a petition be unable to complete it, the person will need to start the process again later. Should a person wish to edit or amend a previously filed petition, the person will need to file a new petition that includes the changes, and must withdraw the earlier petition. Failure to withdraw the earlier petition (or petitions) will generally result in the Commission accepting the earliest filed petition on the subject product. Accordingly, a person filing a petition should have all required information in hand when entering the portal to begin the formal filing process. A list of all the information required to complete a petition may be found in the Commission's Before You File guide located on the Commission's MTB information page on its website.

Time for filing. To be considered, petitions must be filed between October 11, 2019, and the close of business (5:15 p.m. EST) on December 10, 2019. Consistent with the Act, the Commission will not accept petitions filed after that time and date.

Amendment and withdrawal of petitions. As indicated above, the Commission's secure web portal will not allow a person who has formally submitted a petition to amend the petition. Instead, that person must withdraw the original petition and file a new petition that incorporates the changes. The new petition must be filed within the 60-day period designated for filing petitions. The above notwithstanding, any petitions properly filed may be withdrawn (without opportunity to submit a new petition if withdrawn after the close of the 60-day period for filing petitions) no later than 30 days after the Commission submits its preliminary report to the Committees.

Confidential business information. The portal will permit persons submitting petitions to claim that certain information should be treated either as confidential business information or as information protected from disclosure under the Privacy Act, 5 U.S.C. 552a, (*e.g.,* a home address). In the absence of a claim that such information should be so treated, the Commission will disclose the information to the public when it posts the petitions and attachments on the Commission's website. See further information below on possible disclosure of confidential business information.

Confidential Business Information

The Commission will not release information that the Commission considers to be confidential business information within the meaning of § 201.6(a) of its Rules of Practice and Procedure (19 CFR 201.6) unless the party submitting the confidential business information had notice, at the time of submission, that such information would be released by the Commission, or such party subsequently consents to the release of the information.

Confidential business information submitted to the Commission in petitions and comments may be disclosed to or used by (1) the Commission in calculating the estimated revenue loss required under the Act, which may be based in whole or in part on the estimated values of imports submitted by petitioners in their petitions; or (2) the Commission, its employees, and contract personnel (a) in processing petitions and comments and preparing reports under the Act or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (3) Commerce, for use in preparing its report to the Commission and the Committees, and the U.S. Department of Agriculture and CBP, for use in providing information for that report; or (4) U.S. government employees and contract personnel, solely for cybersecurity purposes, subject to the requirement that all contract personnel will sign appropriate nondisclosure agreements.

By order of the Commission.

Issued: October 2, 2019.

Lisa Barton,

Secretary of the Commission.

[FR Doc. 2019–21835 Filed 10–10–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Bulk Manufacturer of Controlled Substances Applications: Bulk Manufacturers of Marihuana; Correction

ACTION: Notice of applications; correction.

SUMMARY: The Drug Enforcement Administration (DEA) published a document in the **Federal Register** on August 27, 2019, concerning a notice of applications. As that document correctly indicated, each of the applicants noticed applied to be registered with DEA to grow marihuana as a bulk manufacturer. However, certain drug codes for some of the applicants were inadvertently omitted by DEA or not listed because applicants had inadvertently omitted them from their applications.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of August 27, 2019, in FR Doc. 2019–18456 (84 FR 44920), on pages 44922 and 44923, correct the table to add the following basic classes of controlled substance for the following applicants:

Applicant	Controlled substance	Drug code	Sch.
Abatin Cultivation Center	Marihuana extract	7350	I
Biopharmaceutical Research Company, LLC	Marihuana, Tetrahydrocannabinols	7360, 7370	I
Columbia Care NY, LLC	Marihuana, Tetrahydrocannabinols	7360, 7370	I
Fraunhofer USA	Marihuana, Tetrahydrocannabinols	7360, 7370	I
Gary Gray DBA Complex Pharmacist Owner	Marihuana extract	7350	I
Hawaii Agriculture Research Center	Marihuana, Tetrahydrocannabinols	7360, 7370	I
MMJ Biopharma Cultivation	Marihuana extract	7350	I
Scottsdale Research Institute	Marihuana, Tetrahydrocannabinols	7360, 7370	I
Ultra Rich CBD	Marihuana	7360	I
University of Massachusetts	Marihuana, Tetrahydrocannabinols	7360, 7370	I

Dated: October 7, 2019.

William T. McDermott,

Acting Assistant Administrator.

[FR Doc. 2019–22312 Filed 10–8–19; 4:15 pm]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On September 30, 2019, the Department of Justice lodged a proposed consent decree with the United States District Court for the Eastern District of Virginia in the lawsuit entitled *United States and the Commonwealth of Virginia* v. *KmX Chemical Corporation,* Civil Action No. 2:19–cv–00517–AWA–DEMVAED.

The Complaint filed by the United States and the Commonwealth alleges claims under the Clean Air Act and seeks injunctive relief and civil penalties for violations of the leak detection and repair regulations that govern at the KmX Chemical Corporation's chemical reclamation facility in New Church, Virginia. The consent decree requires the defendant to perform injunctive relief and pay a $60,000 civil penalty.

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 and the Commonwealth of Virginia* v. *KmX Chemical Corporation,* D.J. Ref. No. 90–5–2–1–11442. 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 e-mail	*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 $15.75 payable to the United States Treasury.

Robert Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2019–22280 Filed 10–10–19; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Privacy Act of 1974; Publication of New Notice of System of Records

AGENCY: Office of the Secretary, Department of Labor.

ACTION: Notice; publication of New System of Records.

SUMMARY: This notice provides publication of a new Department of Labor System of Records.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 12, 2019.

ADDRESSES: You may submit comments to Steven Pierce, Records Officer, Wage and Hour Division, Department of Labor, 200 Constitution Avenue NW, Room S–3510, Washington, DC 20210 or at *pierce.steven@dol.gov. Instructions:* Please submit one copy of your comments by the date listed in the **DATES** section by only one method. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically or by mail early. Comments, including any personal information provided, become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Steven Pierce, Records Officer, Wage and Hour Division, Department of Labor, 200 Constitution Avenue NW, Room S–3510, Washington, DC 20210. Telephone (202) 693–1217, or by email

to *pierce.steven@dol.gov.* Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), The Department of Labor, Wage and Hour Division (WHD), proposes a new system of record for existing records that through the use of information technology will become individually identifiable. This notice extends only to this new Privacy Act system of record and does not modify any of WHD's last published Privacy Act system notices.

II. Current Action

Pursuant to section three of the Privacy Act of 1974 (5 U.S.C. 552a(e)(4)), the Department hereby publishes this new addition to the WHD System of Records.

A. Proposed New System

The proposed new system is entitled DOL/WHD–11, Certificate Application Processing System. This system contains records related to Employer applicants for 14(c) (29 U.S.C. 214(c)) certificates and their employees' information.

WHD—DOL Wage and Hour Division System of Records DOL/WHD–11

SYSTEM NAME:

14(c) Certificate Application Processing System

SECURITY CLASSIFICATION:

None.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Wage and Hour National Office (NO), Regional Offices (RO), and District Offices (DO). Frances Perkins Building, 200 Constitution Avenue NW, Washington DC 20210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employer applicants for 14(c) certificates and their employees' information will be in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

All data collected on the *WH–226* & *226A* will be in the system. This includes records which contain the names of employers and applicants; their employees' names, primary disabilities, and wage and employment data; employer addresses; employer identification number19892, and, certificate numbers for 14(c) certificates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

—29 U.S.C. 214(c).
—29 CFR 525.7–9, 12–13.

PURPOSE(S):

The system will facilitate the review and decision-making related to the WHD section 14(c) certificate program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None, except for those universal routine uses listed in the General Prefatory Statement to this document.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Files are stored electronically.

RETRIEVABILITY:

Records can be retrieved by any data element collected in the system including employer and employee name.

SAFEGUARDS:

Accessed by authorized personnel only. Computer security safeguards are used for electronically stored data.

RETENTION AND DISPOSAL:

Applications and employer certifications are retained for five (5) years after the final action and then are disposed as per N1–155–11–0003 item 2a.

SYSTEM MANAGER(S) AND ADDRESS:

Administrator, Wage and Hour Division, Frances Perkins Building, 200 Constitution Avenue NW, Washington, DC 20210.

NOTIFICATION PROCEDURE:

Inquiries should be mailed to the System Manager.

RECORD ACCESS PROCEDURE:

A request for access should be mailed to the System Manager.

CONTESTING RECORD PROCEDURE:

A petition for amendment should be addressed to the System Manager.

RECORD SOURCE CATEGORIES:

Records contained in this system include 14(c) employer applications, required documentation, and certificates.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

In accordance with 5 U.S.C. 552a(k)(2), investigatory material in this system of records compiled for law enforcement purposes is exempt from subsections (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f) of 5 U.S.C. 552a provided, however, that if any individual is denied any right, privilege, or benefit that he or she would otherwise be entitled to by Federal law, or for which he or she would otherwise be eligible, as a result of the maintenance of these records, such material shall be provided to the individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

Dated: September 30, 2019.

Bryan Slater,

Assistant Secretary for Administration and Management, Department of Labor.

[FR Doc. 2019–22231 Filed 10–10–19; 8:45 am]

BILLING CODE 4510–27–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (19–063)]

NASA Advisory Council; STEM Engagement Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration announces a meeting of the Science, Technology, Engineering and Mathematics (STEM) Engagement Committee of the NASA Advisory Council (NAC). This Committee reports to the NAC.

DATES: Tuesday, October 29, 2019, 12:00 noon–4:30 p.m., Eastern Time.

ADDRESSES: Virtual meeting by dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Dr. Beverly Girten, Designated Federal Officer, NAC STEM Engagement Committee, NASA Headquarters, Washington, DC 20546, (202) 358–0212, or *beverly.e.girten@nasa.gov.*

SUPPLEMENTARY INFORMATION: This meeting will be virtual and will be available telephonically and by WebEx only. You must use a touch tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–844–467–6272 or toll

access number 1–720–259–6462, and then the numeric participant passcode: 423307 followed by the # sign. To join via WebEx, the link is: *https://nasaenterprise.webex.com/* and the meeting number is 909 555 674 and the password is NACStem#29 (Password is case sensitive.) NOTE: If dialing in, please ''mute'' your telephone. The agenda for the meeting will include the following:

—Opening Remarks by Chair
—STEM Engagement Update
—National STEM Activities
—Report on Sparking Interest in STEM
—Findings and Recommendations to the NASA Advisory Council
—Other Related Topics

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2019–22232 Filed 10–10–19; 8:45 am]

BILLING CODE 7510–13–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–025; NRC–2008–0252]

Southern Nuclear Operating Company, Inc.; Vogtle Electric Generating Plant, Unit 3; Background Check Process for Participation in ITAAC Proceeding

AGENCY: Nuclear Regulatory Commission.

ACTION: Opportunity to initiate background check for access to safeguards information; public meeting.

SUMMARY: In approximately 4 to 7 months, the U.S. Nuclear Regulatory Commission (NRC) will publish in the **Federal Register** a notice of intended operation, which will allow the public to submit requests for hearing regarding the licensee's conformance with the acceptance criteria in the combined license (COL) for Vogtle Electric Generating Plant (VEGP) Unit 3. These acceptance criteria are part of the inspections, tests, analyses, and acceptance criteria (ITAAC) included in the COL. If a member of the public believes access to Safeguards Information (SGI) is necessary to file a hearing request, then members of the public must satisfy several standards, including a determination by the NRC that they are ''trustworthy and reliable.'' Because the background checks used to support trustworthiness and reliability determinations take some time to complete, the NRC is providing this ''pre-clearance'' process, by which members of the public may initiate background checks to be completed by an investigative agency well before the hearing process begins. Also, the NRC will hold a public information meeting on the ITAAC hearing process.

DATES: This pre-clearance process is available until publication in the **Federal Register** of the notice of intended operation for VEGP Unit 3. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 3.

A public information meeting on the ITAAC hearing process will be held on October 30, 2019, at 6:00 p.m. at Augusta Technical College, Waynesboro, Georgia. The NRC will provide background information on the ITAAC hearing process and answer questions on it.

ADDRESSES: Please refer to Docket ID NRC–2008–0252 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2008–0252. Address questions about NRC docket IDs in *Regulations.gov* to Anne Frost; telephone: 301–287–9232; email: *Anne.Frost@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Refer to Section II of this document for instructions on how to submit the request for a background check.

FOR FURTHER INFORMATION CONTACT: Chandu Patel, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–3025, email: *Chandu.Patel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC hereby gives notice that members of the public who believe they may need access to SGI to file a hearing request in the upcoming ITAAC proceeding for VEGP Unit 3 may initiate background checks for access to SGI before the proceeding begins. This notice describes how the required background check forms may be obtained and how the required forms and fee must be submitted. Requests to initiate background checks under this notice may be made until publication in the **Federal Register** of the notice of intended operation for VEGP Unit 3. When the notice of intended operation is published, it will govern access to SGI for the proceeding on VEGP Unit 3.

A. Requirements for Access to SGI

Safeguards Information is a special category of sensitive unclassified information defined in section 73.2 of title 10 of the *Code of Federal Regulations* (10 CFR) and protected from unauthorized disclosure under Section 147 of the Atomic Energy Act of 1954, as amended (AEA). Although SGI is unclassified information, it is handled and protected more like Classified National Security Information than like other sensitive unclassified information (*e.g.,* privacy and proprietary information). Requirements for access to SGI and requirements for SGI handling, storage, and processing are in 10 CFR part 73.

To obtain access to SGI in an adjudicatory context, persons must (1) demonstrate a ''need to know'' for the SGI, (2) be deemed ''trustworthy and reliable,'' and (3) demonstrate a likelihood of establishing standing. As relevant to adjudications, ''need to know'' is defined in 10 CFR 73.2 as a determination by the originator of the SGI that the SGI is necessary to enable the proposed recipient to proffer and/or adjudicate a specific contention in that proceeding, and the proposed recipient of the specific SGI possesses demonstrable knowledge, skill, training, or education to effectively utilize the specific SGI in the proceeding. ''Trustworthiness and reliability'' is defined in 10 CFR 73.2 as the characteristics of an individual considered dependable in judgment, character, and performance, such that disclosure of SGI to that individual does not constitute an unreasonable risk to the public health and safety or common defense and security. A determination of trustworthiness and reliability for this purpose is based upon a background check. The standing requirements are in 10 CFR 2.309.

B. Information on ITAAC Closure Process and Associated Hearing Opportunity

Southern Nuclear Operating Company, Inc., was issued a COL for VEGP Unit 3 on February 10, 2012. Appendix C of the COL includes the ITAAC for VEGP Unit 3. The ITAAC establish the means to verify whether the facility has been constructed and will be operated in conformance with the license, the AEA, and NRC rules and regulations. Section 185b of the AEA requires the Commission to ensure that the prescribed inspections, tests, and analyses are performed and to find, prior to operation of the facility, that the prescribed acceptance criteria are met. This AEA requirement is also set forth in 10 CFR 52.103(g), which expressly provides that operation of the facility may not begin unless and until the NRC finds that the acceptance criteria for all ITAAC are met. Once the 10 CFR 52.103(g) finding is made, the licensee may proceed to the operational phase, which begins with initial fuel load.

The NRC's finding on whether the acceptance criteria are met will be based on the licensee's submission of ITAAC notifications required by 10 CFR 52.99(c) and on the results of NRC inspections. Supporting documents pertaining to ITAAC closure for VEGP Unit 3 are available electronically at *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html.* These supporting documents include an ITAAC status report (*https://www.nrc.gov/reactors/new-reactors/new-licensing-files/vog3-icnsr.pdf*), which provides links to (1) the licensee's ITAAC notifications submitted under 10 CFR 52.99(c); (2) NRC construction inspection reports; (3) Verification Evaluation Forms, which document the NRC staff's review of ITAAC closure notifications submitted under 10 CFR 52.99(c)(1) and ITAAC post-closure notifications submitted under 10 CFR 52.99(c)(2); and (4) uncompleted ITAAC Notification Checklists, which document the NRC staff's review of uncompleted ITAAC notifications submitted under 10 CFR 52.99(c)(3).[1] In addition, vendor inspection reports for new reactors, some of which relate to VEGP Unit 3, are available at *https://www.nrc.gov/reactors/new-reactors/oversight/quality-assurance/vendor-insp/insp-reports.html.* The NRC staff determinations made in items (3) and (4) are interim determinations that do not become final unless and until the NRC makes the 10 CFR 52.103(g) finding at the end of construction that all acceptance criteria are met. The NRC staff will periodically update these sources of information to reflect the submission of additional licensee ITAAC notifications and future NRC inspection reports and review documents.

In addition, to provide additional background information to members of the public, *https://www.nrc.gov/reactors/new-reactors/col-holder/vog3.html* includes links to other supporting documents, such as the COL (which includes the ITAAC); the updated final safety analysis report (UFSAR) for the facility; licensee reports on departures from the UFSAR; NRC-issued licensing actions for the facility; the NRC's final safety evaluation report for the COL application review; information on the AP1000 design certification, which the facility references; and information on processes related to ITAAC. Finally, to search for documents in ADAMS using the VEGP Unit 3 docket number 52–025, one should enter the term ''05200025'' in the ''Docket Number'' field when using the web-based search (advanced search) engine in ADAMS.

As required by Section 189a.(1)(B)(i) of the AEA and 10 CFR 52.103(a), the NRC must publish in the **Federal Register** a notice of intended operation at least 180 days before scheduled initial fuel load. This notice shall provide 60 days for any person whose interest may be affected by operation of the plant to request that the Commission hold a hearing on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the COL. For a hearing request in an ITAAC proceeding to be granted, the petitioner must show standing as required by 10 CFR 2.309 and must submit a contention meeting the standards of 10 CFR 2.309(f)(1)(i) through (v) and (vii).[2] In accordance with Section 189a.(1)(B)(ii) of the AEA, the contention standards include the requirement that the petitioner show, *prima facie,* that one or more of the acceptance criteria in the COL have not been, or will not be, met and that the specific operational consequences of nonconformance would be contrary to providing reasonable assurance of adequate protection of the public health and safety. Section 189a.(1)(B)(v) of the AEA requires the NRC, to the maximum possible extent, to render a decision on the issues raised by the hearing request within 180 days of the notice of intended operation or by scheduled initial fuel load, whichever is later.

The Commission published detailed generic procedures for the ITAAC hearing process in ''Final Procedures for Conducting Hearings on Conformance with the Acceptance Criteria in Combined Licenses'' (ITAAC Hearing Procedures) (81 FR 43266; July 1, 2016). The Commission intends to use these generic procedures (with appropriate modifications) in case-specific orders that will govern ITAAC proceedings. The ITAAC Hearing Procedures differ from 10 CFR part 2 in a number of ways, primarily because of the need to meet the statutory goal for timely completing the hearing. To meet this goal, the ITAAC hearing process will be conducted on a much shorter schedule than is used for other NRC hearings. Therefore, the NRC encourages interested members of the public to study the ITAAC Hearing Procedures and commence their hearing preparations well before publication of the notice of intended operation for VEGP Unit 3.

The notice of intended operation must be published at least 180 days prior to scheduled fuel load, but the NRC announced its intention in the ITAAC Hearing Procedures to publish the notice of intended operation between 210 and 285 days before scheduled fuel load.[3] Based on current projections, the NRC anticipates publishing the notice of intended operation for VEGP Unit 3 in approximately 4 to 7 months. This anticipated publication window is based on the licensee's schedule for constructing the facility and submitting ITAAC notifications required by 10 CFR 52.99(c). The notice of intended operation may be published outside this window if the licensee's schedule changes.

C. Access to SGI in ITAAC Hearings

Given the range of matters covered by the ITAAC, the NRC believes that petitioners may deem it necessary to obtain access to SGI for the purpose of submitting an admissible contention. Therefore, as discussed in the ITAAC

[1] The NRC staff is not required to review the licensee's uncompleted ITAAC notifications but may do so if the licensee provides them far enough in advance so that staff review of these notifications contribute to the ITAAC closure process. The staff's review of an uncompleted ITAAC notification focuses on the ITAAC completion methodology described in the notification.

[2] The requirements of 10 CFR 2.309(f)(1)(vi) do not apply to ITAAC proceedings.

[3] The NRC intends to publish the notice of intended operation 210 days before scheduled fuel load if the licensee submits its uncompleted ITAAC notifications 225 days before scheduled fuel load as required by 10 CFR 52.99(c)(2). However, if the licensee submits its uncompleted ITAAC notifications earlier than required and meets certain other prerequisites, the NRC intends to publish the notice of intended operation at a correspondingly earlier time, but not prior to 285 days before scheduled fuel load.

Hearing Procedures, the notice of intended operation will set forth procedures providing such petitioners the opportunity to demonstrate they meet the requirements for access to SGI in the ITAAC hearing context. These requirements include a demonstration of ''need to know,'' a determination of ''trustworthiness and reliability,'' and a demonstration of likelihood to establish standing. If access is granted, non-disclosure agreements/affidavits will need to be executed before access is provided. Also, handling, storage, and processing of SGI must satisfy the requirements of 10 CFR part 73.

The background check used to support trustworthiness and reliability determinations can take some time, and delay could occur if persons seeking access to SGI are not already cleared for access and do not seek clearance until the notice of intended operation is published.[4] To avoid delays in an already-abbreviated hearing schedule, the NRC is providing this pre-clearance process, by which members of the public may initiate background checks well before the hearing process begins. The other requirements for access to SGI (*i.e.,* need to know and likelihood of standing) would be addressed in a request for access to SGI submitted after the notice of intended operation is published. Access to SGI will only be provided if all requirements are satisfied.

There is no guarantee that early initiation of the background check will be of practical use to a petitioner. For example, the petitioner might not satisfy the other requirements for access to SGI. Consequently, it is the petitioner's choice whether to pursue the pre-clearance process. The costs for initiating the background check are not refundable, even if the background check is of no practical use to a petitioner (*e.g.,* an adverse determination is made on the background check, or the petitioner fails to satisfy other requirements for access such as need to know). Nevertheless, while use of the pre-clearance process is voluntary, the ITAAC Hearing Procedures (81 FR 43282) state:

[T]he NRC will not delay its actions in completing the hearing or making the 10 CFR 52.103(g) finding because of delays from background checks for persons seeking access to SGI. In other words, members of the public will have to take the proceeding as they find it once they ultimately obtain access to SGI for contention formulation. The pre-clearance process is designed to prevent the SGI background-check process from becoming a barrier to timely public participation in the hearing process. As stated in Attachment 1 to the SUNSI–SGI Access Procedures (p. 11), ''given the strict timelines for submission of and rulings on the admissibility of contentions (including security-related contentions) . . . potential parties should not expect additional flexibility in those established time periods if they decide not to exercise the pre-clearance option.''

II. Pre-Clearance Process

The pre-clearance process in this notice is based on the pre-clearance process in the ''Procedures to Allow Potential Intervenors to Gain Access to Relevant Records that Contain Sensitive Unclassified Non-Safeguards Information or Safeguards Information,'' dated February 29, 2008 (ADAMS Accession No. ML080380626), as modified and supplemented by provisions in the ITAAC Hearing Procedures and the final rule, ''Protection of Safeguards Information'' (73 FR 63546; October 24, 2008).

A. Any potential party[5] who believes access to SGI may be necessary to formulate contentions for the upcoming ITAAC proceeding for VEGP Unit 3 may request initiation of a pre-clearance background check. Requestors should submit these requests within 20 days of publication of this pre-clearance notice. Requests may be initiated after 20 days, but a delay in submitting the request will lead to a corresponding delay in NRC action on the request. Requests for a pre-clearance background check may be made until the notice of intended operation is published for VEGP Unit 3. Once published, the notice of intended operation will govern access to SGI.

B. To request initiation of the background check to be conducted by an investigative agency, the requestor must submit a background check request letter, two forms, and the fee for the background check, as discussed in Section II.C of this notice.

(1) To initiate the background check, Form FD–258 (fingerprint card) and Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' must be completed and submitted. The requestor should contact the NRC's Office of Administration at (301) 415–3710 to request a package containing the Form FD–258 and to obtain access to Form SF–85. To obtain access to Form SF–85, each individual for whom a background check is being requested will be asked to provide the individual's full legal name, social security number, date and place of birth, telephone number, and email address.[6] Instructions for completing these two forms will be provided directly to the individual for whom the background check is being requested. Form FD–258 and the fee must be delivered to the following address:

U.S. Nuclear Regulatory Commission, Office of Administration, Personnel Security Branch, ATTN: Pre-Clearance SGI Background Check Materials for ITAAC Proceeding, Mail Stop TWFN 07–D04M, 11555 Rockville Pike, Rockville, MD 20852.

(2) The requestor must submit a background check request letter to the Office of the Secretary, U.S. Nuclear Regulatory Commission, and provide a copy to the Deputy General Counsel for Hearings and Administration, Office of the General Counsel. Email submission is preferred. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively. The U.S. mail address for both offices is: U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852.

C. Forms, Fee, and Background Check Request Letter

(1) Required Forms: The requestor must submit the following forms:

(a) A completed Form FD–258 (fingerprint card), signed in original ink, and submitted in accordance with 10 CFR 73.57(d) for each individual for whom a background check is being requested. Copies of Form FD–258 will be provided in the background check request package supplied by the Office of Administration for each individual for whom a background check is being requested. The fingerprint card will be used to satisfy the requirements of 10 CFR part 2, 10 CFR 73.22(b)(1), and AEA Section 149, which mandates that all persons with access to SGI must be fingerprinted for a Federal Bureau of

[4] Our most recent information indicates that the average time to perform a background check that supports the NRC's trustworthiness and reliability determinations for access to SGI is 87 days. This average time is subject to change and should not be relied upon. The time needed for any particular background investigation may be more or less than the average time because of the subject's personal history or the investigating agency's work load. Also, some additional time beyond that taken by the investigating agency will be needed for the NRC's Office of Administration to make a decision based on the information it has received.

[5] A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention in accordance with the instructions in the notice of intended operation.

[6] After providing this information, the individual usually should be able to obtain access to the online Form SF–85 within two business days.

Investigation identification and criminal history records check;

(b) A completed Form SF–85, ''Questionnaire for Non-Sensitive Positions'' for each individual for whom a background check is being requested. The completed Form SF–85 will be used to conduct the background check required for access to SGI, as required by 10 CFR part 2, subpart C, and 10 CFR 73.22(b)(2), to determine the individual's trustworthiness and reliability. For security reasons, Form SF–85 is completed electronically through a secure website that is owned and operated by the investigative agency.

(2) A check or money order payable in the amount of $340.00 to the U.S. Nuclear Regulatory Commission for each individual for whom a background check is being requested.

(3) Background Check Request Letter: The background check request letter must:

(a) Request initiation of a background check for the purpose of determining trustworthiness and reliability for access to SGI that may be relevant to the upcoming ITAAC proceeding for VEGP Unit 3.

(b) Provide the name and address of the potential party and a description of the potential party's particularized interest that could be harmed by a finding by the NRC that the acceptance criteria in the COL are met.[7]

(c) Identify each individual for whom access to SGI will be requested, including the identity of any expert, consultant, or assistant who will aid the petitioner in evaluating the SGI.

(d) If the requestor or any individual for whom access to SGI will be requested believes they belong to one or more of the categories of individuals that are exempt from the criminal history records check and background check requirements in 10 CFR 73.59, the requestor should provide a statement identifying which exemption the person is invoking and explaining the person's basis for believing that the exemption applies. While processing the request, the Office of Administration will make a final determination on whether the claimed exemption applies. Alternatively, the requestor may contact the Office of Administration for an evaluation of the person's exemption status prior to submission of the background check request. Persons who are exempt from the background check are not required to submit the forms and fee described in Sections II.C.(1) and II.C.(2) of this notice; however, all other requirements for access to SGI, including need to know, still apply.

(e) State that the completed forms and fee described in Sections II.C.(1) and II.C.(2) of this notice have been submitted for each individual for whom access to SGI will be requested (except for those exempted by 10 CFR 73.59).

(4) To avoid delays in processing background check requests, the requestor should review all submitted materials for completeness and accuracy (including legibility) before submitting them to the NRC. The NRC will return incomplete packages to the sender without processing.

D. Results of Background Check

(1) If the background check results in a favorable trustworthiness and reliability determination, the NRC staff will so notify the requestor. In its discretion, the responsible NRC staff may proceed at that time with an inspection of the requestor's information protection system to confirm it is sufficient to protect SGI from inadvertent release or disclosure.[8] Once the notice of intended operation is published, an associated request for access to specified SGI will still need to address the other requirements for access, in accordance with the requirements in the notice of intended operation.

(2) If the background check results in an adverse trustworthiness and reliability determination, the NRC staff will so notify the requestor with a brief statement of the reasons for denial.

(a) Before the Office of Administration makes a final adverse determination, the individual against whom the adverse determination has been made must be provided an opportunity to correct or explain information. Specifically, the Office of Administration will (i) provide to the individual any records, including those required to be provided under 10 CFR 73.57(e)(1), that were considered in the trustworthiness and reliability determination; and (ii) resolve any challenge by the individual to the completeness or accuracy of these records. The individual may make this challenge by submitting information and/or an explanation to the Office of Administration within 10 days of the distribution of the records described previously.

(b) The requestor may challenge a final adverse determination by submitting a request for review of the adverse determination to the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel in accordance with 10 CFR 2.336(f)(1)(iv) and by the method described in the final adverse determination. Because a final adverse determination is sufficient grounds for denying a subsequent request for SGI access submitted after the notice of intended operation is published, the requestor should not wait until a subsequent denial to appeal the adverse trustworthiness and reliability determination.

(3) If the notice of intended operation is published while the background check is in progress or while an appeal of an adverse determination is pending, the petitioner should still submit the other components of its request for access consistent with the requirements set forth in the notice of intended operation. Those elements of the access determination will be handled in accordance with the procedures and timelines in the notice of intended operation. The petitioner's submission of its request need not repeat the information already submitted specifically for the background check—it may simply reference the pre-clearance background check request—but it must provide all other information requested in the notice of intended operation.[9] To avoid confusion, however, the submission should identify the petitioner's contact information, the agency action, and the notice of intended operation.

III. Public Meeting

The NRC will hold a public information meeting on the ITAAC hearing process on October 30, 2019 at 6:00 p.m. at Augusta Technical College, Waynesboro, Georgia. At the meeting, the NRC will provide background information on the ITAAC hearing process and answer questions on it. The notice for this public meeting will be made available electronically in

[7] The NRC staff will review this statement of interest for the limited purpose of determining whether to initiate the requested background check. The NRC staff will review the statement of interest only to confirm that there is some description of why the potential party's interest could be affected. A positive determination by the NRC staff is not a conclusion that the potential party has met the requirements for standing under 10 CFR 2.309.

[8] The requestor may wish to defer this inspection to a later time, but if the NRC staff decides that an inspection is necessary to confirm that the requestor's information protection system is sufficient, this inspection must be conducted before SGI is provided to the requestor. However, the requestor may opt to view SGI at an approved SGI storage location rather than establish its own SGI protection program to meet SGI protection requirements.

[9] If a background check has been initiated using the pre-clearance process and the NRC staff has made a final adverse determination, the requestor should timely appeal that determination if it intends to pursue its request for access; the staff will rely on that determination and will not initiate a second background check if the requestor submits the complete access request described in the notice of intended operation.

ADAMS and posted on the NRC's Public Meeting Schedule website at *https://www.nrc.gov/pmns/mtg.* The agenda for the public meeting will be noticed no fewer than 10 days prior to the meeting on the Public Meeting Schedule website. Any meeting updates or changes will be made available on this website. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been cancelled or rescheduled, and the time allotted for public questions can be obtained from the Public Meeting Schedule website.

Dated at Rockville, Maryland, this 8th day of October, 2019.

For the Nuclear Regulatory Commission.

Victor E. Hall,

Chief, Construction Inspection Program Branch, Division of Licensing, Siting, and Environmental Analysis, Office of New Reactors.

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–302 and 72–1035; NRC–2019–0184]

Crystal River Unit 3 Nuclear Generating Plant; Duke Energy Florida, LLC; Consideration of Approval of Transfer of License and Conforming Amendment

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for direct transfer of license; opportunity to comment, request a hearing, and petition for leave to intervene.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of an application filed by the Duke Energy Florida, LLC (DEF), on behalf of itself and ADP [Accelerated Decommissioning Partners] CR3, LLC (ADP CR3) (together the Applicants), on June 14, 2019. The application seeks NRC approval of the direct transfer of Facility Operating License No. DPR–72 for Crystal River Unit 3 Nuclear Generating Plant (CR–3) and the general license for the CR–3 Independent Spent Fuel Storage Installation (ISFSI), from the current holder, DEF, to ADP CR3 which is a wholly owned subsidiary of ADP, LLC. The NRC is also considering amending the facility operating licenses for administrative purposes to reflect the proposed transfer. The application contains sensitive unclassified non-safeguards information (SUNSI).

DATES: Comments must be filed by November 12, 2019. A request for a hearing must be filed by October 31, 2019.

Any potential party as defined in § 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to this notice must follow the instructions in Section VI of the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: You may submit comments by any of the following method:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0184. Address questions about NRC docket IDs in *Regulations.gov* to Anne Frost; telephone: 301–287–9232; email: *Anne.Frost@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Hearing.Docket@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: John Hickman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3017, email: *John.Hickman@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0184 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0184.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2019–0184 in your comment submission. The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov/* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Introduction

The NRC is considering the issuance of an order under sections 50.80 and 72.50 of title 10 of the *Code of Federal Regulations* (10 CFR) approving the direct transfer of control of Facility Operating License No. DPR–72 for CR–3 and the general license for the CR–3 ISFSI, currently held by DEF. The transfer would be to ADP CR–3. The NRC is also considering amending the facility operating licenses for administrative purposes to reflect the proposed transfer. The application now being considered is dated June 14, 2019,

and was filed by the Applicants (ADAMS Package Accession No. ML19170A209).

Following approval of the proposed direct transfer of control of the licenses, ADP CR–3 would be the licensed operator for decommissioning of CR–3 and the CR–3 generally licensed ISFSI. DEF will retain licensed ownership of CR–3. ADP SF1, LLC (ADP SF1) will acquire the CR–3 ISFSI and its associated equipment, and title to the CR–3 spent nuclear fuel, the high-level waste, and the greater than Class C waste at the CR–3 facility. ADP SF1 will own, but not possess, the ISFSI and its associated equipment, the spent fuel and waste pursuant to the general license provided in 10 CFR 72.6(b). ADP CR3 will possess the ISFSI and its associated equipment, the spent fuel and waste under the part 50 license and the part 72 general license.

The application for transfer does not propose any physical or operational changes to the CR–3 facility.

The NRC's regulations at 10 CFR 50.80 state that no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the direct transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

Before issuance of the proposed conforming license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

As provided in 10 CFR 2.1315, unless otherwise determined by the Commission with regard to a specific application, the Commission has determined that any amendment to the license of a utilization facility or to the license of an Independent Spent Fuel Storage Installation, which does no more than conform the license to reflect the transfer action, involves no significant hazards consideration. No contrary determination has been made with respect to this specific license amendment application. In light of the generic determination reflected in 10 CFR 2.1315, no public comments with respect to significant hazards considerations are being solicited, notwithstanding the general comment procedures contained in 10 CFR 50.91.

III. Opportunity To Comment

Within 30 days from the date of publication of this notice, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted as described in the **ADDRESSES** section of this document.

IV. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 20 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* Alternatively, a copy of the regulations is available at the NRC's Public Document Room, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (First Floor), Rockville, Maryland 20852. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 20 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 20 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

V. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located at the bottom of the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail at of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

For further details with respect to this application, see the application dated

June 14, 2019, (ADAMS Package Accession No. ML19170A209).

VI. Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Any person who desires access to proprietary, confidential commercial information that has been redacted from the application should contact the applicant by telephoning Tracey LeRoy, Duke Energy, at (704) 382–8317 for the purpose of negotiating a confidentiality agreement or a proposed protective order with the applicant. If no agreement can be reached, persons who desire access to this information may file a motion with the Secretary and addressed to the Commission that requests the issuance of a protective order.

Dated at Rockville, Maryland this 8th day of October, 2019.

For the Nuclear Regulatory Commission.

Bruce A. Watson,

Chief, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87243; File No. SR–CboeBZX–2019–084]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Listing and Trading of Shares of the FT Cboe Vest U.S. Equity Buffer ETFs and the FT Cboe Vest U.S. Equity Deep Buffer ETFs Under the First Trust Exchange-Traded Fund VIII

October 7, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 23, 2019, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposed rule change to list and trade shares of the FT Cboe Vest U.S. Equity Buffer ETFs and the FT Cboe Vest U.S. Equity Deep Buffer ETFs under the First Trust Exchange-Traded Fund VIII (the ''Trust''), under Rule 14.11(i) (''Managed Fund Shares'').

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of up to twelve monthly FT Cboe Vest U.S. Equity Buffer ETFs (collectively, the ''Buffer Funds'') and FT Cboe Vest U.S. Equity Deep Buffer ETFs (collectively, the ''Deep Buffer Funds'') (each a ''Fund'' and, collectively, the ''Funds'') under Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange.[5] Each Fund will be actively managed. The Exchange submits this proposal in order to allow each Fund to hold listed derivatives in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b), as further described below. The Exchange notes that this proposal and the statements or representations herein regarding the limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, and the applicability of Exchange listing rules are substantively identical to those statements and representations included in a proposal previously approved by the Commission[6] and the descriptions of the portfolio or reference assets are substantially similar to those included in the Original Approval and do not raise any new issues that the Commission has not previously contemplated. The only other notable differences between this proposal and the Original Approval, which the Exchange believes are non-substantive, are that: (i) The Original Approval approved the listing and trading of three series of monthly funds, while this proposal only proposes to list and trade two series of monthly funds; (ii) the Deep Buffer Funds will provide a buffer against SPY losses between 5% and 30% as compared to between 5% and 35% against S&P 500 Index losses in the Original Approval; and (iii) the investment objective of the Funds is based on the returns (before fees, expenses, and taxes) of SPY as compared to the S&P 500 Index in the Original Approval.

The Shares will be offered by the Trust, which was organized as a Massachusetts business trust on February 22, 2016. The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A (''Registration Statement'') with the Commission on behalf of the August and November Funds.[7] Each Fund

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission originally approved BZX Rule 14.11(i) in Securities Exchange Act Release No. 65225 (August 30, 2011), 76 FR 55148 (September 6, 2011) (SR–BATS–2011–018) and subsequently approved generic listing standards for Managed Fund Shares under Rule 14.11(i) in Securities Exchange Act Release No. 78396 (July 22, 2016), 81 FR 49698 (July 28, 2016) (SR–BATS–2015–100).

[6] *See* Securities Exchange Act Release No. 83679 (July 20, 2018), 83 FR 35505 (July 26, 2018) (SR–BatsBZX–2017–72) (the ''Original Approval''). The only substantive difference between this proposal and the Original Approval is that this proposal would allow the Funds to hold FLexible EXchange Options (''FLEX Options'') on the SPDR S&P 500 ETF Trust (''SPY'') in addition to FLEX Options on the S&P 500 Price Return Index (the ''S&P 500 Index''), while the Original Approval only allowed for FLEX Options on the S&P 500 Index.

[7] *See* Registration Statement on Form N–1A for the Trust (File Nos. 333–210186 and 811–23147). The descriptions of the Funds and the Shares contained herein are based on information in the Registration Statement. There are no permissible holdings for the Funds that are not described in this proposal. The Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') (the ''Exemptive Order''). *See* Investment Company Act Release No. 28468 (October 27, 2008) (File No. 812–13477).

intends to qualify each year as a regulated investment company (a ''RIC'') under Subchapter M of the Internal Revenue Code of 1986, as amended.[8] First Trust Advisors L.P. (the ''Adviser'') is the investment adviser to the Funds. Cboe Vest Financial LLC is the sub-adviser (the ''Sub-Adviser'') to the Funds. Rule 14.11(i)(7) provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[9] In addition, Rule 14.11(i)(7) further requires that personnel who make decisions on the investment company's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable investment company portfolio. Neither the Adviser nor the Sub-Adviser is a registered broker-dealer, but both are currently affiliated with the same broker-dealer and have implemented and will maintain ''fire walls'' with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a Fund's portfolio. In addition, Adviser and Sub-Adviser personnel who make decisions regarding a Fund's portfolio are subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund's portfolio. In the event that (a) the Adviser or Sub-Adviser becomes registered as a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with a broker-dealer, it will implement and maintain a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

The investment objective of the Funds is to provide investors with returns (before fees, expenses, and taxes) that match those of SPY over a period of approximately one year, while providing a level of protection from SPY losses. The Funds are each actively managed funds that employ a ''target outcome strategy'' that:

(1) For the Buffer Funds, seeks to provide investors with returns (before fees, expenses, and taxes) that match those of SPY, up to a pre-determined upside cap (as specified both (i) before fees, expenses, and taxes, and (ii) after fees and expenses) (the ''Buffer Cap Level''), while providing a buffer against the first 10% (before fees, expenses, and taxes) of SPY losses (the ''Buffer Strategy'');

(2) for the Deep Buffer Funds, seeks to provide investors with returns (before fees, expenses, and taxes) that match those of SPY, up to a pre-determined upside cap (as specified both (i) before fees, expenses, and taxes, and (ii) after fees and expenses) (the ''Deep Buffer Cap Level''), while providing a buffer against SPY losses between 5% and 30% (before fees, expenses, and taxes) (the ''Deep Buffer Strategy'' and, collectively with the Buffer Strategy, the ''Strategies'').

Pursuant to the Strategies, each Fund will invest primarily in exchange-traded options contracts that reference either the S&P 500 Index or ETFs[10] that track the S&P 500 Index. Target outcome strategies are designed to participate in market gains and losses within pre-determined ranges over a specified period (*i.e.* point to point). These outcomes are predicated on the assumption that an investment vehicle employing the strategy is held for the designated outcome periods. As such, the Exchange is proposing to list up to twelve monthly series of each of the Buffer Funds and Deep Buffer Funds, as named above.

The Exchange submits this proposal in order to allow each Fund to hold listed derivatives, in particular FLEX Options on SPY and/or FLEX Options on the S&P 500 Index (collectively, ''S&P 500 FLEX Options''), in a manner that does not comply with Rule 14.11(i)(4)(C)(iv)(b).[11] Otherwise, the Funds will meet all other listing requirements of the Generic Listing Standards[12] for Managed Fund Shares on an initial and continued listing basis under Rule 14.11(i).

FT Cboe Vest U.S. Equity Buffer ETFs

Under Normal Market Conditions,[13] each Buffer Fund will attempt to achieve its investment objective by employing a ''target outcome strategy'' that will seek to provide investment returns (before fees, expenses, and taxes) during the outcome period that

[8] 26 U.S.C. 851.

[9] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[10] For purposes of this proposal, the term ETF means Portfolio Depositary Receipts, Index Fund Shares, and Managed Fund Shares as defined in Rule 14.11(b), (c), and (i), respectively, and their equivalents on other national securities exchanges.

[11] Rule 14.11(i)(4)(C)(iv)(b) provides that ''the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).'' The Funds would not meet the generic listing standards because they would fail to meet the requirement of Rule 14.11(i)(4)(C)(iv)(b) that prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the requirement that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures).

[12] For purposes of this proposal, the term ''Generic Listing Standards'' shall mean the generic listing rules for Managed Fund Shares under Rule 14.11(i)(4)(C).

[13] As defined in Rule 14.11(i)(3)(E), the term ''Normal Market Conditions'' includes, but is not limited to, the absence of trading halts in the applicable financial markets generally; operational issues causing dissemination of inaccurate market information or system failures; or force majeure type events such as natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. In addition, for each Fund, on a temporary basis, including for defensive purposes, during the initial invest-up period (*i.e.,* the six-week period following the commencement of trading of Shares on the Exchange) and during periods of high cash inflows or outflows (*i.e.,* rolling periods of seven calendar days during which inflows or outflows of cash, in the aggregate, exceed 10% of such Fund's net assets as of the opening of business on the first day of such periods), such Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, a Fund may not be able to achieve its investment objective. A Fund may adopt a defensive strategy when the Adviser and/or the Sub-Adviser believes securities in which such Fund normally invests have elevated risks due to market, political or economic factors and in other extraordinary circumstances.

match the gains of SPY, up to the Buffer Cap Level, while shielding investors from SPY losses of up to 10% (before fees, expenses, and taxes). Pursuant to the Buffer Strategy, each Buffer Fund will invest primarily in S&P 500 FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of S&P 500 FLEX Options that, when held for the specified period, seeks to produce returns (before fees, expenses, and taxes) that, over the outcome period, match the positive returns of SPY up to the Buffer Cap Level. Pursuant to the Buffer Strategy, each Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If SPY appreciates over the outcome period, the combination of FLEX Options held by the Buffer Fund will provide upside participation that is intended to match that of SPY, up to the Buffer Cap Level;
- If SPY decreases over the outcome period, the combination of FLEX Options held by the Buffer Fund will provide a payoff at expiration that is intended to compensate for losses experienced by SPY (if any), in an amount not to exceed 10% before fees, expenses, and taxes;
- If SPY has decreased in value by more than 10%, the Buffer Fund will experience all subsequent losses on a one-to-one basis.

The Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired target outcome parameters. The FLEX Options comprising a Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of SPY. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by a Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Buffer Fund to create the right to buy or sell the same asset such that the Buffer Fund will always be in a net long position. That is, any obligations of a Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. On the FLEX Options expiration date, each Buffer Fund intends to sell the FLEX Options prior to their expiration and use the resulting proceeds to purchase new FLEX Options for the next outcome period. By purchasing new FLEX Options annually, each Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of SPY up to pre-determined levels in that same month of the following year. The Buffer Funds do not offer any protection against declines in SPY exceeding 10% on an annualized basis. Shareholders will bear all SPY losses exceeding 10% on a one-to-one basis.

The FLEX Options owned by each of the Buffer Funds will have the same terms (*i.e.* same strike price and expiration) for all investors of a Buffer Fund within an outcome period. The Buffer Cap Level will be determined with respect to each Buffer Fund on the inception date of the Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Buffer Fund at that time.

FT Cboe Vest U.S. Equity Deep Buffer ETFs

Under Normal Market Conditions, each Deep Buffer Fund will attempt to achieve its investment objective by employing a ''target outcome strategy'' that will seek to provide investment returns (before fees, expenses, and taxes) during the outcome period that match the gains of SPY, up to the Deep Buffer Cap Level, while shielding investors from SPY losses of between 5% and 30% (before fees, expenses, and taxes). Pursuant to the Deep Buffer Strategy, each Deep Buffer Fund will invest primarily in S&P 500 FLEX Options or standardized options contracts listed on a U.S. exchange that reference either the S&P 500 Index or ETFs that track the S&P 500 Index.

The portfolio managers will invest in a portfolio of S&P 500 FLEX Options that, when held for the specified period, seeks to produce returns (before fees, expenses, and taxes) that, over the outcome period, match the returns of SPY up to the Deep Buffer Cap Level. Pursuant to the Deep Buffer Strategy, each Deep Buffer Fund's portfolio managers will seek to produce the following outcomes during the outcome period:

- If SPY appreciates over the outcome period, the combination of FLEX Options held by the Deep Buffer Fund will provide upside participation that is intended to match that of SPY, up to the Deep Buffer Cap Level;
- If SPY decreases over the outcome period by up to 5% or less, the combination of FLEX Options held by the Deep Buffer Fund will provide a payoff at expiration that is intended to match that of SPY up to -5% over the outcome period before fees, expenses, and taxes;
- If SPY decreases over the outcome period by more than 5% but less than or equal to 30%, the combination of FLEX Options held by the Deep Buffer Fund will provide a payoff at expiration that decreases by the percentage decrease of SPY, up to -5% over the outcome period before fees, expenses, and taxes; and
- If SPY has decreased in value by more than 30%, the combination of FLEX Options held by the Deep Buffer Fund will provide a payoff at expiration that is 25% less than the percentage loss on SPY with a maximum loss of approximately 75% over the outcome period before fees, expenses, and taxes.

The Deep Buffer Funds will produce these outcomes by layering purchased and written FLEX Options. The customizable nature of FLEX Options allows for the creation of a strategy that sets desired target outcome parameters. The FLEX Options comprising a Deep Buffer Fund's portfolio have terms that, when layered upon each other, are designed to buffer against losses or match the gains of SPY. However, another effect of the layering of FLEX Options with these terms is a cap on the level of possible gains.

Any FLEX Options that are written by a Deep Buffer Fund that create an obligation to sell or buy an asset will be offset with a position in FLEX Options purchased by the Deep Buffer Fund to create the right to buy or sell the same asset such that the Deep Buffer Fund will always be in a net long position. That is, any obligations of a Deep Buffer Fund created by its writing of FLEX Options will be covered by offsetting positions in other purchased FLEX Options. On the FLEX Options expiration date, each Deep Buffer Fund intends to sell the FLEX Options prior to their expiration and use the resulting proceeds to purchase new FLEX Options for the next outcome period. By purchasing new FLEX Options annually, each Deep Buffer Fund seeks to ensure that investments made in a given month during the current year buffer against negative returns of SPY up to pre-determined levels in that same month of the following year. Other than the 25% protection against declines from 5% to 30%, the Deep Buffer Funds do not offer any protection against declines in SPY exceeding 30% on an annualized basis. Shareholders will bear all SPY losses exceeding 30% on a one-to-one basis.

The FLEX Options owned by each of the Deep Buffer Funds will have the same terms (*i.e.,* same strike price and

expiration) for all investors of a Deep Buffer Fund within an outcome period. The Deep Buffer Cap Level will be determined with respect to each Deep Buffer Fund on the inception date of the Deep Buffer Fund and at the beginning of each outcome period and is determined based on the price of the FLEX Options acquired by the Deep Buffer Fund at that time.

Investment Methodology for the Funds

Under Normal Market Conditions, each Fund will invest substantially all of its assets in U.S. exchange-listed S&P 500 FLEX Options. Each of the Funds may invest its net assets (in the aggregate) in other investments which the Adviser and/or the Sub-Adviser believes will help each Fund to meet its investment objective and that will be disclosed at the end of each trading day (''Other Assets''). Other Assets include only the following: Cash or cash equivalents, as defined in Rule 14.11(i)(4)(C)(iii) [14] and standardized options contracts listed on a U.S. securities exchange that reference either the S&P 500 Index or that reference ETFs that track the S&P 500 Index.

S&P 500 FLEX Options

The market for options contracts on the S&P 500 Index traded on Cboe Exchange, Inc. (''Cboe Options'') is among the most liquid markets in the world. In August 2019, approximately 1.488 million options contracts on the S&P 500 Index were traded per day, which is more than $430 billion in notional volume traded on a daily basis. Similarly, more than 75 million options contracts referencing SPY were traded in August 2019, representing more than $105 billion in notional volume on a daily basis. While FLEX Options are traded differently than standardized options contracts, the Exchange believes that this liquidity bolsters the market for FLEX Options, as described below. Every FLEX Option order submitted to an exchange is exposed to a competitive auction process for price discovery. The process begins with a request for quote (''RFQ'') in which the interested party establishes the terms of the FLEX Options contract. The RFQ solicits interested market participants, including on-floor market makers, remote market makers trading electronically, and member firm traders, to respond to the RFQ with bids or offers through a competitive process. This solicitation contains all of the contract specifications-underlying, size, type of option, expiration date, strike price, exercise style and settlement basis. During a specified amount of time, responses to the RFQ are received and at the end of that time period, the initiator can decide whether to accept the best bid or offer. The process occurs under the rules of the applicable listing exchange which means that customer transactions are effected according to the principles of a fair and orderly market following trading procedures and policies developed by the applicable self-regulatory organization.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and S&P 500 FLEX Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index and SPY results in a well-established price discovery process that provides meaningful guideposts for FLEX Option pricing; and (iv) surveillance by the Exchange, Cboe Options, other U.S. options exchanges, and the Financial Industry Regulatory Authority (''FINRA'') designed to detect violations of the federal securities laws and self-regulatory organization (''SRO'') rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of S&P 500 FLEX Options, will be acquired in extremely liquid and highly regulated markets,[15] the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the related Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the

[14] As defined in Rule 14.11(i)(4)(C)(iii), cash equivalents include short-term instruments with maturities of less than three months, including: (i) U.S. Government securities, including bills, notes, and bonds differing as to maturity and rates of interest, which are either issued or guaranteed by the U.S. Treasury or by U.S. Government agencies or instrumentalities; (ii) certificates of deposit issued against funds deposited in a bank or savings and loan association; (iii) bankers acceptances, which are short-term credit instruments used to finance commercial transactions; (iv) repurchase agreements and reverse repurchase agreements; (v) bank time deposits, which are monies kept on deposit with banks or savings and loan associations for a stated period of time at a fixed rate of interest; (vi) commercial paper, which are short-term unsecured promissory notes; and (vii) money market funds.

[15] All exchange-listed securities that the Funds may hold will trade on a market that is a member of the Intermarket Surveillance Group (''ISG'') and the Funds will not hold any non-exchange-listed equities or options, however, not all of the components of the portfolio for the Funds may trade on exchanges that are members of the ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. For a list of the current members of ISG, see *www.isgportal.org.*

distribution of material, non-public information by its employees.

As noted above, options on the S&P 500 Index and SPY are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The contracts trade in competitive auction markets with price and quote transparency. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, the market cap and liquidity of SPY, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for SPY, S&P 500 Index securities, options on the S&P 500 Index and SPY, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except for the limitations on listed derivatives in BZX Rule 14.11(i)(4)(C)(iv)(b), the Funds' proposed investments will satisfy, on an initial and continued listing basis, all of the generic listing standards under BZX Rule 14.11(i)(4)(C) and all other applicable requirements for Managed Fund Shares under Rule 14.11(i). The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of the Funds. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. In addition, the Exchange represents that the Shares of the Funds will comply with all other requirements applicable to Managed Fund Shares, which includes the dissemination of key information such as the Disclosed Portfolio,[16] Net Asset Value,[17] and the Intraday Indicative Value,[18] suspension of trading or removal,[19] trading halts,[20] surveillance,[21] minimum price variation for quoting and order entry,[22] and the information circular,[23] as set forth in Exchange rules applicable to Managed Fund Shares. Further, all statements or representations regarding the description of the portfolio or reference assets, limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, or the applicability of Exchange listing rules shall constitute continued listing requirements for the Funds. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. Quotation and last sale information for U.S. exchange-listed options contracts cleared by The Options Clearing Corporation will be available via the Options Price Reporting Authority. RFQ information for FLEX Options will be available directly from the applicable options exchange. The intra-day, closing and settlement prices of exchange-traded options will be readily available from the options exchanges, automated quotation systems, published or other public sources, or online information services such as Bloomberg or Reuters. Price information on cash equivalents is available from major broker-dealer firms or market data vendors, as well as from automated quotation systems, published or other public sources, or online information services.

Lastly, the issuer represents that it will provide and maintain a publicly available web tool for each of the Funds on its website that provides existing and prospective shareholders with important information to help inform investment decisions. The information provided includes the start and end dates of the current outcome period, the time remaining in the outcome period, the Fund's current net asset value, the Fund's cap for the outcome period and the maximum investment gain available up to the cap for a shareholder purchasing Shares at the current net asset value. For each of the Funds, the web tool also provides information regarding each Fund's buffer. This information includes the remaining buffer available for a shareholder purchasing Shares at the current net asset value or the amount of losses that a shareholder purchasing Shares at the current net asset value would incur before benefitting from the protection of the buffer. The cover of each Fund's prospectus, as well as the disclosure contained in ''Principal Investment Strategies,'' provides the specific web address for each Fund's web tool.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[24] in general and Section 6(b)(5) of the Act[25] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, because, as noted above, the Shares will meet each of the initial and continued listing criteria in BZX Rule 14.11(i) with the exception of Rule 14.11(i)(4)(C)(iv)(b), which requires that the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets shall not exceed 65% of the weight of the portfolio (including gross notional exposures), and the aggregate gross notional value of listed derivatives based on any single underlying reference asset shall not exceed 30% of the weight of the portfolio (including gross notional exposures).[26] Rule 14.11(i)(4)(C)(iv)(b) is intended to ensure that a fund is not subject to manipulation by virtue of significant exposure to a manipulable underlying reference asset by establishing concentration limits among the underlying reference assets for listed derivatives held by a particular fund.

The Exchange believes that sufficient protections are in place to protect against market manipulation of the Funds' Shares and S&P 500 FLEX Options for several reasons: (i) The diversity, liquidity, and market cap of the securities underlying the S&P 500 Index; (ii) the competitive quoting process for FLEX Options; (iii) the significant liquidity in the market for options on the S&P 500 Index and SPY results in a well-established price discovery process that provides meaningful guideposts for FLEX Option

[16] *See* Rule 14.11(i)(4)(A)(ii) and 14.11(i)(4)(B)(ii).

[17] *See* Rule 14.11(i)(4)(A)(ii).

[18] *See* Rule 14.11(i)(4)(B)(i).

[19] *See* Rule 14.11(i)(4)(B)(iii).

[20] *See* Rule 14.11(i)(4)(B)(iv).

[21] *See* Rule 14.11(i)(2)(C).

[22] *See* Rule 14.11(i)(2)(B).

[23] *See* Rule 14.11(i)(6).

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78f(b)(5).

[26] As noted above, the Exchange is submitting this proposal because the Funds would not meet the requirements of Rule 14.11(i)(4)(C)(iv)(b) which prevents the aggregate gross notional value of listed derivatives based on any single underlying reference asset from exceeding 30% of the weight of the portfolio (including gross notional exposures) and the aggregate gross notional value of listed derivatives based on any five or fewer underlying reference assets from exceeding 65% of the weight of the portfolio (including gross notional exposures).

pricing; and (iv) surveillance by the Exchange, Cboe Options, other U.S. options exchanges, and FINRA designed to detect violations of the federal securities laws and SRO rules. The Exchange has in place a surveillance program for transactions in ETFs to ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the Shares less readily susceptible to manipulation. Further, the Exchange believes that because the assets in each Fund's portfolio, which are comprised primarily of S&P 500 FLEX Options, will be acquired in extremely liquid and highly regulated markets, the Shares are less readily susceptible to manipulation.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares. All statements and representations made in this filing regarding (a) the description of the portfolio, reference assets, and index, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules shall constitute continued listing requirements for listing the Shares on the Exchange. The issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund or the related Shares to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund or the related Shares are not in compliance with the applicable listing requirements, then, with respect to such Fund or Shares, the Exchange will commence delisting procedures under Exchange Rule 14.12. FINRA conducts certain cross-market surveillances on behalf of the Exchange pursuant to a regulatory services agreement. The Exchange is responsible for FINRA's performance under this regulatory services agreement. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures with respect to such Fund under Exchange Rule 14.12.

The Exchange or FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and exchange-traded options contracts with other markets and other entities that are members of the ISG and may obtain trading information regarding trading in the Shares and exchange-traded options contracts from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and exchange-traded options contracts from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees. As noted above, options on the S&P 500 Index and SPY are among the most liquid options in the world and derive their value from the actively traded S&P 500 Index components. The Exchange believes the highly regulated options markets and the broad base and scope of the S&P 500 Index make securities that derive their value from that index less susceptible to market manipulation in view of market capitalization and liquidity of the S&P 500 Index components, the market cap and liquidity of SPY, price and quote transparency, and arbitrage opportunities.

The Exchange believes that the liquidity of the markets for S&P 500 Index securities, SPY, options on the S&P 500 Index and SPY, and other related derivatives is sufficiently great to deter fraudulent or manipulative acts associated with the Funds' Shares price. The Exchange also believes that such liquidity is sufficient to support the creation and redemption mechanism. Coupled with the extensive surveillance programs of the SROs described above, the Exchange does not believe that trading in the Funds' Shares would present manipulation concerns.

The Exchange represents that, except as described above, the Funds will meet and be subject to all other requirements of the Generic Listing Standards and other applicable continued listing requirements for Managed Fund Shares under Rule 14.11(i), including those requirements regarding the Disclosed Portfolio,[27] Intraday Indicative Value,[28] suspension of trading or removal,[29] trading halts,[30] disclosure,[31] and firewalls.[32] The Trust is required to comply with Rule 10A–3 under the Act for the initial and continued listing of the Shares of each Fund. Moreover, all of the options contracts held by the Funds will trade on markets that are a member of ISG or affiliated with a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Finally, this proposal and the statements or representations herein regarding the limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, and the applicability of Exchange listing rules are substantively identical to those statements and representations included in the Original Approval and the descriptions of the portfolio or reference assets are substantially similar to those included in the Original Approval. The only substantive difference between this proposal and the Original Approval is that this proposal would allow the Funds to hold S&P 500 FLEX Options, while the Original Approval only allowed for FLEX Options on the S&P 500 Index.[33] As noted above, there is significant liquidity in the components of the S&P 500 Index, options on the S&P 500 Index, and options on SPY, and, as such, allowing the Funds to hold FLEX Options referencing SPY raises no additional substantive issues for the Commission to review as compared to allowing the comparable funds from the Original Approval to hold FLEX Options referencing the S&P 500 Index. As such, the Exchange believes the proposed rule change will not significantly affect the protection of investors or the public interest because the proposal contains no new issues that the Commission has not previously contemplated.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange

[27] *See* Rule 14.11(i)(4)(B)(ii).

[28] *See* Rule 14.11(i)(4)(B)(i).

[29] *See* Rule 14.11(i)(4)(B)(iii).

[30] *See* Rule 14.11(i)(4)(B)(iv).

[31] *See* Rule 14.11(i)(6).

[32] *See* Rule 14.11(i)(7).

[33] The Exchange also notes that the only other notable differences between this proposal and the Original Approval, which it believes are non-substantive, are that: (i) The Original Approval approved the listing and trading of three series of monthly funds, while this proposal only proposes to list and trade two series of monthly funds; (ii) the Deep Buffer Funds provide a buffer against SPY losses between 5% and 30% as compared to between 5% and 35% against S&P 500 Index losses in the Original Approval; and (iii) the investment objective of the Funds is based on the returns (before fees, expenses, and taxes) of SPY as compared to the S&P 500 Index in the Original Approval.

notes that the proposed rule change will facilitate the listing and trading of an additional type of Managed Fund Shares that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [34] and Rule 19b–4(f)(6) thereunder.[35]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [36] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [37] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange believes that the proposal and its statements and representations regarding the limitations on portfolio holdings or reference assets, dissemination and availability of index, reference asset, and intraday indicative values, and the applicability of Exchange listing rules, as well as the descriptions of the portfolio or reference assets are substantively identical to those statements and representations included in the Original Approval. The Exchange believes that there is significant liquidity in the components of the S&P 500 Index, options on the S&P 500 Index, and options on SPY, and that allowing the Funds to hold FLEX Options referencing SPY raises no additional substantive issues for the Commission to review. Further, the Exchange believes waiver of the operative delay will more quickly facilitate the Adviser's ability to list the product on the Exchange, which will enhance competition among market participants, to the benefit of investors and the marketplace. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[38]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2019–084 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2019–084. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeBZX–2019–084, and should be submitted on or before November 1, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–22253 Filed 10–10–19; 8:45 am]

BILLING CODE 8011–01–P

[34] 15 U.S.C. 78s(b)(3)(A).

[35] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[36] 17 CFR 240.19b–4(f)(6).

[37] 17 CFR 240.19b–4(f)(6)(iii).

[38] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[39] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16151 and #16152; NORTH CAROLINA Disaster Number NC–00112]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Carolina (FEMA–4465–DR), dated 10/04/2019.

Incident: Hurricane Dorian.

Incident Period: 09/01/2019 through 09/09/2019.

DATES: Issued on 10/04/2019.

Physical Loan Application Deadline Date: 12/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/04/2019, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Brunswick, Carteret, Craven, Currituck, Dare, Duplin, Hyde, Jones, New Hanover, Pamlico, Pender, Sampson, Tyrrell, Washington.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 161518 and for economic injury is 161520.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–22278 Filed 10–10–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16149 and #16150; TEXAS Disaster Number TX–00525]

Presidential Declaration of a Major Disaster for the State of Texas

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4466–DR), dated 10/04/2019.

Incident: Tropical Storm Imelda.

Incident Period: 09/17/2019 through 09/23/2019.

DATES: Issued on 10/04/2019.

Physical Loan Application Deadline Date: 12/03/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/06/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 10/04/2019, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Chambers, Harris, Jefferson, Liberty, Montgomery, Orange

Contiguous Counties (Economic Injury Loans Only):

Texas: Brazoria, Fort Bend, Galveston, Grimes, Hardin, Jasper, Newton, Polk, San Jacinto, Walker, Waller.

Louisiana: Calcasieu, Cameron.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.500
Homeowners without Credit Available Elsewhere	1.750
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 161496 and for economic injury is 161500.

(Catalog of Federal Domestic Assistance Number 59008)

James Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2019–22276 Filed 10–10–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Fort Lauderdale-Hollywood International Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by Broward County, Florida, through its Aviation Department (BCAD) for Fort Lauderdale-Hollywood International Airport under the provisions of the Aviation Safety and Noise Abatement Act are in compliance with applicable requirements.

DATES: The effective date of the FAA's determination on the noise exposure maps is October 3, 2019.

FOR FURTHER INFORMATION CONTACT: Felicia Reeves, Federal Aviation Administration, Southern Region/Atlanta Airports District Office, 1701 Columbia Ave, Room 220, College Park, GA 30337, (404) 305–6708.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Fort Lauderdale-Hollywood International Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective October 3, 2019. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (''the Act''), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may

submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Broward County, Florida, through its Aviation Department (BCAD) for Fort Lauderdale-Hollywood International Airport. The documentation that constitutes the ''Noise Exposure Maps'' as defined in 14 CFR 150.7 includes: Map 1 of 5—2018 Noise Exposure Map; Map 2 of 5—2023 Noise Exposure Map; Map 3 of 5—East Flow Fixed-Wing Flight Tracks; Map 4—West Flow Fixed-Wing Flight Track; and Map 5 of 5—Helicopter Flight Tracks; and the Final Noise Exposure Map Report and its appendices. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on October 3, 2019.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the Act. The FAA has relied on the certification by the airport operator, under 14 CFR 150.21, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination by appointment at the following location: Federal Aviation Administration, Orlando Airports District Office, 8427 SouthPark Circle, 5th Floor, Orlando, Florida 32819.

To arrange an appointment to review the Noise Exposure Maps documentation, contact Peter Green, Federal Aviation Administration, Southern Region/Atlanta Airports District Office, 8427 SouthPark Circle, Orlando, FL 32819, (407) 487–7296. Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando Airports District Office, Orlando, FL on October 3, 2019.

Bart Vernace,

Manager, FAA/Orlando Airports District Office.

[FR Doc. 2019–22331 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0228]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Operations Specifications, Part 129 Application

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew a previously approved information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 3, 2019. There were no comments. The FAA assesses the information collected and issues operations specifications to foreign air carriers. These operations specifications assure the foreign air carrier's ability to navigate and communicate safely within the U.S. National Airspace System. The FAA, based on additional data analysis, has amended the number of respondents and burden to include that on an existing operators. An existing operator is any operator who has already received their initial set of operations specifications.

DATES: Written comments should be submitted by November 12, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Danuta Pronczuk by email at: *danuta.pronczuk@faa.gov;* phone: 202–267–0923.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0749.

Title: Operations Specifications, Part 129 Application.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 3, 2019 (84 FR 13095). The final rule published in 2013, clarified and standardized the rules for applications by foreign air carriers and foreign persons for operations specifications issued under 14 CFR part 129 and established standards for amendment, suspension and termination of those operations specifications. The final rule also applied to foreign air carriers and foreign persons operating U.S.-registered aircraft in common carriage solely outside the United States. This

action was necessary to update the process for issuing operations specifications, and it established a regulatory basis for current practices, such as amending, terminating, and suspending operations specifications.

Respondents: Approximately 28 new applicants and 467 existing foreign air carriers and foreign persons annually.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 10 Hours for new applicants. One to ten hours for existing applicants.

Estimated Total Annual Burden: 280 hours for new applicants and 467 to 4670 hours for existing applicants.

Issued in Washington, DC, on October 7, 2019.

Robert C. Carty,

Deputy Executive Director, Flight Standards Service.

[FR Doc. 2019–22330 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Chittenden County, Vermont

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind the 2010 Record of Decision.

SUMMARY: The FHWA is issuing this notice to advise the public that the 2010 Record of Decision issued for the proposed Southern Connector/Champlain Parkway project is being rescinded.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Sikora, Jr., Environmental Program Manager, Federal Highway Administration, 87 State Street, Room 216, Montpelier, Vermont 05602. Telephone: (802) 828–4573.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Vermont Agency of Transportation (VTrans), is rescinding the Record of Decision (ROD) for the Southern Connector/Champlain Parkway project issued on January 13, 2010.

The Notice of Intent to prepare the Supplemental Environmental Impact Statement (SEIS) was published in the **Federal Register** on December 31, 2003. The ROD was issued on January 13, 2010. The FHWA, in conjunction with the Vermont Agency of Transportation (VTrans), has determined that the ROD shall be rescinded for the following reason: Although the 2005 Draft SEIS and the 2009 Final SEIS each considered disproportionately high and adverse impacts on minority and low-income populations in accordance with Executive Order 12898, public outreach for that analysis was limited to the general public involvement associated with the NEPA process. Since the 2010 ROD, FHWA has become aware of new information about project impacts that may bear on the project decision.

In order to the assess the relevance of this new information, FHWA and VTrans have decided to perform targeted public outreach to any minority and low-income populations in the project study area in order to determine whether the conclusions reached in the 2009 Final SEIS and 2010 ROD remain valid. FHWA and VTrans have also determined that the environmental justice analysis and conclusions in the NEPA review should be reassessed using the latest (2010) census data, and based on FHWA's December 16, 2011 Guidance on Environmental Justice and NEPA.

The reassessment of census data and public outreach will be performed as part of a written evaluation of the 2009 Final SEIS. The outcome of the written evaluation will assess all changes to the project as well as its setting in determining project impacts. The identified impacts will be compared to those disclosed in the 2009 FSEIS. FHWA and VTrans will assess whether or not all of the project's environmental impacts were adequately considered, and if any of the impacts may rise to the level of significance. Based on the identification of any new impacts, and to what extent they rise to the level of significance, the written evaluation will recommend whether or not the preparation of a new Supplemental EIS would be appropriate to issue a new or an amended ROD for the project to move forward.

FHWA and VTrans continue to recognize a strong need for this project. The written evaluation will provide a basis for determining the way forward to implement this project. Any future FHWA action within this project study area will comply with environmental review requirements of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321), FHWA's environmental regulations (23 CFR 771) and related authorities, as appropriate. Comments and questions concerning this action should be directed to FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 7, 2019.

Matthew R. Hake,

Division Administrator, Montpelier, Vermont.

[FR Doc. 2019–22306 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2019–0064]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on September 3, 2019, Burlington Northern Santa Fe Railway (BNSF) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.305(b)(2). FRA assigned the petition Docket Number FRA–2019–0064.

Specifically, BNSF requests the same regulatory relief provided to the Union Pacific Railroad Company (UP) in Docket Number FRA–2007–28454. Current regulations require railroad carriers to perform a single car air brake test (SCABT) when a car is on a shop or repair track, as defined in 49 CFR 232.303(a), for any reason and has not received a SCABT within the previous 12-month period. This also includes cars on an in-train wheel replacement track that do not require wheel replacement (if there are no FRA defects present), but may otherwise have an air date indicating it has not received a SCABT within the previous 12-month period and is in compliance with all other requirements of 49 CFR 232.305. BNSF requests relief through a change in repair track designation per 49 CFR 232.303. Specifically, BNSF requests that the in-train wheel replacement track not be designated a shop or repair track. However, BNSF proposes to continue performing a SCABT on any car undergoing an in-train wheelset replacement because of an FRA-condemnable wheel defect as defined in 49 CFR 232.305(b)(5).

BNSF states that this relief would serve safety and the public good by reducing the number of wheels in service which have elevated impact readings and will therefore have a long-term positive impact on rail integrity. BNSF has an extensive wayside detector network with over 4,000 detectors with varying technologies utilized to identify deteriorating component performance. Wheel Impact Load Detectors (WILD) are a part of this network that focus specifically on car and locomotive

wheels that have impact readings indicating surface defects. BNSF further states that the approval of this request will add to the total number of elevated kip reading wheels removed and not adversely impact any other safety related initiatives with respect to cars.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Website: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by November 25, 2019 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2019–22271 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2016–0023]

Extension of a Previously Approved Collection: Public Charters, 14 CFR Part 380

AGENCY: Office of the Secretary.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Department of Transportation (DOT) invites the general public, industry and other governmental parties to comment on Public Charters. The pre-existing information collection request was previously approved by the Office of Management and Budget (OMB).

DATES: Written comments should be submitted by December 10, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Reather Flemmings (202–366–1865) and Mr. Brett Kruger (202–366–8025), Office of the Secretary, Office of International Aviation, U.S. Air Carrier Licensing/Special Authorities Division-X44, 1200 New Jersey Ave. SE, Washington, DC 20590.

ADDRESSES: You may submit comments [identified by DOT–DMS Docket No. DOT–OST–2016–0023] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2106–0005.

Title: Public Charters, 14 CFR part 380.

Form Numbers: 4532, 4533, 4534, 4535.

Type of Review: Extension of a Previously Approved Collection: The current OMB inventory has not changed.

Abstract: 14 CFR part 380 establishes regulations embodying the Department's terms and conditions for Public Charter operators to conduct air transportation using direct air carriers. Public Charter operators arrange transportation for groups of people on chartered aircraft. This arrangement is often less expensive for the travelers than individually buying a ticket. Part 380 exempts charter operators from certain provisions of the U.S. code in order that they may provide this service. A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus—consisting of OST Forms 4532, 4533, 4534, 4535, and supporting financial documents) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. If the prospectus information were not collected it would be extremely difficult to assure compliance with agency rules and to assure that public security and other consumer protection requirements were in place for the traveling public. The information collected is available for public inspection (*unless the respondent specifically requests confidential treatment*). Part 380 does not provide any assurances of confidentiality.

Burden Statement: Completion of all forms in a prospectus can be accomplished in approximately two hours (30 minutes per form) for new filers and one hour for amendments (existing filings). The forms are simplified and request only basic information about the proposed programs and the private sector filer. The respondent can submit a filing to operate for up to one year and include as many flights as desired, in most cases. If an operator chooses to make changes to a previously approved charter operation, then the operator is required by regulations to file revisions to its original prospectus.

Respondents: Private Sector: Air carriers; tour operators; the general public (including groups and individuals, corporations and Universities or Colleges, etc.).

Number of Respondents: 245.

Number of Responses: 1,782.

Total Annual Burden: 891.

Frequency of Responses:

245 (respondents) × 4 = 980

401 (amendments *from the same respondents*) × 2 = 802

Total estimated responses: 980 + 802 = 1,782

The frequency of response is dependent upon whether the operator is requesting a new program or amending an existing prospectus. Variations occur due to the respondents' criteria. On average four responses (forms 4532, 4533, 4534 and/or 4535) are required for filing new prospectuses and two of the responses (forms) are required for amendments. The separate hour burden estimate is as follows:

Total Annual Burden: 891 hours.

Approximately 1,782 (responses) × 0.50 (per form) = 891

Public Comments Invited: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, by the use of electronic means, including the use of automated collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on October 7, 2019.

Jeffrey B. Gaynes,

Assistant Director for Regulatory Affairs.

[FR Doc. 2019–22286 Filed 10–10–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons and these vessels are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 26, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons and the following vessels subject to U.S. jurisdiction are blocked under the relevant sanctions authorities listed below.

Individuals

BILLING CODE 4810–AL–P

1. LOGINOV, Ilya (a.k.a. LOGINOV, Ilya Alekseyevich (Cyrillic: ЛОГИНОВ, Илья Алексеевич)); DOB 02 Jul 1971; nationality Russia; Gender Male; Deputy General Director for Legal Support at Sovfracht (individual) [UKRAINE-EO13685] (Linked To: OJSC SOVFRACHT).

   Designated pursuant to section 2(a)(iii) of Executive Order 13685 of December 19, 2014, "Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to the Crimea Region of Ukraine" (E.O. 13685), for having acted or purported to act for or on behalf of, directly or indirectly, OJSC SOVFRACHT, a person whose property and interests in property are blocked pursuant to E.O. 13685.

2. OKOROKOV, Ivan (a.k.a. OKOROKOV, Ivan B.; a.k.a. OKOROKOV, Ivan Borisovich); DOB 19 Sep 1985; nationality Russia; Gender Male; Director of Marine Transport Department at Sovfracht (individual) [UKRAINE-EO13685] (Linked To: OJSC SOVFRACHT).

   Designated pursuant to section 2(a)(iii) of E.O. 13685 for having acted or purported to act for or on behalf of, directly or indirectly, OJSC SOVFRACHT, a person whose property and interests in property are blocked pursuant to E.O. 13685.

3. STEPANYAN, Karen (Cyrillic: СТЕПАНЬЯН, Карен) (a.k.a. STEPANYAN, Karen Albertovich); DOB 22 Oct 1975; nationality Russia; Gender Male; First Deputy General Director of Marine Transportation at Sovfracht (individual) [UKRAINE-EO13685] (Linked To: OJSC SOVFRACHT).

   Designated pursuant to section 2(a)(iii) of E.O. 13685 for having acted or purported to act for or on behalf of, directly or indirectly, OJSC SOVFRACHT, a person whose property and interests in property are blocked pursuant to E.O. 13685.

Entity

1. MARITIME ASSISTANCE LLC (Cyrillic: ООО МАРИТАЙМ АССИСТАНС) (a.k.a. LIMITED LIABILITY COMPANY MARITIME ASSISTANCE (Cyrillic: ОБЩЕСТВО С ОГРАНИЧЕННОЙ ОТВЕТСТВЕННОСТЬЮ МАРИТАЙМ АССИСТАНС)), Sadovaya-Kudrinskaya street, building 32-1, office XII on 6th fl., cabinet 4d, Moscow 123001, Russia; Tax ID No. 7718075252 (Russia); Government Gazette Number 770301001 (Russia); Registration Number 1157746142960 (Russia) [SYRIA] [UKRAINE-EO13685] (Linked To: OJSC SOVFRACHT; Linked To: SYRIAN COMPANY FOR OIL TRANSPORT).

Designated pursuant to section 2(a)(iv) of E.O. 13685 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, OJSC SOVFRACHT, a person whose property and interests in property are blocked pursuant to E.O. 13685.

Designated pursuant to section 1(b)(i) of Executive Order 13582 of August 17, 2011, "Blocking Property of the Government of Syria and Prohibiting Certain Transactions With Respect to Syria" (E.O. 13582), for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, SYRIAN COMPANY FOR OIL TRANSPORT, a person whose property and interests in property are blocked pursuant to E.O. 13582.

BILLING CODE 4810–AL–C

Vessels

1. OT–2077 Russia flag; Vessel Registration Identification IMO 9025778 (vessel) [UKRAINE–EO13685] (Linked To: TRANSPETROCHART CO LTD).

Identified pursuant to E.O. 13685 as property in which TRANSPETROCHART CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13685, has an interest.

2. PASSAT Russia flag; Vessel Registration Identification IMO 8523242 (vessel) [UKRAINE–EO13685] (Linked To: TRANSPETROCHART CO LTD).

Identified pursuant to E.O. 13685 as property in which TRANSPETROCHART CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13685, has an interest.

3. SIG Russia flag; Vessel Registration Identification IMO 9735335 (vessel) [UKRAINE–EO13685] (Linked To: TRANSPETROCHART CO LTD).

Identified pursuant to E.O. 13685 as property in which TRANSPETROCHART CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13685, has an interest.

4. SUDAK Russia flag; Vessel Registration Identification IMO 8943155 (vessel) [UKRAINE–EO13685] (Linked To: TRANSPETROCHART CO LTD).

Identified pursuant to E.O. 13685 as property in which TRANSPETROCHART CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13685, has an interest.

5. YAZ Russia flag; Vessel Registration Identification IMO 9735323 (vessel) [UKRAINE–EO13685] (Linked To: TRANSPETROCHART CO LTD).

Identified pursuant to E.O. 13685 as property in which TRANSPETROCHART CO LTD, a person whose property and interests in property are blocked pursuant to E.O. 13685, has an interest.

Dated: September 27, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–21502 Filed 10–10–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning estate and gift taxes; qualified disclaimers of property (section 2518).

DATES: Written comments should be received on or before December 10, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sara Covington, at (202) 317–6038, or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Estate and Gift Taxes; Qualified Disclaimers of Property.

OMB Number: 1545–0959. Regulation Project Number: TD 8095.

Abstract: Internal Revenue Code section 2518 allows a person to disclaim an interest in property received by gift or inheritance. The interest is treated as if the disclaimant never received or transferred such interest for Federal gift tax purposes. A qualified disclaimer must be in writing and delivered to the transferor or trustee.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of 1information 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: October 07, 2019.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2019–22248 Filed 10–10–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13362

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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 13362, Consent to Disclosure of Return Information.

DATES: Written comments should be received on or before December 10, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, 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 Dawn Bidne at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or at (202) 317–6038, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consent to Disclosure of Return Information.

OMB Number: 1545–1856.

Form Number: 13362.

Abstract: The Consent Form is provided to external applicant that will allow the Service the ability to conduct tax checks to determine if an applicant is suitable for employment once they are determined qualified and within reach to receive an employment offer.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension without change, of a currently approved collection.

Affected Public: Federal Government.

Estimated Number of Respondents: 46,000.

Estimated Time per Respondents: 10 minutes.

Estimated Total Annual Burden Hours: 7,664.

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: October 7, 2019.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2019–22246 Filed 10–10–19; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8498

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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 8498, Continuing Education Provider Application and Request for Provider Number.

DATES: Written comments should be received on or before December 10, 2019 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, 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 should be directed to Sara Covington at (202) 317–6038 or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Continuing Education Provider Application and Request for Provider Number.

OMB Number: 1545–1459.

Form Number: Form 8498.

Abstract: Form 8498 is used by the Director of Practice to determine the qualifications of those individuals or organizations seeking to present continuing professional educational programs for persons enrolled to

practice before the Internal Revenue Service.

Current Actions: There is no change in the form previously approved by OMB.

Type of Review: Extension without change, of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Time Per Respondent: 36 minutes.

Estimated Total Annual Burden Hours: 480.

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: October 7, 2019.

Philippe Thomas,

IRS Supervisory, Tax Analyst.

[FR Doc. 2019–22247 Filed 10–10–19; 8:45 am]

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Part II

Federal Communications Commission

47 CFR Part 54

Promoting Telehealth in Rural America; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 17–310; FCC 19–78]

Promoting Telehealth in Rural America

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes a variety of measures to promote transparency and predictability, and further the efficient allocation of limited Rural Health Care Program resources while guarding against waste, fraud and abuse.

DATES: Effective November 12, 2019, except for §§ 54.622(d), 54.622(e)(2), 54.622(e)(4), 54.622(e)(5), 54.623(a)(2), 54.623(a)(3), 54.623(a)(4), 54.624, 54.626(b), 54.627(b), 54.631(d), which contain new or modified information collection requirements, as provided in the Report and Order, that will not be effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections not yet effective.

FOR FURTHER INFORMATION CONTACT: Elizabeth Drogula, *Elizabeth.Drogula@fcc.gov,* Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–1591 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in WC Docket No. 17–310; FCC 19–78, adopted on August 1, 2019 and released on August 20, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-78A1.pdf.*

I. Introduction

1. Nearly 60 million people—roughly 1 out of every 5 Americans—live in a rural area. For these millions of Americans, affordable, quality health care at the local level can be scarce. Geographic isolation, combined with low population densities, make the provision of sustainable local health care in rural areas a challenge. Many rural areas also have witnessed an increasing number of local health care facilities closing in recent years. Inadequate local resources and difficulties in recruiting and retaining physicians further complicate local access to quality health care. As a result, millions of rural Americans are forced to travel long distances to obtain medical treatment, at significant time and expense not only for the patient but also for friends and family. Those unable to bear the expense may forgo treatment altogether and risk a personal health care crisis. Telehealth services are one important solution to the challenge of health care access in rural areas by connecting rural patients with general physicians and medical specialists located outside the patients' communities. The Commission promotes telehealth in rural areas through the Rural Health Care Program (RHC Program or Program), which provides financial support to help rural health care providers obtain broadband and other communications services at discounted rates. These services are in turn used by health care providers to offer telehealth to patients living in and around the communities they serve.

2. As the demand for robust broadband has increased throughout the country, the RHC Program has witnessed a dramatic increase in health care provider participation. This increased demand and resulting administrative challenges required the Commission to take a closer look at whether the current rules and procedures are cost-effective and efficient and adequately protect the Universal Service Fund against waste, fraud, and abuse. Accordingly, in the R&O, the Commission adopted a number of the proposals made in the *2017 Promoting Telehealth Notice of Proposed Rulemaking and Order (2017 Promoting Telehealth NPRM & Order),* 83 FR 303, January 3, 2018, to reform the RHC Program rules to promote transparency and predictability, and further the efficient allocation of limited RHC Program resources.

II. Discussion

3. *Improving Transparency, Predictability, and Efficiency for the Telecom Program.* The Telecom Program is rooted in section 254(h)(1)(A) of the Communications Act, as amended by the Telecommunications Act of 1996 (the Act). This statutory provision allows eligible health care providers to obtain telecommunications services in rural areas at rates comparable to the rates charged to customers in urban areas for similar services in a state. Section 254(h)(1)(A) is intended ''to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide . . . medical services to all parts of the Nation.'' The statute also limits the types of health care providers that can receive the services supported by the RHC Program. Health care providers eligible for discounts include: (1) Post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools; (2) community health centers or health centers providing health care to migrants; (3) local health departments or agencies; (4) community mental health centers; (5) not-for-profit hospitals; (6) rural health clinics; (7) skilled nursing facilities; and (8) consortia consisting of eligible health care providers.

4. The Telecom Program provides eligible health care providers with a discount on telecommunications services so they can purchase services at rates reasonably comparable to the rates paid for similar services in urban areas as directed by the statute. The amount of the discount is the difference between the urban and rural rate calculated under the Commission's rules. The current system requires health care providers to identify the urban and rural rates for an eligible service and submit that information to the Universal Service Administrative Company (the Administrator) in their funding applications. To do this, health care providers often (and in some cases, must) rely on information obtained from carriers. Ultimately, the urban rate identified by the health care provider is what the health care provider pays for the service. Accordingly, the health care provider has an incentive to identify the lowest urban rate possible for the requested service in the state to minimize its out-of-pocket expense. The Telecom Program compensates carriers for the difference between the rural rate and corresponding urban rate for the service as identified under the Commission's rules. The carrier, therefore, also has an incentive to identify the highest rural rate it can justify to maximize the support received.

5. Under existing Telecom Program rules, the process of determining the urban and rural rates is cumbersome, and the current system lacks transparency. Health care providers individually determine, according to the Commission's rules, the rates used to set the program discount. Health care providers are further required to submit documentation substantiating their requested urban and rural rates to the Administrator with their funding applications; however, the information submitted by a health care provider in support of a particular funding request

is not publicly available for review by other service or health care providers looking to compare and scrutinize the rates. Consequently, the Administrator must either accept the rate information submitted by the health care provider or conduct a burdensome investigation of the submitted rates. Conducting such investigations on a case-by-case basis for thousands of Telecom Program funding requests filed each year is a laborious, time-intensive task in a program where the speed of funding decisions may determine vital outcomes. Not conducting investigations, on the other hand, may favor those more willing to manipulate the Commission's current approach, and thus reduces funding otherwise available to other health care providers and thwarts the purpose of the RHC Program to support the delivery of critical health care services to rural America. In short, the current system of Telecom Program rate determinations results in wasteful spending, fraud, and abuse as reflected in recent enforcement actions; is not serving the statute as intended; and is causing a significant drain on the limited resources of the Telecom Program.

6. The Commission took the following steps to reform the Telecom Program: (1) Clarified the scope of similar services for rate determination; (2) defined the geographic contours of urban and comparable rural areas for rate determination; (3) reassigned to the Universal Service Administrative Company (the Administrator) the task of determining urban and rural rates for similar services from health care and service providers; (4) reformed the determination of rates based on the median of all available rates for functionally similar services; (5) directed the Administrator to create a publicly available database for the posting of urban and rural rates; (6) eliminated the limitation on support for satellite services; and (7) eliminated distance-based support.

7. *Defining Similar Services for Determining Rates.* The amount of the discount health care providers receive in the Telecom Program is the difference between the urban rate, which must be ''reasonably comparable to the rates charged for *similar services* in urban areas in that State,'' and the rural rate—*i.e.,* ''the rates for *similar services* provided to other customers in comparable rural areas.'' As the Commission recognized, the currently outdated speed tiers ''ha[ve] led to significant variability in how the 'similar services' analysis is conducted and is a potential source of waste.'' Thus, the Commission, in the R&O, placed the burden of identifying ''similar services'' for rate determination on the Administrator. This approach will reduce health care provider burdens and will also preclude manipulation of urban and rural rates through *ad hoc* assessments of service similarity by service and health care providers. It will also promote a more equitable distribution of program funding by ensuring that funding requests for Telecom Program support are consistently evaluated and based on the same parameters.

8. The Commission retained the existing requirement that the similarity of services be determined from the perspective of the end user, rather than technical similarity of the services, and direct the Administrator to evaluate whether services are similar based on that. For purposes of determining functional similarity, the Administrator will consider other services with advertised speeds 30% above or below the speed of the requested service.

9. The current designated speed tiers, in effect since 2003, have failed to keep pace with the rising demand for faster connectivity. A range based on the requested service speed eliminates the need to continually update the speed tiers to reflect advances in technology. Moreover, the Commission anticipates that a 30% range will provide a sufficiently large range of functionally similar services to enable reasonable rate comparisons. While the universe of functional equivalents may be larger in limited cases, depending on the telecommunications service, the Commission found a 30% range strikes the appropriate balance to furthering specific, predictable, and sufficient mechanisms to preserve and advance universal service while ensuring rural health care providers obtain telecommunications services at reasonable comparable rates for similar services.

10. The Commission also found that factors other than bandwidth are relevant to whether a service is functionally similar. Rural health care providers may have mission critical needs requiring highly secure and reliable telecommunications services for which a dedicated service offering is necessary. In these instances, a best-efforts service may not be functionally similar. In future funding years, the Commission expects health care providers to indicate whether they require a dedicated service or other service level guarantees when they seek bids for eligible services. By doing so, the question of whether dedicated and best-efforts services are similar from the perspective of the end user will be in the hands of the end user (*i.e.,* the health care provider requesting the service). If a health care provider does not indicate a need for dedicated services or is otherwise silent on the subject in its competitive bidding documentation, then the Administrator may reasonably conclude that best-efforts services are sufficient from the perspective of the health care provider. Where a health care provider specifies that it requires a dedicated service or other service level guarantees, the Commission instructed the Administrator to take that into account when identifying functionally similar services for rate comparisons. For the same reasons, the Commission also retained its earlier conclusion that the Administrator should consider whether the requested service is symmetrical or asymmetrical when assessing functional similarity of services for rate comparisons. Depending on the health care provider's identified needs, asymmetrical services would not be functionally similar to the requested service because they would not fulfill those needs. The Commission directed the Wireline Competition Bureau (the Bureau) and the Administrator to work on any appropriate revisions to the competitive bidding forms that will enable health care providers to provide the necessary information.

11. Additionally, the Commission directed the Administrator not to limit the functionally similar inquiry to solely telecommunications services. The Telecom Program is statutorily limited to supporting telecommunications services but determining similarity of services is a technology-agnostic inquiry as to whether there are functionally equivalent substitutes from the end user's viewpoint. The end-user experience is not dictated by regulatory classification. Therefore, the Commission determined that it is appropriate to determine median rates for telecommunications services using non-telecommunications service rates and instructed the Administrator to expand the inquiry beyond telecommunications to other services, including functionally equivalent private carriage and information services.

12. The Commission found that expanding the inquiry not only more closely aligns with the functionally similar standard but also with the statutory language directing the Commission to ensure access to telecommunications services by health care providers at rates ''reasonably comparable'' to those charged for ''similar services in urban areas.'' For example, the Commission anticipated

that the inclusion of less expensive, information services that are nonetheless functional substitutes will result in lower urban rates than if only similar telecommunications services are considered. Accordingly, health care providers will likely pay less for telecommunications services supported by the Universal Service Fund, reflecting the availability of lower priced alternatives in urban areas. This result should place health care providers on a more equal footing with their urban counterparts, as intended by the statute, than if non-telecommunications services were excluded from the similar services inquiry.

13. And as with urban rates, the Commission found that expanding the similar services inquiry could also serve to lower rural rates by increasing the pool of services to include similar information services when determining the rural rate. A lower rural rate determination, in turn, decreases the support ceiling and thus could further reduce demand on the Universal Service Fund. An expanded inquiry will also alleviate administrative burdens by eliminating the need for the Administrator to identify the regulatory classification of commercially available services when determining urban and rural rates. Lastly, the Commission determined that expanding the similar services inquiry to include other services will further serve the Commission's overall directive to act in a competitively neutral manner.

14. *Defining Geographic Contours for Determining Rates.* Section 254(h)(1)(A) of the Act requires carriers to provide rural health care providers, upon receiving a bona fide request, with telecommunications services at rates reasonably comparable to those charged in urban areas of the state. The provisioning carrier is then entitled to receive support in the amount of the difference between the urban rate charged and the ''rates for similar services provided to other customers in comparable rural areas in the state.'' To determine the urban rate, the Commission determined that it will use the ''urbanized areas'' as designated by the Census Bureau based on the most recent decennial Census to define the geographic contours of urban areas in a state. The Commission concluded that urbanized areas are appropriate because they include urban cores with at least 50,000 people ''along with adjacent territory containing non-residential urban land uses as well as territory with low population density included to link outlying densely settled territory with the densely settled core.'' For determining rural rates, the Commission established three tiers of rurality to determine the comparable rural areas in a state or territory: (1) *Extremely Rural,* areas entirely outside of a Core Based Statistical Area; (2) *Rural,* areas within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater; and (3) *Less Rural,* areas in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. In Alaska, however, given the vast number of communities without access to roads and the unique cost considerations they may face for obtaining service, the Commission further bifurcated the Extremely Rural tier into two sub-tiers. That is, areas in Alaska entirely outside of a Core Based Statistical Area that are inaccessible by road will be treated as Frontier areas for purposes of determining comparable rural rates. Communities outside of a Core Based Statistical Area and accessible by road will be in the Extremely Rural tier.

15. *Geographic Contours for Urban Areas.* The Commission's rules do not explicitly define ''urban area'' with respect to determining the urban rate. Instead, the rules require the applicant to base the urban rate on rates for similar services charged to a commercial customer in ''any city with a population of 50,000 or more'' in the state.

16. In the R&O, the Commission retained the current population threshold of 50,000 in defining the geographic contours of urban areas for purposes of the determining the urban rate. Consistent with the Commission's conclusion in 1997, the Commission continued to believe that cities with populations of 50,000 or more are large enough so the rates for telecommunications services in these areas reflect cost reductions associated with high-volume, high-density factors. The Commission concluded, however, that defining urban areas by the jurisdictional boundaries of cities is unrealistic and unnecessarily restrictive because it fails to account for adjacent areas that are socioeconomically tied to the urban core. Failing to include a city's suburban areas runs counter to the goal of using urban rates that reflect the cost reductions associated with higher population density present in urban areas. Omitting such areas is also contrary to how urban areas are designated by the nation's top two Federal agencies on the subject, the Census Bureau and the Office of Management and Budget (OMB), both of which evaluate surrounding areas when considering urban designations regardless of a city's jurisdictional boundary. Accordingly, the Commission updated the contours of urban areas for determining urban rates to: (1) More accurately reflect the socioeconomic realities of metropolitan cities and (2) ensure rates relevant to the urban rate determination are not unnecessarily excluded.

17. The Commission noted that urbanized areas are used by OMB to designate Metropolitan Statistical Areas which the Commission originally referenced when establishing the 50,000 population threshold. The Commission decided, however, to use urbanized area designations as opposed to the Metropolitan Statistical Areas to minimize the potential for the inadvertent inclusion of pocket rural areas. Because Metropolitan Statistical Areas are based on counties and urbanized areas designations consisting of census tracts and blocks, there is a greater likelihood of the less granular Metropolitan Statistical Area containing an area that is rural for purposes of reflecting the costs of deploying telecommunications services. Using urbanized areas thus allows for a more granular designation of high population density areas than attainable with the county-based Metropolitan Statistical Areas.

18. The Commission clarified, however, that consistent with the statute, the Administrator will review public rates in all urbanized areas to the extent those urbanized areas fall within the boundaries of the state where the health care provider is located. For example, in urbanized areas like the Washington, DC-Virginia-Maryland urbanized area that cross multiple state boundaries, this means the Administrator could factor in available rates for determining an urban rate for a service delivered to a health care provider in Virginia from that portion of the urbanized area that falls within the Commonwealth of Virginia. For example, a public rate that is available throughout the urbanized area (*i.e.,* the rate is the same irrespective of location within the urbanized area) could be part of the determination along with a local cable company rate that is only available in northern Virginia. The Administrator could not, however, factor in a local cable company rate that is only available in portions of the urbanized area outside of Virginia, like neighboring areas in Maryland and the District of Columbia.

19. *Geographic Contours for Comparable Rural Areas.* Historically, the Commission has defined

''comparable rural areas'' to mean the immediate rural area in which the health care provider is located. The Commission concluded, however, that the better, more inclusive interpretation of ''comparable rural areas'' includes not only rural areas in the health care provider's own immediate rural location but all similar rural areas, namely all those within the same rural tier in the health care provider's state. Two rationales support the Commission's shift in interpretation. First, the use of the plural ''comparable rural areas'' in the Act indicates an intent to encompass rates from more than a single area, including, by default, areas where the health care provider is not located. Second, consideration of available rates for services offered across the health care provider's state provides significantly more service rate data points and thus a more accurate measure of the actual costs of providing services to rural areas.

20. The Commission noted that the existing definition of rural area used for Telecom Program eligibility naturally breaks down into degrees of rurality for the purpose of determining rates in comparable rural areas. Under the existing definition, a rural area is ''an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000.'' In the R&O, the Commission established three rural tiers—which it designated Extremely Rural, Rural, and Less Rural, respectively—based on this existing definition.

21. The Commission concluded that using rural area tiers is a more precise means of determining rurality because it prevents rates in the most rural areas from being unfairly reduced by being combined with rates from less rural areas. The Commission based this conclusion on the reasonable assumption that the cost to provide telecommunications services increases as the density of an area decreases, as rates are generally a function of population density. The Commission also found that tying the new rural tiers to the existing three-part definition of ''rural area'' used for eligibility purposes has the advantage of familiarity, and thus avoids a change that introduces a new concept that may be needlessly complicated. The approach also benefits from the ease with which the new rurality tiers can be employed to determine support.

22. Additionally, the Commission will treat areas outside of a Core Based Statistical Area that are inaccessible by road as a separate tier, *i.e.,* Frontier areas. Areas outside of a Core Based Statistical Area that are accessible by road will be treated as Extremely Rural for purposes of rate determination. To determine communities connected by roads, the Commission will use the data provided by the Alaska Department of Commerce Community and Economic Development; Division of Community and Regional Affairs. This data source will allow participants to determine the appropriate tier for the relevant health care provider and simplifies the administration of this aspect of the program. To ensure that the process used to establish rural tiers is objective, administratively feasible, transparent, and simple to apply, the Commission declined at this time to further sub-divide off-road communities for determining comparable rural areas.

23. The Commission expects that by broadening the scope of comparable rural areas used to compute the rural rate, it will increase the likelihood of identifying available rates for the same or similar services within a state to determine rural rates, which addresses a concern raised by some commenters. Moreover, because the Commission now requires consideration of available rates outside the health care provider applicant's immediate rural area (but within similarly tiered rural areas within the health care provider's state), the approach reflects a more faithful interpretation of the statutory obligation to reimburse carriers using rates for similar services provided to other customers in ''comparable rural areas'' in the state.

24. *Ensuring Reasonable Comparable Urban Rates.* Based on the record and the Commission's past experiences with the Telecom Program, the Commission found that the current process for determining urban rates does not adequately advance the goals of the statute and requires reform. The Commission thus revised its rules to require the Administrator to determine the urban rate based on a median of available rates for similar services across all urbanized areas in a state. The Commission also directed the Administrator to create a publicly available database to post the urban rates for each state for program participants. These changes will: (1) Eliminate incentives by health care and service providers to manipulate the urban rate determination; (2) promote rate determination transparency and consistency; (3) provide health care providers with predictability on the urban rates prior to choosing among service offerings; and (4) decrease administrative burdens for rural health care providers participating in the Telecom Program.

25. The Commission's rules currently place a ceiling on the amount a health care provider is required to pay for a requested service, stating the urban rate ''shall be a rate no higher than the highest publicly-available rate charged to a commercial customer for a functionally similar service in any city with a population of 50,000 or more in that state.'' The current process for determining urban rates contributes to the inefficient increase in support demand. As the data shows, health care providers are increasingly paying less and less for eligible services. For example, the Telecom Program commitments increased in size by more than 80% from approximately $116 million in funding year 2012 to approximately $211 million in funding year 2016. Gross demand for Telecom Program requests respectively totaled approximately $272 million and $206 million for funding years 2017 and 2018. The overall out-of-pocket expenses for health care providers, however, have decreased from approximately $23 million in funding year 2012 to approximately $12 million in funding year 2017. The overall effective discount rate thus rose steadily during this period to 92% in funding year 2017, meaning health care providers were collectively paying only 8% of the total cost of the service. In many cases, individual health care providers paid as little as 1% or less for the services they received. In funding year 2016, 5% of participating health care providers in the Telecom Program received 62% of the committed funding, *i.e.,* $131 million, with an effective discount rate of 99% and above. As a result, health care providers increasingly have less incentive, because they have increasingly less money invested, to cost-effectively obtain services to minimize strain on the Universal Service Fund.

26. The Commission is also concerned that urban rates submitted on the Telecom Program's request for funding form (FCC Form 466) are being held artificially low and may not reflect the comparable urban rates charged for services in urban areas. For example, after comparing available information for the E-Rate Program, the median rates reported by rural health care providers are in many cases far less than the median rates paid by schools and

libraries in urbanized areas of the state for the same or similar services.

27. Accurately determining the urban rate is imperative to the integrity of the Telecom Program. The urban rate is not only key to incentivizing health care providers to make service choices in a cost-efficient manner but is also critical to determining the level of universal service support provided to participants. Based on review of the record and program data, the Commission found that the existing approach for determining urban rates is not producing reasonably comparable urban rates and required reform to reflect the rates actually being charged in urban areas of the state more accurately than the current methodology. The Commission also was concerned that the current methodology fails to provide adequate incentives for health care providers to act in the best interests of the Universal Service Fund and is susceptible to rate manipulation. Therefore, the Commission found that reforming the urban rate determination necessary to further the intent of Congress of ensuring that rural health care providers are placed on equal footing with their urban counterparts, and to preserve and advance the Universal Service Fund.

28. To this end, in the R&O, the Commission changed course and now requires that the Administrator calculate urban rates based on the available rates, including data available from the E-Rate Open Data Platform, for functionally similar services offered across all urbanized areas of the state. The Commission found that this approach will more likely produce a reasonably comparable urban rate than the current approach by taking into account a wider range of urban rates. In addition, the Commission requires the Administrator to determine the urban rate by using the median of the available rates for functionally similar services. Having the Administrator conduct the rate determination, as opposed to the health care provider, will further eliminate any potential incentives to manipulate rates and will provide transparency and predictability to the rate determination process as well as ease burdens on health care providers.

29. The Commission will no longer allow health care providers to determine the urban rate from the rates available in any particular city in the state. In 2003, the Commission expanded the geographical boundaries from which urban rates could be considered from the nearest city with a population of 50,000 or more to any such city in the state with the goal that rural health care providers ''benefit from the lowest rates for service in the State.'' The Commission reasoned the largest cities in a state likely have significantly lower rates and more service options than the city nearest to the rural health care provider with a population of least 50,000. The Commission now concludes that this approach goes beyond the intent of Congress of providing ''reasonably comparable'' urban rates to rural health care providers and leads to funding inefficiencies. This approach is no longer tenable given the growing demand for program funding.

30. The median urban rate for a particular service will be the sole urban rate that a health care provider may use on its FCC Form 466 application to request Telecom Program support. The Commission believes that using multiple price points to determine the urban rate will bring restraint and discipline to the Program and will minimize opportunities for rate manipulation. The Commission is concerned, however, with using an average because rates may be skewed by a very high or very low rate for that service in some location. For example, in Texas for funding year 2017, health care providers reported on the FCC Form 466 urban rates for voice grade business circuits ranging from about $938 to $9 at the high and low ends but with a large majority of the urban rates falling in the $40 to $400 range. The high and low rates in this scenario could skew the average upwards or downwards depending on the other rates in the data set whereas a median mutes these potential outliers. The potential for intentionally manipulating the urban rate determination, by interjecting available outlier rates, is thus lessened.

31. *Eliminate ''No Higher Than'' Standard.* In moving to a median urban rate determination conducted by the Administrator, the Commission eliminated the ''no higher than the highest publicly available rate'' restriction on the urban rate determination. In practice, the existing ceiling has no effect as a health care provider would be unlikely to ever determine and report an urban rate that is higher than the highest available rate in any city in the state. Moreover, the median urban rate adopted is by definition a rate that is no higher than the highest available rate. Accordingly, the Commission eliminated the ''no higher than'' restriction and instead requires health care providers to use the median urban rate identified by the Administrator for the relevant eligible service when submitting FCC Form 466 filings.

32. *Eliminate the Standard Urban Distance.* The Commission eliminated the standard urban distance demarcation contained in the current urban rate rule. The current rule provides two methods for determining the urban rate depending on whether the requested service is provided over a distance that is either less than or equal to, or else greater than the ''standard urban distance.'' Based on the current rules, a rural health care provider's rate for services provided over a distance greater than the standard urban distance would be no greater than the urban rate for services provided over the standard urban distance, while the rate for services provided at a distance equal to or less than the standard urban distance would be equal to the urban rate for services provided over the actual distance to be covered. Because the urban rate adopted is determined using rate data from all urbanized areas in the state, the Commission believes it will reflect a reasonably comparable rate for the particular service regardless of the distance actually covered, and as a result, a distance measure is no longer relevant.

33. *Reforming the Determination of Rural Rates.* To simplify rural rate determinations, encourage transparency and predictability, and minimize the risk of rate manipulation, the Commission revised the rules to establish a single method for determining the rural rate, which will be the median of all available rates charged for the same or functionally similar service in the rural tier where the health care provider is located within the state. The Commission also directed the Administrator to determine the rural rate for each eligible service and rural tier in each state and publish the rural rates in a publicly available database. The Commission further established a standard of review for carriers that wish to seek a waiver of a rural rate determined pursuant to these steps that requires a demonstration that the carrier will be unable to recover its economically reasonable costs of supplying service, as defined in the following, if it is limited to the rural rates determined by the Administrator.

34. The Commission's rules currently permit three methods for calculating the rural rate depending on each health care provider's situation: (1) Averaging the rates that the carrier actually charges to non-health care provider commercial customers for the same or similar services provided in the rural area where the health care provider is located; (2) averaging publicly available rates charged by other service providers for the same or similar services over the

same distance in the rural area where the health care provider is located (applicable in cases where the service provider does not provide service to the health care provider's rural area); or (3) requesting approval of a cost-based rate from the Commission (for interstate services) or a state commission (for intrastate services) if there are no rates for same or similar services in that rural area or the carrier believes the calculated rural rate is unfair. Applicants must justify the rural rate calculation on which they rely when seeking Telecom Program support by using one of these three methods.

35. Like the urban rate, the rural rate has proven to be difficult for health care and service providers to calculate and is susceptible to manipulation. The complexity of the rural rate rules has caused health care providers to frequently rely on consultants or their service providers to navigate the rules, which AT&T observes has ''made it easy for unscrupulous parties to create artificially high 'rural rates,' and, in some cases, artificially low 'urban rates' thus maximizing the alleged disparity between rural and urban rates.'' Indeed, the risk of artificially inflated rural rates is very real under the Commission's existing framework. When a carrier sets the rural rate by averaging the rates of identical or similar services, the service rates of other carriers are not considered by design (in cases where the carrier offers commercial service to the health care provider's rural location) or may not be considered by selective omission (in cases where the carrier does not offer commercial service to the health care provider's location). Either way, the lack of consideration of competitors' offerings can lead to a rural rate that does not reflect the true rate of service available at the health care provider's location and which can be manipulated upwards because the service provider is incentivized to do so. In each of the foregoing examples, health care providers have no countervailing incentive to check carrier pricing because they pay only the lower urban rate without regard to the rural rate.

36. Additionally, it is a matter of record that rural rates are rising sharply, as reflected in the increasing combined levels of Telecom Program funding commitments over the past several years. The aggregate rural rate in 2004, for example, was $42 million. That aggregate figure climbed steadily over the next seven years to $142 million by funding year 2011, and then increased again by $80 million over the next five years to $222 million. The rural rate is not only increasing in the aggregate, it is increasing on an individual basis as well. Between funding year 2011 and funding year 2016, as the rural rate increased in the aggregate by $80 million, the number of health care provider sites requesting support decreased by 30%. These numbers equate to an average rural rate (per individual health care provider site) that more than doubled from $37,755 in 2011 to $84,797 in 2016. Although some of the increase in the rural rate can be attributed to legitimate causes such as a health care provider's location, demand for and availability of higher speed services, and limited access to high speed middle-mile transport capacity, that appears to be only part of the story. Given the widely divergent rates for the same services the Commission has seen, it appears much of the increase results from the lack of adequate transparency, standardization, and enforceability in the existing method of determining rural rates, collectively opening the door to rate manipulation. The Administrator currently must examine each funding request individually to determine if the associated rural rate was properly calculated and substantiated, and whether the substantiated rate complies with the requirements under the Commission's rules. This task requires access either to all of the service providers' rates or to available rates for the applicable rural area. Because this information is not readily available to the Administrator in-house, it has come to rely on rate data provided by the very parties, namely carriers, with the greatest interest in keeping rural rates high. This can lead to rural rates inconsistently calculated, artificially inflated, and difficult to verify against public data sources. It also results in review process delays that understandably tax the patience of RHC Program participants waiting for final support determinations and funding commitments. Inefficiency and waste of this type is especially problematic now given the extreme demands on limited RHC Program funds. For these reasons, the Commission was compelled to make the programmatic changes to the rural rate rules.

37. *Modifying the Rural Rate Calculation.* The Commission's rules require health care and service providers to justify the requested rural rate by using one of three methods that require, depending on the circumstances, either averaging rates offered by the service provider, averaging rates offered by carriers other than the service provider, or conducting a cost-based analysis. In the R&O, the Commission adopted a new method of calculating rural rates, applicable in all cases, to be applied and publicly maintained by the Administrator. The rural rate will be the median of available rates for the same or similar services offered within the health care provider's rural tier (*i.e.,* Extremely Rural, Rural, or Less Rural) in the state. For example, the maximum rural rate for a particular service requested by a health care provider located in an Extremely Rural area would be the median rate charged for that same or similar service in all areas within the health care provider's state that are deemed Extremely Rural.

38. As with the median urban rate, the relevant rates to be used when determining the median rural rate will be broadly inclusive and comprised of the service provider's own available rates to other non-health care providers, as well as other available rates in the rural area, including rates posted on service providers' websites, rate cards, contracts such as state master contracts, undiscounted rates charged to E-Rate Program applicants, prior funding year RHC Program pricing data, and National Exchange Carrier Association (NECA) tariff rates. In the unlikely event that a health care provider's rural tier includes no available rates for a particular service, the Commission directed the Administrator to use the available rates for that service available from the tier next lowest in rurality in the health care provider's state (*i.e.,* the Administrator will use the rates from the Rural tier if no rates are available in the Extremely Rural tier, and from the Less Rural tier if no rates are available in the Rural tier).

39. The new standardized approach to determining the rural rate will eliminate the problem of rate inconsistency that results from the current method. For example, three rural health care providers in Alamosa, Colorado, requested support for T1 service for funding year 2017. These health care providers, located within less than two miles of each other, included rural rates of $294.24, $827.00, and $2,077.65. Discrepancies such as these arise under the existing rate-setting framework because health care and service providers are left to their own devices to select the data required to make rate determinations for each funding request and would have to conduct exhaustive research on their own to ensure that the data is comprehensive. Indeed, because any number of variables can affect rates for the same service offering, health care and service providers have had to grapple with an inconsistent process that lacks the controls, transparency, and predictability necessary to ensure a fair and reliable allocation of scarce Telecom Program funds.

40. The Commission adopted a median-based approach for rate determinations in lieu of rate averaging to account for the significant effect that a small number of outlier rates (*i.e.,* those that are very high or very low in cost) can have on the average rural rate. If a rural tier within a state has few service providers offering a certain service, there may be incentives to publicize artificially high rates to influence the rural rate. This incentive is stronger if the average rural rate is used rather than the median rate because the average rate can be more easily manipulated. The median figure established by the Commission's new approach represents a rate ''ceiling,'' in that the Commission will not provide support in excess of the median rate. Health care providers may of course enter into contracts with carriers at a rate lower than the median rural rate. If the health care provider enters into a contract with a carrier at a rate that falls below the median rural rate determined pursuant to its new rules, the health care provider should enter the *lower* of the two rates into the FCC Form 466 funding application that it submits to the Administrator. The Commission believes that this approach balances the pro-competitive advantages of market-based rates with protections against possible rate manipulation in circumstances where insufficient levels of competition exist.

41. Several commenters favored using only competitive bidding to set a fair market rate. To these parties, reliance on market forces offers several benefits, including a check on outlier pricing that keeps prices low and no need to depend on rates that they assert are often unavailable. The Commission did not agree with these commenters that there are sufficient competing service alternatives in all rural areas to allow for the exclusive reliance on market-based methods of rate determination. Indeed, there is a striking lack of competition in the Telecom Program. In funding year 2017, of a total of 7,357 Telecom Program funding requests received by the Administrator, 6,699 requests included no bids, and 242 requests included only one bid, from carriers. In other words, nearly 95% of requests for Telecom Program support were submitted without an effective competitive bidding process. Given these numbers, competitive bidding alone cannot be expected to set efficient rural rates. Nor would the Commission expect carriers to compete on *rural* rates in their bids. After all, rural health care providers do not pay the rural rate—they pay the urban rate. So, while the Commission cannot discount some possibility that competition could lower rural rates, the far greater likelihood is that carriers compete (in those discrete instances where they do compete) on urban rates and the non-price characteristics of the service.

42. The Commission believes that a uniformly applied standard for determining rural rates based on a state-wide pool of available rates significantly enhances the efficiency of the Telecom Program in several ways. First, a definitively determined rural rate will facilitate rate transparency, thereby reducing rural rate inconsistencies and simplifying the review process, thus expediting funding commitment determinations and encouraging more competition from service providers. Second, by limiting rate determinations to available rates, rural rates are more predictable and easily verifiable, and harder for service providers to artificially inflate or otherwise manipulate. Third, the ability to determine a rural rate using available rates from other parts of the health care provider's state (under conditions where sufficient data is not available in the provider's rural area) eliminates the need for resource-intensive cost-based rural rate reviews by the Commission.

43. *Allowing Cost-Based Rates Only Via Waiver.* Under the current rules, carriers may request approval of a cost-based rate from the Commission (for interstate services) or a state commission (for intrastate services) if there are no rates for same or similar services in that rural area or the carrier reasonably determines that the calculated rural rate is unfair. The Commission adopted the cost-based mechanism when it created the Telecom Program in 1997, but the cost-based rural rate mechanism was only invoked for the first time in funding year 2017, and since then, only a small number of carriers have attempted to use it.

44. The Commission eliminated the cost-based support mechanism. To the extent the Commission created it in anticipation of rates for same or similar services not being available in some rural areas, the Commission found that such circumstances have not materialized on a significant scale, given how infrequently the cost-based mechanism has been invoked. Moreover, commenters generally disfavor the cost-based method for determining rural rates, which they view as challenging to calculate and difficult to obtain approval for due to the burdensome itemized cost summaries that the method requires. Further, the rural rate methodology that the Commission adopted in the R&O will include rates from a geographic range that is broader than a health care provider's immediate rural area, making it unlikely that the data necessary to determine a rural rate for a particular service will not be available.

45. The Commission concluded that cost-based reviews should not be an alternative method of determining a rural rate under its rules but should be reserved for extreme cases where a carrier can demonstrate that determining Telecom Program support under the new rural rate rules adopted by the R&O would result in an objective, measurable economic injury. Parties that seek exemptions from the requirements of the Commission's rules for the other universal service support mechanisms do so through petitions for waiver. To that end, the Commission established specific evidentiary requirements for carriers that seek waivers of its new rural rate rules in order to use a cost-based rate.

46. A petition seeking such a waiver will only be granted if, based on documentary evidence, the carrier demonstrates that application of the rural rate published by the Administrator would result in a projected rate of return on the net investment in the assets used to provide the rural health care service that is less than the Commission-prescribed rate of return for incumbent rate of return local exchange carriers (LECs). This demonstration will constitute ''good cause'' to support a waiver of the rural rate rules.

47. The Commission emphasized that this standard of review constitutes a specific application of the ''good cause'' standard that generally applies to petitions for waiver of its program rules. All such waiver requests must articulate the specific facts that demonstrate that the good cause waiver standard has been met, substantiated through documentary evidence as stated in the following, to demonstrate that granting the waiver would be in the public interest. Further, a petition for such a waiver will not be entertained if it does not also set forth a rural rate that the carrier demonstrates will permit it to obtain no more than the current Commission prescribed rate of return authorized for incumbent rate-of-return LECs. The Commission concluded that the current prescribed rate of return authorized for incumbent rate-of-return LECs is compensatory for carriers in the Telecom Program, and the Commission will not approve a rural rate that yields a higher return through the waiver process.

48. *Evidentiary Requirements.* All petitions seeking such a waiver must

include all financial data and other information to verify the service provider's assertions, including, at a minimum, the following information: (1) Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and federal income taxes, and net investment; capital costs by category expressed as annual figures (*e.g.,* depreciation expense, state and federal income tax expense, return on net investment); operating expenses by category (*e.g.,* maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and federal income tax rates; fixed charges (*e.g.,* interest expense); and any income tax adjustments; (2) An explanation and a set of detailed spreadsheets showing the direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service; (3) The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available; (4) Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of these projections; (5) Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable); (6) Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make that projection; (7) The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by 12 equals the monthly rate for the service), assuming one rate element for the service, based on the projected rural health care service costs and demands; (8) Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and (9) Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season, or any other characteristics that contribute to the high cost of servicing the health care providers.

49. Failure to provide the listed information shall be grounds for dismissal without prejudice. The petitioner also shall respond and provide any additional information as requested by Commission staff. Such petitions will be placed on public notice for comment. The Bureau is directed to approve or deny all or part of requests for waiver of the rural rate rules adopted in the R&O.

50. *Establishing an Urban and Rural Rate Database.* In the R&O, the Commission directed the Administrator to create a publicly available database that lists the eligible services in the Telecom Program, the median urban rate and rural rate for each such service in each state, and the underlying rate data used by the Administrator to determine the median rates. The urban and rural rates shall be based on available rates (*e.g.,* rates posted on service providers' websites, rate cards, publicly available contracts (*i.e.,* state master contracts), undiscounted E-Rate Program data, tariffs (*i.e.,* intrastate tariffs filed with state commissions, FCC's Electronic Tariff Filing System), and prior funding year Telecom Program rate data). The Commission directed the Administrator to determine the median urban and rural rate for eligible services as described in the R&O. The Commission further directed the Administrator to establish the database and post its first set of median urban and rural rates on its website as soon as possible, but no later than July 1, 2020, and to update the rates periodically based on market and technology changes. Rural health care providers generally will be required to use the currently posted median rates as their urban and rural rates when requesting funding on FCC Form 466 once the Administrator posts median urban and rural rates for the relevant services. In cases where a rural health care provider enters into a service agreement with a carrier featuring a rural rate lower than the rate posted by the Administrator, however, the health care provider should enter the lower rural rate.

51. The new urban and rural rate database to be established by the Administrator will provide several benefits. By centralizing and categorizing rate information in one place and by providing rural health care providers with pre-determined median urban and rural rates based on the information, the process will increase transparency compared to the current RHC Program. The database will allow quick identification of the median rates for a particular service within any state and how these rates were determined, ensuring that urban and rural rates are applied consistently and fairly to similarly situated health care providers seeking Telecom Program support for the same or similar services. In addition, because the database is publicly available, it will also promote predictability in the rate-setting process. The new database approach should also lessen the risk of rate manipulation. Requiring rural health care providers to use the median rates as determined by the Administrator will prevent the health care provider and its carrier from using urban rates that are artificially low and rural rates that are artificially high, thereby safeguarding the integrity of the Telecom Program.

52. The Commission also believes that having rates determined by the Administrator will greatly lessen the administrative burden that rural health care providers (and their carriers) currently experience. The Commission's new approach removes the onus of determining rates from Telecom Program participants and places this function in the hands of a single expert entity without a financial interest in the outcome. And while the Administrator will have to determine the median rates, it will not have to verify individually the rates on each funding request application other than to confirm that the rates match those on the website. This approach should ultimately result in and a more efficient, transparent, and timely funding decision process.

53. Two Commissioners dissent from these decisions, contending that the Commission should defer from implementing the rules for determining urban and rural rates in the Telecom Program because the Commission does not ''describe,'' ''analyze,'' ''test[ ],'' ''model[ ],'' or ''assess[ ]'' the impact of those rules on the rural health care facilities that rely on the program today. This contention is somewhat curious. *For one,* the Commission describes, analyzes, and assesses the impacts of the rules adopted. For example, the Commission finds that the rules adopted will provide more certain and transparent funding for rural health care providers across the board—more ''predictable,'' in the words of section 254 of the Act. To the extent that the

current rules subject rural health care providers to wildly varying urban rates for the same service (recall that urban rates in Texas for voice grade business circuits ranged from $9 to $938), the impact of using a statewide urban median will be to eliminate outliers and ensure that all rural health care providers pay what Congress mandated: ''rates that are reasonably comparable to rates charged for similar services in urban areas in that State.'' And as discussed in the document, the Commission concludes that existing rules have led to widely divergent rural rates, thus imposing wasteful inefficiencies on the program and its administration. In contrast, the rules adopted by the Commission will eliminate divergent rural rates in similar areas, eliminating problematic incentives and the real costs this imposes on rural health care providers and the Universal Service Fund. Or to put it a different way (and as fully explained in the R&O), the Commission has exercised its predictive judgment to develop an approach to developing both urban and rural rates of the analysis suggestion is reasonable, that takes into account and balances the relevant considerations, and that fully satisfies the requirements of section 254 while safeguarding the Universal Service Fund from wasteful spending.

54. For another, these critiques ignore the real costs of delayed implementation. As described more fully in the R&O, current rules have enabled waste, fraud, and abuse in the Telecom Program and yielded results that appear contrary to Congress's mandate. After all, how could rates of $9 and $938 for the same service be considered ''reasonably comparable'' to each other, let alone the urban rates in a single state? How could rural rates ranging from $420 to $4,308 for the same service in the same county (Tulare County, California) be a faithful implementation of Congress's command that the rural rate be based on ''rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State''? These discrepancies threaten the ability of the Telecom Program to fund the telecommunications services that health care providers need to deliver critical health care services to their rural communities from the Program's limited resources. Program data establishes that commitments in the Telecom Program grew by more than 80% between funding year 2012 and funding year 2016. And yet, as explained in the R&O, *more and more* of the program's limited resources are devoted to *fewer* health care providers. The dissenting Commissioners do not offer any defense of existing rules and the negative impact they have on rural health care facilities—and delay would only prolong these problems. By removing the problematic provisions of the Commission's existing rules, its approach will enable rural health care providers to continue to receive the services and support they need, with fewer administrative burdens and at lower cost to the Universal Service Fund. Or in other words, it is neither necessary nor desirable to delay the benefits of implementing the new urban and rural rate rules.

55. For yet another, the Commission found that no modeling is necessary at this point to reject the suggestion of one Commissioner, without factual basis, that health care providers in the most remote locations might be forced to close as a result of the new rules. Ensuring that remote regions receive sufficient support is precisely why the Commission divided rural areas into differing tiers (with an additional subtier for the most remote regions of the country). More fundamentally, health care providers will continue to receive needed telecommunications services ''at rates that are reasonably comparable to rates charged for similar services in urban areas in that State,'' as provided by Congress, and carriers are obligated to provide them service at that rate. The Commission also noted that the waiver process helps ensure that any carrier outliers have an opportunity to receive sufficient support. Further, because of the prioritization rules adopted by the Commission, the most rural and remote locations actually will have more protection than they do today, because those locations will receive prioritized funding. What is more, health care providers will have a full year between the posting of the applicable urban rates and the first day they will begin to receive service at those rates, so they will have adequate time to adjust. Thus, participants in the Program will be protected from undue rate impacts under the Commission's new rules, and will receive support that is ''specific, predictable and sufficient,'' as required by Congress.

56. In sum, the Commission adopted a process that eliminates largely subjective urban and rural rate determinations made by the applicants and service providers and substitutes objective determinations by the Administrator in full view of the public. The Commission expects that the result will be a more equitable and efficient use of limited available funding and a more predictable application process for Program participants.

57. In its Second July 25, 2019 *Ex Parte* Letter, GCI contends that the Commission has engaged in unlawful delegation of functions to the Administrator. That is incorrect as both a legal and factual matter. Initially, GCI identifies no valid legal authority for its claim that the Commission is prohibited from delegating to the Administrator the administrative roles contemplated by the R&O. GCI argues, for example, that section 5(c)(1) of the Act blocks the Commission from assigning a role to the Administrator in administering the urban and rural rates for the program. But nothing in that section mentions section 254. Rather, that section provides only that the Commission cannot delegate its ratemaking hearing authority under section 204(a)(2) of the Act, which does not apply to the development of urban and rural rates under section 254. Nor does section 5(c)(1) even mention section 205, the other provision upon which GCI relies.

58. In a contorted interpretation of the Act, GCI contends that section 205 of the Act applies to the Commission's establishment of rural and urban rates under section 254(h)(1)(A). GCI then argues that because the section 204(a)(2) hearing function cannot be delegated (citing Section 5(c)(1)), the Administrator can have no role in establishing the applicable urban and rural rates for the Telecom Program. But sections 205 and 204 simply do not apply to section 254(h)(1)(A), which is structured as a universal service obligation, and which uses very different statutory terms to describe the rate determinations involved. Specifically, section 254(h)(1)(A) imposes a requirement on telecommunications carriers, as part of their universal service obligation, to provide service to eligible rural health care providers at rates ''*reasonably comparable* to rates charged for *similar services* in urban areas in that State.'' It then entitles those carriers to ''the difference, if any, between rates for services provided to health care providers for rural areas within a State and the rates for *similar services* provided to other customers in *comparable rural areas* in that State . . . .'' Had Congress intended for the Commission to conduct a section 204(a)(2) hearing in order to give effect to the universal service obligation, it would not have used such different language in section 254(h)(1)(A), and it would have presumably cross-referenced section 204. Nor is the mere compilation of available rates and

calculation of a median rate used to calculate universal service support amounts equivalent to a rate ''prescription'' under section 205(a) that would require a hearing, as GCI contends. Indeed, although the Act and the Commission's rules discuss a rural ''rate,'' the Act and rules do not contemplate requiring or even allowing any carriers participating in the program to ever charge that rate (and hence it lies outside the scope of the ratemaking contemplated in sections 204 and 205 of the Act). Instead the ''rural rate'' is a legal placeholder simply used to carry out the statutory requirement of calculating ''the difference, if any, between the rates for services provided to health care providers for rural areas in a State and the rates for similar services provided to other customers in comparable rural areas in that State.''

59. In any event, the Commission has not delegated ratemaking authority to the Administrator. In the R&O, the Commission itself adopted rules dictating how urban and rural rates will be determined for the Telecom Program. Those rules and the R&O contain specific requirements to which the Administrator must adhere in developing these rates. For example, the Commission has delineated the geographic areas that are to be considered ''comparable'' rural areas under section 254(h)(1)(A); it has determined which services are ''similar'' within the meaning of that statutory provision (including bandwidth tiers, service quality, etc.); and it has determined how the Administrator is to assemble the available rates that will form the basis for calculating the median urban and rural rates for relevant geographic areas. The Commission has also required the Administrator to make public not only the median rates but also all the rates that the Administrator used to calculate the median.

60. GCI nevertheless contends that the Commission has delegated ''ultimate authority over RHC Program rates'' to the Administrator. But the only change the Commission made in the R&O is to have the Administrator, rather than the service provider, make the initial determination of what the rural rate should be. The Commission has no more delegated the ''ultimate authority'' over RHC Program rates to the Administrator than it delegated such ''ultimate authority'' to service providers under the prior rules. As always, the authority to establish the appropriate urban and rural rates under section 254(h)(1)(A) remains squarely with the Commission. First, the Commission ultimately decides what the rates should be and how the rules should be applied and interpreted. Should a health care provider or service provider believe that the Administrator failed to follow the Commission's rules in determining the applicable urban or rural rates, or otherwise believe the Administrator erred, it may appeal that decision to the Commission, which will conduct *de novo* review. Second, the Administrator is expressly prohibited from making policy or interpreting Commission rules. Section 54.702(c) of the Commission's rules, which applies to the RHC Program, prohibits the Administrator from making policy or interpreting the statute or Commission rules and requires the Administrator to seek guidance from the Commission when the Act or rules are unclear.

61. For these reasons, there is no merit to GCI's alternative contention that the Commission has impermissibly delegated an ''inherently governmental function.'' If GCI were correct that the determination of initial rates under section 254(h)(1)(A) is an ''inherently governmental function'' that cannot be delegated, then the Commission could not have lawfully permitted service providers to calculate initial rural rates, as it did under the prior rules. Determining the initial urban and rural rates under section 254(h)(1)(A) is something the service providers and the Administrator have been doing for many years, always subject to the Commission's oversight and review, and it will be no different under the program rules adopted. Because the Administrator carries out this function only pursuant to the Commission's rules and guidance, and subject to its review, and because the Administrator is prohibited from making policy or interpreting rules or statutes, there is nothing ''inherently governmental'' in the Administrator's role—rather, the Commission continues to exercise that function.

62. *Eliminating the Limitation of Support for Satellite Services.* The Commission eliminated, as no longer necessary, effective for funding year 2020, § 54.609(d) of the rules, which allows rural health care providers to receive discounts for satellite service, up to the amount providers would have received if they purchased functionally similar terrestrial-based alternatives, even where terrestrial-based services are available. The Commission determined that the limitation on support for satellite services in § 54.609(d) of the rules is unnecessary where the rural rates are constrained to an average, or in the case of the newly adopted approach a median, of available rates (including satellite service to the extent functionally similar to the service requested by the health care provider) as determined by the Administrator. The Commission previously adopted the cap on satellite service support because the prices of satellite services in rural areas were ''often significantly more expensive than terrestrial-based services.'' As acknowledged by USTelecom, however, and reflected in the data reported by health care providers in the FCC Form 466, rates for satellite services are in many instances comparable to, and in some instances less expensive than, the cost of terrestrial-based services. For example, in Alaska for funding year 2017, health care providers reported, on the FCC Form 466, rural rates ranging from $30,000 to $40,500 for a 10 Mbps satellite service per month. In comparison, rural rates for a terrestrial-based 10 Mbps MPLS service in Alaska, in many instances, were between $60,000 and $75,000 per month.

63. The Commission believes the changes made in the R&O in determining the rural rate place a check on the service provider's ability to inflate the rural rate by requiring the rural rate to be determined by taking a median of available rates outside the health care provider's immediate rural area (but within similarly tiered rural areas within the health care provider's state). This method of using the median takes into account rates by *all* competitive service providers offering services, including terrestrial and satellite services, but eliminates outlier rates that would unduly influence the rural rate determination. The median approach will thus alleviate concerns that excessively high terrestrial-based rates skew the rural rate determination to the detriment of the Universal Service Fund. Treating both services equally when functionally similar also furthers the principle of technological neutrality and recognizes the role that *both* satellite and terrestrial services may play in delivering telehealth services in rural areas without placing significant demand on the Fund. Additionally, by strengthening the Commission's competitive bidding process and rules, it ensures that health care providers select the most cost-effective service offering based on their telehealth needs and do not purchase services that exceed their needs. The Commission therefore found that the need to cap support for satellite service at the lower of the satellite service rate or the terrestrial service rate, where both services are available, would serve no additional purpose. Accordingly, the Commission rejected ACS's proposal to

limit Telecom Program support to the lower of the rural rate for functionally similar satellite or terrestrial service, where both are available and eliminated § 54.609(d) of its rules.

64. *Eliminating Distance-Based Support.* The Commission eliminated distance-based support, which allows rural health care providers to obtain support for charges based on distance. With the reforms to the urban and rural rate calculations adopted in the R&O, the Commission found that distance-based support is no longer necessary. Moreover, the Administrator-created and maintained databases and median rates will provide rural health care providers with a mandatory median urban rate and a median rural rate to guide their determination of the rural rate. The Commission believes that the median rate determinations for urban and rural rates adopted in the R&O will provide a reliable proxy for reasonably comparable rates in a state. The Commission expects the dataset that the Administrator will compile will include sufficient rate information to allow the Administrator to determine meaningful median urban and rural rates for use by rural health providers. By providing a mechanism to determine urban and rural rates that is less complex and more straightforward, the Commission believes it will simplify the application process for the rural health care provider so that it can focus on its primary business of providing health care. Finally, by eliminating the distance-based support method, the Commission reduces the administrative burden on the Administrator by no longer requiring the Administrator to manage two separate rate methodologies in the Telecom Program. Although the distance-based approach was infrequently used by rural health care providers, the Administrator nonetheless was required to have in place the necessary procedures and processes to handle such requests.

65. *Supported Services in the Telecom Program.* Section 254(h)(1)(A) of the Act ''explicitly limits supported services for [rural] health care providers to telecommunications services'' for the Telecom Program. Over time, as technology has evolved, the line between telecommunications services and other services is not always evident to some health care providers. Therefore, the Commission took the opportunity in the R&O to remind participants that the Telecom Program only supports telecommunications services and not private carriage services, network buildout expenses, equipment, or information services. Services and expenses not covered by the Telecom Program may be supported to the extent eligible under the Healthcare Connect Fund Program. Accordingly, rural health care providers needing services not covered by the Telecom Program should seek support to the extent eligible under the Healthcare Connect Fund Program.

66. *Prioritizing RHC Program Funding for Rural and Medically Underserved Areas.* Under the Commission's rules, proration is required when funding requests submitted during a filing window exceed the amount of available funds. This process results in an across-the-board reduction of support by a pro-rata factor calculated by the Administrator. All eligible support requests are reduced by the same percentage amount regardless of the location and need of the health care provider applicant. Parties to the underlying contracts are responsible for any shortfall due to reduced support. Either health care providers have to shoulder a larger portion of the cost of the supported services, or service providers will offer price reductions to avoid curtailing service, or some combination thereof.

67. In the R&O, the Commission changed course and replaced the proration rules with a new process that prioritizes funding based on the rurality of the site location and whether the area is considered medically underserved. This approach furthers the goals of section 254(h) and is consistent with the universal service principles of section 254(b). First, health care providers in more rural areas have less access to telecommunications and advanced services than those in less rural areas, and those services tend to be more costly. Prioritizing limited funding for those areas fulfills the Commission's statutory mandate to preserve and advance universal service, including for ''low-income consumers and those in rural, insular, and high cost areas.'' Second, in areas in which medical care is less available, there is a greater need for and reliance on delivery of health care services via telehealth (which in turn requires access to telecommunications and advanced services). Prioritizing funding for those rural areas with the greatest medical need thus also serves the public interest. When demand exceeds the funds available, the Commission will first prioritize support based on rurality tiers, with extremely rural areas getting the highest priority over less rural areas. The Commission will further prioritize funding based on whether the area is a Medically Underserved Area/Population (MUA/P) as designated by the Health Resources and Services Administration (HRSA).

68. *Rural Prioritization Criteria.* The Commission first bases rural prioritization criteria on the existing definition of rural area. The current definition lends itself well to prioritization because it includes gradations of rurality instead of having simply two categories, *e.g.,* rural and non-rural. Accordingly, using the current definition of ''rural area'' contained in § 54.600(b) of the Commission's rules, 47 CFR 54.600(b), the Commission will prioritize funding based on the following rurality tiers: *Extremely rural*—counties entirely outside of a Core Based Statistical Area; *Rural*—census tracts within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000; *Less Rural*—census tracts within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but the census tract does not contain any part of an urban area or cluster with population equal to or greater than 25,000; and *Non-Rural*—all other non-rural areas.

69. The Commission considered and declined to use, as a proxy for rurality, the ''Highly Rural'' areas used by the Department of Veterans Affairs for its Highly Rural Transportation Grant program. Highly Rural areas are counties located in 25 states, primarily in the west and southwest United States, with a population density of fewer than seven people per square mile. The Commission found Highly Rural areas lack the necessary gradations of rurality and create an additional layer of complexity as to what is considered rural for purposes of prioritization. For example, using just a Highly Rural designation would prioritize only one category of rural areas for funding and would not allow the Commission to set subsequent prioritization levels among other areas that likely have varying degrees of rurality. In comparison, the current definition of rural area allows the Commission to designate multiple prioritization levels based on rurality. Moreover, creating a definition of rural just for prioritization that is separate and apart from the definition used for funding eligibility would further complicate the process for applicants and increase the burden for administering the program. With the rejection of using Highly Rural areas, the Commission likewise rejected GCI's alternative proposal to prioritize funding for such areas in exchange for

increased minimum payments by health care providers over a five-year period.

70. Additionally, the Commission declined to base rurality on the number of patients in rural areas served rather than the location of the health care provider. Such an approach would not only increase the complexity of determining prioritization but would also potentially shift funding to health care facilities in urban areas. For example, the Commission would need to determine, and then update, the areas where patients served by each participating health care facility actually live to determine the facilities entitled to funding prioritization. Commenters supporting this approach fail to suggest how such a process is administratively feasible. In addition, the Commission recognized many rural Americans have limited local opportunities for health care access and must travel to more populated areas for quality care. Accordingly, urban health care facility sites, participating as part of a consortium under the Healthcare Connect Fund Program, and that serve patients living in rural areas could receive funding priority based on this approach. One of the major goals of the RHC Program is to help promote local access in rural areas for health care so patients do not have to travel as far to obtain care. Prioritizing based on how many rural patients a facility serves could act contrary to this goal by shifting the funding priority to more populated areas that likely already have greater quality health care delivery systems than more rural areas.

71. *Health Care Shortage Measure.* The most commonly used Federal shortage designations are the Medically Underserved Areas and Populations (MUA/P) and the Health Professional Shortage Area (HPSA) designations. Both are administered by the Health Resources & Services Administration (HRSA) but are based in different statutory provisions for different Federal programs. The designation criteria for both rely on measures of physician supply relative to the size of the local population to assess geographically available care. MUA/Ps, however, also include weighted need-based variables for low-income, infant mortality, and population age. Designations are used to identify counties and census tracts not adequately served by available health care resources, and in the case of HPSAs, individual facilities that provide care to HPSA-designated areas or population groups. Both methods primarily rely on state governments, *i.e.,* the state primary care office, to identify areas or populations for designation and to gather information to document satisfaction of the designation criteria. Designations are approved by HRSA. Once designated, MUA/Ps are not subject to any subsequent renewal or update requirement. The U.S. Department of Health & Human Services is required to conduct periodic reviews and revisions for HPSA designations.

72. To determine whether an area is medically underserved, the Commission will use, with limited exception, the MUA/P as designated by HRSA. MUA/P designation relies on the Index of Medical Underservice (IMU), developed by the U.S. Department of Health & Human Services, which is calculated on a 1–100 scale (with 0 representing completely underserved and 100 representing best served or least underserved). An area or population with an IMU of 62.0 or below qualifies for designation as an MUA/P. The IMU is calculated by assigning a weighted value to an area or population's performance on four demographic and health indicators: (1) Provider per 1,000 population ratio; (2) percent population at 100% of the Federal Poverty Level; (3) percent of population age 65 and over; and (4) infant mortality rate. As of June 10, 2019, MUA/P designated areas covered 41.6% of the 2010 U.S. population. The Commission recognized rural areas may experience shortages in other health care areas, *e.g.,* mental health services and other specialty areas, but adding additional shortage designation types would significantly increase the complexity of the prioritization process. Accordingly, the Commission decided to measure shortages based on primary care at this time to facilitate predictability and to simplify the prioritization process.

73. The Commission found that MUA/Ps have two distinct advantages over HPSAs for purposes of RHC Program prioritization. First and most importantly, the MUA/P designation criteria includes variables for poverty, infant mortality, and population age in addition to provider supply as compared to population. Use of the MUA/P ensures consideration of population indicators for health need in addition to the number of primary care physicians in the area. Second, the focus on primary care with counties, census tracts, block groups, and blocks designated as shortage areas makes administering MUA/Ps in the prioritization process relatively straight-forward as compared to HPSAs. By using MUA/Ps, however, loses some degree of accuracy as compared to HPSAs because there is no requirement for renewal or subsequent review of MUA/P designations. But other benefits of using MUA/Ps outweigh this concern at this time. That said, the Commission will monitor and plan to revisit the use of MUA/Ps in the future to determine whether this proxy is sufficient for identifying medically underserved areas.

74. *Application of Prioritization Factors.* The Commission directed the Administrator in the R&O to fully fund all eligible requests falling in the first prioritization category before funding requests in the next lower prioritization category. The Administrator will continue to process all funding requests by prioritization category until there are no available funds. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will prorate the funding available among all eligible requests in that prioritization category only pursuant to the current proration process. The Administrator would then multiply the pro rata factor by the total dollar amount requested by each applicant in the prioritization category and then commit funds consistent with this calculation. While the Commission changed the overall prioritization process to minimize proration, the Commission found the limited use of proration prudent to equitably address instances where funding is insufficient for all applicants similarly situated within the same prioritization category. The Administrator will then deny requests falling within subsequent prioritization categories due to lack of available funds.

75. The prioritization process applies equally when demand exceeds the $150 million Healthcare Connect Fund Program cap for upfront and multi-year commitments. The Commission clarified that if requests for support exceed both the overall RHC Program cap and the $150 million Healthcare Connect Fund Program cap, the Administrator will first apply the prioritization process adopted in the R&O to requests subject to the $150 million Healthcare Connect Fund Program cap as that may eliminate the need to prioritize funding for the RHC Program cap.

76. The Commission recognized funding requests submitted by a consortium may contain multiple member sites falling in more than one prioritization categories, including member sites in non-rural areas. Nonetheless, the same prioritization process will apply, meaning those consortium sites in the highest prioritization category would receive funding commitments while other consortium sites in less rural and non-rural areas may not, *i.e.,* based on prioritization, the consortium may only

get a partial grant for some but not all of its sites. This potential outcome could dissuade future consortium participation but is necessary to better ensure support is directed to the most rural and medically underserved areas when demand exceeds the available support in a funding year. This outcome will also eliminate additional complexity in trying to prioritize consortia requests based on the percentage of member sites falling into particular prioritization categories as suggested in the *2017 Promoting Telehealth NPRM & Order.*

77. Under the approach adopted by the Commission, prioritization will not depend on whether the applicant seeks support under the Telecom or Healthcare Connect Fund Programs. Seeking to both ensure Telecom Program applicants have telecommunications services necessary to provide health care services and also support the deployment and adoption of advanced, next-generation broadband capabilities as promoted by the Healthcare Connect Fund Program. Accordingly, at this time, the Commission declined to prioritize funding based on program type and will treat both programs equally. The Commission disagreed with those commenters who state the language of section 254(h) requires the Commission to favor the Telecom Program over the Healthcare Connect Fund Program. The language of section 254(h) does not expressly require such prioritization; Congress did not express such an intent in the Joint Explanatory Statement accompanying the enactment of section 254(h); and the Commission has never interpreted the statute in this manner. Further, section 254(h)(1)(A) does not by its terms or otherwise require the Commission to prioritize support under that section over support to health care providers under section 254(h)(2)(A) or to other universal service programs under section 254. The Commission found that the goals of sections 254(b) and 254(h) are best served by prioritizing both RHC Programs according to degree of rurality and medical need, rather than arbitrarily prioritizing one program over another.

78. The Commission also declined to prioritize funding based on the type of service, *e.g.,* whether the support sought is for a monthly recurring service charge versus a one-time upfront payment, such as for infrastructure. Support of infrastructure and equipment costs are only available under the Healthcare Connect Fund Program so trying to prioritize by service raises the same issues as prioritizing one program over another. The Commission intends to treat both programs equally and to provide applicants the necessary flexibility to choose the services and infrastructure that best satisfy their needs in a given funding year without concern over losing funding priority. The Commission recognized that this approach deviates from that taken under the E-Rate Program, but found that this is the right approach for the RHC Program at this time.

79. *Retaining the Current Definition for Rural Area.* In the R&O, the Commission found that a modification of its definition of ''rural area'' is unwarranted at this time and could cause uncertainty for program recipients. That said, the Commission indicated it would add to the definition as necessary to reflect the three different rurality tiers discussed in the R&O, which has relevance for not only prioritization but also for the determination of rates for comparable rural areas in a state. This change will not result in a substantive modification of the definition for rural area for eligibility purposes, however.

80. Separately, with the 2020 decennial census approaching, the Commission reminded program participants of the procedures previously outlined to address revisions to the list of eligible rural areas (Rural Areas List). In addition, the Commission took the opportunity in the R&O to make one minor change to those procedures. Specifically, to simplify and minimize disruptions in between decennial data releases and the corresponding Core Based Statistical Area designation updates, the Commission instructed the Administrator to only refresh the Rural Areas List when the decennial census data and Core Based Statistical Area designations based on the new decennial census data are released. The Administrator should not update the Rural Areas List in between the decennial updates to reflect periodic data refreshes. For example, the Administrator should not update the list to reflect the ongoing American Community Survey that occurs in between decennial updates. While this means the Rural Areas List will not be based on the most up-to-date data each year, it will simplify the process and minimize potential disruptions for program participants in between decennial releases.

81. *Funding Is Not without Limit.* The Telecom Program is rooted in section 254(h)(1)(A). The Commission previously read this language to mean the ''amount of credit or reimbursement to carriers from the health care support mechanism is based on the difference between the price actually charged to eligible health care providers [*i.e.,* the discounted urban rate] and the rates for similar, if not identical, services provided to 'other customers' in rural areas in that State.'' Several commenters argue this statutory language requires the Commission to fully fund without limit all requests for commitments under the Telecom Program. The Commission disagrees.

82. Section 254(h)(1)(A) does not expressly provide for the creation of a funding support mechanism for telecommunications services to rural health care providers, but the Commission has relied on this provision to create the Telecom Program. Prior to creation of the Telecom Program, the Joint Board recommended the Commission rely on offsets and ''disallow the option of direct reimbursement'' given the statutory language to treat the discounted amount ''as a service obligation as part of [the carrier's] obligation to participate in the mechanisms to preserve and advance universal service.'' The Commission instead allowed for direct compensation when and if the amount of discounted services provided exceeded the provider's Universal Service Fund contribution. In 2012, the Commission changed its rules to ''permit USF contributors in the Telecommunications Program and the Healthcare Connect Fund to elect whether to treat the amount eligible for support as an offset against their universal service contribution obligation, or to receive direct reimbursement from USAC.''

83. The Commission has never treated the section 254(h)(1)(A) provision as creating an unlimited right to Universal Service Fund support for telecommunication services provided to rural health care providers. As discussed in the R&O, the Commission adopted a $400 million cap in 1997 on the Telecom Program in order to ''control the size of the support mechanism'' and ''to fulfill [its] statutory obligation to create specific, predictable, and sufficient universal service support mechanisms.'' The following year, the Commission adopted a proration mechanism should demand ever exceed the cap. The Commission would not have adopted a cap or a proration mechanism if it believed that it lacked statutory authority to set limits on the Telecom Program, which was implemented by section 254(h)(1)(A). The Commission has also placed other limitations on support provided under section 254(h)(1)(A). When creating the Telecom Program in 1997, the Commission also limited services eligible for support to services with a

bandwidth equal to or less than 1.544 Mbps per location, finding telecommunications services in excess of this threshold ''not necessary for the provision of health care services at th[at] time.'' Faced with tepid participation in the program, in 1999 the Commission eliminated the per-location limit and the limitation on service bandwidth finding such restrictions ''no longer necessary to ensure that demand for support remains below the . . . per year cap.''

84. Congress intended section 254(h) ''to ensure that health care providers for rural areas . . . have affordable access to modern telecommunications services that will enable them to provide medical . . . services to all parts of the nation.'' The language of section 254(h) provides the Commission with ample flexibility on how to structure a support mechanism to further this goal. As with any support mechanism, the Commission must base its decisions on the principles set forth in section 254(b), including having ''specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service.'' The prioritization approach adopted in the R&O serves this principle. Allowing funding without any limit runs counter to fiscal responsibility. The Commission does not believe Congress intended such a result, and instead concludes that Congress has given the Commission the necessary tools to preserve and advance universal service, including the ability to place limits on the amount of funding available.

85. *Maintaining the Funding Cap on Multi-Year Commitments and Upfront Payments and Instituting an Inflation Adjustment.* The Commission retained the $150 million cap on multi-year commitment and upfront payment requests in the Healthcare Connect Fund Program, but provided for the cap to be adjusted annually for inflation. The $150 million funding cap on multi-year and upfront payment requests has only been exceeded once since its creation in 2012. In funding year 2018, gross demand for multi-year commitments and upfront payments was $237 million, and demand for remaining Healthcare Connect Fund Program requests and Telecom Program requests was approximately $411 million. The overall program funding cap for funding year 2018 was approximately $581 million. If not for the $150 million cap on multi-year commitment and upfront payment requests, all funding year 2018 requests would have had to be prorated to bring the $648 million total gross demand for RHC Program funding below the $581 million funding cap, resulting in reductions of funding for *all* program participants. Because the $150 million cap on multi-year and upfront requests was in place, the Administrator was able to process single-year funding year 2018 requests at their full eligible amounts. Stated differently, the $150 million cap did the job the Commission intended when it was established—to prevent multi-year and upfront payment requests from usurping the funding available for single-year requests for recurring services and safeguard against large fluctuations in demand for RHC Program funds. Absent additional data demonstrating the need to increase the $150 million cap (if it is exceeded in future funding years), providing an economic basis for a particular increase amount, and establishing that an increase would not have a detrimental impact on single-year requests, the Commission concluded that increasing the base amount of the $150 million cap on multi-year commitments and upfront payments would not be a fiscally responsible measure consistent with the obligation to be good stewards of the Universal Service Fund.

86. That said, the Commission concluded that the $150 million funding cap on multi-year and upfront payment requests should be adjusted annually for inflation. In the *2018 Report and Order* (*2018 R&O*), FCC 18–82, the Commission found that health care providers purchasing services with RHC Program support should be able to maintain consistent purchasing power in the event of price inflation. To provide the flexibility necessary for that to occur, the Commission adopted a rule that annually adjusts the overall RHC Program cap for inflation, using the GDP–CPI inflation index. The Commission found that adjusting the $150 million funding cap on multi-year commitments and upfront payments within the Healthcare Connect Fund Program by the same index was a fiscally responsible means of preventing inflation from eroding the purchasing power of health care providers seeking such requests without overburdening the Universal Service Fund, unreasonably increasing contribution charges passed through to consumers, or risking an untenable depletion of funding available for single-year requests. In the R&O, the Commission directed the Bureau to compute the annual inflation adjustment pursuant to the same criteria established for adjusting the overall RHC Program funding cap in the *2018 R&O.* Any increases to the $150 million funding cap will be accounted for *within* the overall RHC Program cap, *i.e.,* an increase in the $150 million funding cap on multi-year commitments and upfront payments will not increase the overall RHC Program cap. The Commission also directed the Bureau to announce any inflation-adjusted increase in the $150 million funding cap on multi-years and upfront payments in the same Public Notice that announce the inflation adjustment of the overall cap, if any.

87. The Commission appreciates that health care providers want certainty of funding approvals when applying for multi-year commitments and upfront payments. The reality of the RHC Program and other universal service mechanisms is that available funds are limited, however, and there is no guarantee that funding requests submitted to the Administrator in a particular funding year will be approved. The Commission noted that the inability to obtain a multi-year *commitment* from the RHC Program due to a lack of available funds in a particular funding year does not prevent health care providers from obtaining the benefits of a multi-year *contract.* Health care providers remain free to seek advantageous pricing through multi-year service arrangements and seek evergreen treatment of those contracts so that funding requests may be submitted to the Administrator for each year of the contract without rebidding the services. Indeed, multi-year commitments are not permitted in the E-Rate Program, but that does not prevent schools and libraries from benefitting from the cost-benefits of negotiating multi-year contracts for services, including substantial broadband projects. Applicants that are concerned that a multi-year commitment may be denied in a particular funding year due to lack of funding should consider seeking annual funding for services provided under multi-year contracts.

88. *Clarifying the Carry-Forward Process for the RHC Program.* In the *2018 R&O,* the Commission adopted rules to address increasing demand in the RHC Program. Specifically, the Commission: (1) Increased the annual RHC Program funding cap to $571 million and applied it to funding year 2017; (2) provided for the annual RHC Program funding cap to be adjusted for inflation, beginning with funding year 2018; and (3) established a process to carry-forward unused funds from past funding years for use in future funding years. As part of that process, the Commission committed to announcing in the second quarter of each calendar year ''a specific amount of unused funds from prior funding years to be carried forward to increase available funding for

future funding years.'' The Commission indicated unused funds ''may be used to commit to eligible services in excess of the annual funding cap in the event demand in a given year exceeds the cap, or it may be used to reduce collection for the RHC Program in a year when demand is less than the cap.'' The Commission directed the Bureau to ''announce the availability and amount of carryover funds during the second quarter of the calendar year.''

89. To provide additional clarity for the carry-forward process, the Commission, in the R&O, directed the Bureau, in consultation with the Office of the Managing Director, to determine the proportion of unused funding for use in the RHC Program in accordance with the public interest to either satisfy demand notwithstanding the annual cap, reduce collections for the RHC Program, or to hold in reserve to address contingencies for subsequent funding years. The Bureau has authority to direct the Administrator to carry out the necessary actions for the use of available funds consistent with the direction specified in the document. The Commission previously provided similar authority to the Bureau in the context of allocating unused funding between demand for Category 1 and 2 services for the E-Rate Program.

90. *Targeting Support to Tribal Health Care Providers.* The Commission sought comments on targeting more support to health care providers located on Tribal lands and asked how the prioritization proposals would impact Tribal populations. The Commission received several comments on this issue, including comments from the Alaska Native Tribal Consortium and the Council of Athabascan Tribal Governments. Commenters generally emphasized the need for Tribal consultation and supported funding for health care providers on Tribal lands, specifically supporting prioritization based on the most rural areas. The Commission believes the prioritization approach adopted in the R&O, which prioritizes funding in those most rural areas with the greatest medical shortages, will help those living and seeking health care on Tribal lands as they are likely often the most remote and medically underserved areas of the country.

91. *Increasing Rural Participation in Healthcare Connect Fund Program Consortia.* The Healthcare Connect Fund Program provides support for eligible non-rural health care providers in majority-rural consortia (''more than 50% rural health care providers).'' Consortia have three years from the filing date of their first funding request under the Healthcare Connect Fund Program to meet the majority-rural requirement. To ensure that eligible rural health care providers are benefiting from limited RHC Program dollars, the Commission eliminated the three-year grace period for consortia to come into compliance with the majority-rural rule. The Commission concluded that the prior rationale for a three-year grace period is no longer applicable to the RHC Program as it exists today. It was established at the time when there was significantly less demand for RHC Program funding and the Commission sought to encourage the formation of consortia within the Healthcare Connect Fund Program. Now, approximately seven years later, circumstances have changed. The Commission's focus now is to ensure that the limited RHC Program funding reaches the rural beneficiaries the RHC Program was created to support, and the Commission determined that requiring all Healthcare Connect Fund Program consortia to comply with the majority-rural requirement is an appropriate step toward achieving those ends.

92. Eliminating the grace period (rather than shortening it) will also eliminate administrative burdens for the Commission and the Administrator in overseeing it—and eliminate an opportunity for regulatory arbitrage. No longer, for example, would the Administrator need to track how long a consortium had failed to meet the majority-rural requirement. And no longer would the Commission potentially face thorny compliance questions, such as whether a ''new'' consortium consisting of non-rural health care providers that switched from other non-compliant consortia would receive a new grace period.

93. The Commission now requires all consortia to comply with the majority-rural requirement by funding year 2020. Although the Commission recognized that some existing consortia may need a slight ramp-up period to negotiate and enter into contractual relationships amongst their participants and form a technology plan, almost two out of every three consortia have already demonstrated that achieving more than 50% rural participation is feasible—and 37% of consortia have reached at least 75% rural participation. For those that have not yet met the 50% threshold, the Commission found that allowing them until funding year 2020 to reach it strikes the appropriate balance between ensuring that RHC Program support reaches eligible non-rural health care providers during the transition to majority-rural status and the Commission's duty to ensure that RHC Program support is focused on the delivery of services to eligible health care providers in rural areas. For new consortia seeking to participate in the Healthcare Connect Fund Program, the majority-rural threshold must be met at the time that they apply for RHC Program funding. And while Kellogg & Sovereign, LLC asserts that, in some circumstances, it can take up to three years ''to establish the contracts'' to initiate the consortium and to add the eligible rural health care providers to ''ensure a proper balance''—the Commission does not see that as a reason to steer scarce RHC Program funds to non-compliant consortia when so many rural health care providers as well as compliant consortia are in need.

94. Given the Commission's elimination of the grace period, the Commission declined to increase the majority-rural threshold at this time. Rather, the Commission determined that increases to the majority-rural threshold should be consistent with overall RHC Program demand and the need to prioritize funding to health care providers in rural areas. Accordingly, the Commission will increase the majority-rural consortia percentage requirement only when RHC Program demand exceeds the funding cap. Specifically, if the Commission must prioritize funding in one year because demand exceeds the cap, the majority-rural threshold will automatically increase by 5% for the following funding year (up to a maximum of 75%). Consistent with the statutory mandate, this will ensure, as demand increases, that more Healthcare Connect Fund Program funding is focused on eligible health care providers serving rural areas. The Commission found that the more incremental approach—making such increases only when further evidence of demand outstripping supply comes in—better accomplishes the goals of such commenters without preemptively limiting participation by currently compliant consortia.

95. The Commission was not persuaded by commenters who oppose increasing the majority-rural health care provider requirement for Healthcare Connect Fund Program consortia. These commenters argue that: (1) The rural/non-rural composition of consortia is artificial; (2) increasing the majority-rural requirement may prevent small consortia from participating; (3) non-rural health care providers that deliver institutional knowledge, specialization, and expertise to rural communities may be disincentivized from participating; and (4) non-rural participants help to offset the expense of middle- and last-mile costs. Based on RHC Program data,

the majority of consortia currently participating in the Healthcare Connect Fund Program exceed the current majority-rural participation requirement without any apparent degradation of benefits to the eligible rural health care participants. The Commission determined, based on the current make-up of participating consortia, and with no data to support the arguments of the commenters opposing an increase, that increasing the majority-rural requirement by an incremental percentage as demand exceeds the cap, focuses the limited RHC Program dollars on support for eligible rural health care providers while still encouraging the participation of eligible non-rural health care providers. Thus, the Commission requires all existing and new consortia to reach any increased threshold, as necessary, and in so doing ensure the focus of RHC Program support remains primarily on supporting eligible rural health care providers.

96. *Applicability to Grandfathered Pilot Program Consortia.* The rule changes the Commission adopted in the R&O will apply equally to those consortia that participated in the prior Pilot Program and were grandfathered from complying with the majority-rural requirement in 2012. These grandfathered consortia were allowed to participate in the Healthcare Connect Fund Program with limitations on adding eligible non-rural member sites. The Commission grandfathered these consortia in recognition of their ability to encourage eligible rural health care provider participation in the Healthcare Connect Fund Program, and to minimize potential disruption in rural health care as the Commission transitioned from a pilot to a permanent program. Currently, 32 grandfathered Pilot Program consortia are participating in the Healthcare Connect Fund Program. All but three of these consortia now have more eligible rural than non-rural sites, *i.e.,* a rural majority. Fourteen of the 32 grandfathered Pilot Program consortia consist of 75% or more eligible rural sites. Given the limited number of such consortia and the current percentage of eligible rural health care provider sites within each consortia, the Commission sees no detrimental impact from requiring the remaining three consortia to meet the majority-rural requirement in one year. As the Commission indicated, circumstances have changed significantly since the Commission decided to grandfather Pilot Program consortia in 2012. The Commission therefore found all these requirements should apply equally to those grandfathered Pilot Program consortia.

97. *Requiring Applicants to Seek Bids for Particular Services, Not Tasks Performed by a Service.* Under the Commission's rules governing the Telecom Program and Healthcare Connect Fund Program, health care providers during the competitive bidding process are required to select the most ''cost-effective'' service offering. As the Commission explained in the *2017 Promoting Telehealth NPRM & Order,* the definition of ''cost-effective'' applicable to both RHC Programs places virtually no limitation on how health care providers make their service selection. In addition, because the definition of ''cost-effective'' does not require health care providers to identify their specific service requirements when posting their requests for service, they can select carriers whose service offerings meet the current ''cost-effective'' definition, but which exceed the needs of the health care providers irrespective of cost. The result is a procedure that can lead to wasteful inefficiency in the competitive bidding process.

98. To increase the effectiveness of the competitive bidding process, the Commission implemented a new safeguard intended to reduce the risk of the type of inefficiency described in the R&O. Specifically, the Commission requires RHC Program applicants to list the requested services for which they seek bids (*e.g.,* internet access, bandwidth) rather than merely listing what those services are intended to do (*e.g.,* transmit x-rays), and requires applicants to provide sufficient information to enable bidders to reasonably determine the needs of the applicant and provide responsive bids. The Commission believes requiring applicants to describe with greater specificity the precise *services* that they need, rather than just more specific uses, will reduce the likelihood of funding being used for excessively expensive services that are not necessary. This in turn will ensure a more equitable distribution of limited RHC Program funding. This change will become effective for funding year 2020.

99. *Harmonizing Certification and Documentation Requirements Between the RHC Programs.* To further promote the effectiveness of the competitive bidding process, the Commission harmonized the competitive bidding rules requiring Telecom Program applicants and Healthcare Connect Fund Program applicants to submit the same certifications and documentation (with limited exceptions) as part of their requests for service. The Commission first harmonized the certifications that RHC Program applicants must make when requesting service. Effective with funding year 2020, both Telecom Program and Healthcare Connect Fund Program applicants will be required to provide, contemporaneously with their requests for services, the following identical certifications that: (1) The health care provider seeking supported services is a public or nonprofit entity that falls within one of the seven categories set forth in the definition of health care provider listed in § 54.600 of the Commission's rules; (2) the health care provider seeking supported services is physically located in a rural area as defined in § 54.600 of the Commission's rules, or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607 of the Commission's rules; (3) the person signing the application is authorized to submit the application on behalf of the applicant, has examined the form and attachments, and to the best of his or her knowledge, information, and belief, all statements contained therein are true; (4) the applicant has complied with any applicable state, Tribal, or local procurement rules; (5) RHC Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the health care provider is legally authorized to provide under the law of the state in which the services will be provided and will not be sold, resold, or transferred in consideration for money or any other thing of value; (6) the applicant satisfies all requirements under section 254 of the Act and applicable Commission rules; and (7) the applicant has reviewed and is compliant with all applicable RHC Program requirements. The Commission will also require applicants of both RHC Programs to provide full details of any arrangement involving the purchasing of service or services as part of an aggregated purchase with other entities or individuals.

100. In addition to the foregoing, the Commission also harmonized and expanded two key competitive bidding documentation requirements. Applicants of both RHC Programs currently submit with their requests for service weighted evaluation criteria (*e.g.,* a scoring matrix) that demonstrate how the applicant will choose the most cost-effective bid and a declaration of assistance identifying each paid or unpaid consultant, vendor, and other outside expert who aided in the preparation of their applications. There

are, however, no RHC Program-wide rules governing either type of documentation. Therefore, the Commission amended its rules to codify the requirement that both Telecom Program and Healthcare Connect Fund Program applicants submit weighted bid evaluation criteria as before, but also specify on their bid evaluation worksheet/scoring matrix their minimum requirements for each criteria and record on their worksheet/matrix each service provider's proposed service levels for the established criteria. The Commission also required applicants of both programs to specify their disqualification factors, if any, that they will use to remove bids or bidders from further consideration.

101. The Commission further amended its rules to codify the requirement that both Telecom Program applicants and Healthcare Connect Fund Program applicants submit a declaration of assistance identifying each paid or unpaid consultant, vendor, and other outside expert who aided in the preparation of their application. In addition, to better safeguard against the possibility of conflicts of interest, the Commission also required applicants to describe the nature of the relationship they have with any such outside entity identified in their declaration of assistance. While cognizant of the additional time that these new requirements may require of health care providers preparing their requests, the Commission concluded that any increased administrative burden will likely be minimal and offset by the increase in competitive bidding transparency and accountability. The new documentation requirements discussed in the R&O will become effective for funding year 2020.

102. *Extending Healthcare Connect Fund Program's ''Fair and Open'' Competitive Bidding Process to the Telecom Program.* To improve RHC Program uniformity and transparency, the Commission aligned the ''fair and open'' competitive bidding standard applied in each program. While most Telecom Program participants already comply with this standard, and the Commission has long stated that an applicant must conduct a fair and open competitive bidding process, there is no rule codifying this standard in the Telecom Program as there is in the Healthcare Connect Fund Program. The Commission found that this standard should apply to all participants in the RHC Program as it ensures that they are accountable for engaging in improper conduct that undermines the competitive bidding process or otherwise violates the Commission's rules. The Commission therefore amended its rules to codify the requirement that the Telecom Program competitive bidding process be ''fair and open.''

103. The following actions are necessary to satisfy the ''fair and open'' competitive bidding standard in each RHC Program: (1) All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process; (2) vendors who intend to bid on supported services may not simultaneously help the applicant complete its request for proposal (RFP) or request for services form; and (3) vendors who intend to bid on supported services may not simultaneously help the applicant evaluate submitted bids or select the winning bid. The Commission also required applicants to respond to all service providers that have submitted questions or proposals during the procurement process. The Commission also reminded program participants that they also have an obligation to comply with any applicable state or local procurement laws, in addition to the Commission's competitive bidding requirements.

104. Conversely, as in the past, the Commission will find that it is a violation of the Commission's ''fair and open'' competitive bidding standard if: (1) A vendor, or any individual that has a financial or ownership interest in such a vendor, submits a bid and also prepares, signs, or submits the applicant's request for services; (2) a vendor, or any individual that has a financial or ownership interest in such a vendor, submits a bid and also participates in the applicant's bid evaluation or vendor selection process in any way; (3) the applicant has a relationship with a vendor that would unfairly influence the outcome of a competition or would furnish the vendor with ''inside'' information; (4) the applicant's RFP or request for services form does not describe the desired products and services with sufficient specificity to enable interested parties to submit responsive bids; (5) a vendor representative is listed as the contact person on the applicant's request for services and that vendor also participates in the competitive bidding process; or (6) the applicant's consultant is affiliated with the vendor selected to provide the requested services. Although some of these clarifications of the ''fair and open'' standard have yet to be applied to the RHC Program, the Commission believes that the RHC Program is equally at risk to the anti-competitive conduct that prompted the Commission to issue the clarifications in other Universal Service Fund contexts. The Commission also emphasized that this is not an exhaustive list of the types of conduct that violate the Commission's ''fair and open'' competitive bidding standard. Because the Commission cannot anticipate and address every possible action that parties may take in the RHC Program application and competitive bidding process, the Commission expects to continue to use the appeal process as necessary to address alleged competitive bidding violations.

105. *Extending the Healthcare Connect Fund Program Competitive Bidding Exemptions to the Telecom Program.* The Commission aligned the Commission's rules exempting certain applicants from the competitive bidding requirements in the Telecom and Healthcare Connect Fund Programs. Under Healthcare Connect Fund Program rules, there are five exemptions to the competitive bidding process: (1) Applications seeking support for $10,000 or less of total undiscounted eligible expenses for a single year; (2) applicants who are purchasing services and/or equipment from master services agreements (MSAs) negotiated by federal, state, Tribal, or local government entities on behalf of such applicants; (3) applicants purchasing services and/or equipment from an MSA that was subject to the Healthcare Connect Fund and Pilot Programs competitive bidding requirements; (4) applicants seeking support under a contract that was deemed ''evergreen'' by the Administrator; and (5) applicants seeking support under an E-Rate contract that was competitively bid consistent with E-Rate Program rules. Only the ''evergreen'' contract exemption applies to applicants in the Telecom Program, although that exception is not codified in the rules.

106. In the R&O, the Commission harmonized its rules in both RHC Programs by codifying the following Healthcare Connect Fund Program competitive bidding exemptions in the Telecom Program: (1) Applicants who are purchasing services and/or equipment from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such applicants; (2) applicants purchasing services and/or equipment from an MSA that was subject to the Healthcare Connect Fund and Pilot Programs competitive bidding requirements; (3) applicants seeking support under a contract that was deemed ''evergreen'' by the Administrator; and (4) applicants seeking support under an E-Rate contract that was competitively bid

consistent with E-Rate Program rules. The Commission declined to apply the $10,000 or less exemption it to the Telecom Program because it runs counter to the Commission's efforts to strengthen the competitive bidding process under the Telecom Program. As the Commission has seen in the Healthcare Connect Fund Program, sufficient safeguards are already in place to protect against waste, fraud, and abuse in these situations because the contracts are the result of a competitive bidding process in which the most cost-effective service provider is identified and selected. These exemptions also remove unnecessary and duplicative competitive bidding requirements while still ensuring fiscal responsibility, and better serve health care providers by improving and streamlining the application process. Codifying these exemptions in the Telecom Program will likely yield the same benefits for Telecom Program applicants.

107. *Adopting the E-Rate Program Gift Rule.* The Commission codified gift restrictions for the RHC Program that are similar to the gift rules applicable in the E-Rate Program. Specifically, the Commission adopted restrictions prohibiting an RHC Program applicant and/or its consultant, if applicable, from directly or indirectly soliciting or accepting a gift (*i.e.,* anything of value, including meals, tickets to sporting events, or trips) from a service provider participating in or seeking to participate in the RHC Program. As part of this rule, the Commission also prohibited service providers participating in or seeking to participate in the RHC Program from offering or providing any such gifts, gratuity, favor, entertainment, loan, or any other thing of value to those personnel of eligible entities participating in the RHC Program. The prohibition on offering or providing gifts includes any on-site product demonstration where the cost of the product, if purchased, licensed, or leased by the eligible entity's personnel for the length of time of the demonstration, would exceed the *de minimis* gift exception discussed in the following.

108. Like the E-Rate Program, the rules adopted by the Commission allows two exceptions for *de minimis* gifts: (1) Modest refreshments that are not offered as part of a meal (*e.g.,* coffee and donuts provided at a meeting) and items with little intrinsic value solely for presentation (*e.g.,* certificates and plaques); and (2) items that are worth $20 or less, as long as those items do not exceed $50 per employee from any one source per calendar year. In determining the amount of gifts from any one source, the Commission will consider the aggregate value of all gifts from any employees, officers, representatives, agents, independent contractors, or directors of the service provider in a given calendar year. These restrictions do not discourage companies from making charitable donations to RHC Program applicants, as long as such contributions are not directly or indirectly related to RHC Program procurement activities or decisions. If contributions have no relationship to the procurement of RHC Program-eligible services and are not given by service providers to circumvent any RHC Program rules, such contributions will not violate the prohibition against gift-giving. Similarly, gifts to family members and personal friends, when those gifts are made using personal funds of the donor (without reimbursement from an employer) and are not related to a business transaction or business relationship, will not violate the gift rules.

109. The Commission emphasized that the restriction on gifts is always applicable and is not in effect or triggered only during the time period when competitive bidding is taking place. In the Commission's experience, solicitation, offering, or acceptance of improper gifts may take place outside of the competitive bidding period. Accordingly, the Commission required an RHC Program applicant and/or its consultant, if applicable, to certify that it has not solicited or accepted a gift or any other thing of value from a service provider participating in or seeking to participate in the RHC Program. The Commission also required service providers to certify that they have not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services. To assist service providers to more easily identify those entities that are covered by the gift restrictions, the Commission recommended that service providers routinely search the Open Data platform maintained by the Administrator listing the entities participating in the RHC Program, as well as the locations receiving RHC Program support.

110. The gift rules codified by the Commission offer a fair balance between prohibiting gifts that may have undue or improper influence on a procurement decision and acknowledging the realities of professional interactions, which may occasionally involve giving people modest refreshments or a token gift. The rules also are appropriate for ease of administration and provide clarity for applicants and service providers. The Commission also believes that they are a necessary step to eliminate fraud and abuse in the RHC Program. The Commission reminded applicants and service providers that they remain subject to applicable state and local gift restrictions. To the extent a state or local provision is more stringent than the federal requirements, violation of the state or local provision constitutes a violation of the Commission's rules adopted in the R&O. The new rules applicable to gifts will become effective for funding year 2020.

111. *Implementing Rules Governing Consultants.* The RHC Program permits applicants to use a consultant or other third party to file FCC Forms and supporting documentation on their behalf. In the R&O, the Commission harmonized across both programs requirements regarding the use of consultants as well as adopted other specific requirements to ensure the integrity of the competitive bidding process and to prevent incidents of waste, fraud, and abuse. Specifically, the Commission required applicants to submit a declaration of assistance with their request for services identifying each and every consultant, vendor, or other outside expert, whether paid or unpaid, who aided in the preparation of their applications and, as part of this declaration, to describe the nature of their relationship with the consultant, vendor, or other outside expert providing the assistance. The Commission also required participating service providers (in each RHC Program) to disclose, on the appropriate RHC Program form, the names of any consultants or third parties who helped them identify the applicant's RFP or otherwise helped them to connect with the health care provider participating in the RHC Program. Applicants and service providers must certify, on the appropriate RHC Program form, that the consultants or other third parties they hire do not have an ownership interest, sales commission arrangement, or other financial stake in the vendor chosen to provide the requested services, and that they have otherwise complied with RHC Program rules, including the Commission's rules requiring fair and open competitive bidding. The Commission Emphasized that applicants and service providers are accountable for the actions of their consultants or outside experts should the Commission find that those consultants or experts have engaged in conduct that undermines fair and open competitive bidding. The new rules governing consultants and other third

parties will become effective for funding year 2020.

112. To enable the Administrator and the Commission to identify individuals providing consultant services in the RHC Program, the Commission directed the Administrator to establish a consultant registration process that is similar to the process in place for the E-Rate Program. Requiring unique registration numbers for consultants or outside experts is a simple and effective way of identifying those individuals and the firms that employ them. Under this registration process, an individual who has been identified as the applicant's consultant or other outside expert must provide to the Administrator his or her name and contact information, the name and contact information of the consulting firm or company that employs him or her, and a brief description of the role he or she will undertake in assisting the applicant. Once this information is provided, the Administrator will then issue a unique registration number to the consultant or outside expert and that number will be linked to the applicant's organization. These measures provide transparency for RHC Program participants regarding the roles and limitations of their consultants, while at the same time, facilitate the ability of the Administrator, the Commission, and law enforcement officials to identify and hold accountable those individuals who engage in illegal acts or otherwise damage the integrity of an applicant's competitive bidding process.

113. *Providing Additional Time for Competitive Bidding Process.* The Commission revised the RHC Program procedures, effective funding year 2021, to give applicants additional time to conduct their competitive bidding process prior to the start of the funding year rather than the current six months. This six-month period gives applicants very limited time within which to conduct competitive bidding prior to the opening of the application filing window for a given funding year. For example, for funding years 2018 and 2019, the application filing window opened on February 1, giving applicants, in practice, only one month to conduct a competitive bidding process prior to the start of the application filing window. While January 1 provides six months prior to the start of the funding year for competitive bidding, in practice, applicants need to complete bidding prior to the start of the application filing window, which opens months prior to the start of the funding year.

114. In the R&O, the Commission recognized that this time period is insufficient for applicants to thoroughly conduct competitive bidding and select a service provider prior to submitting an application for RHC Program support. The Commission concluded that applicants merit additional time prior to the opening of the application filing window to submit their request for services along with a request for proposal, if necessary, so they can more thoroughly review bids received and complete contracts with a service provider prior to the application filing window. The Commission thus provided applicants with additional time beyond the current six months to initiate the competitive bidding process prior to the start of the funding year. Specifically, beginning in funding year 2021, applicants can initiate their competitive bidding processes as early as July 1 of the prior year. This will give applicants more time to complete the bidding process and finalize contracts prior to filing their applications. This timeframe is also consistent with the E-Rate Program in which applicants generally have one year before the start of the funding year. Additionally, it will help to ensure that applicants' requests for services are more detailed and better targeted to meet their telehealth needs.

115. *Establishing an Application Filing Window.* The Commission revised its rules to require the Administrator to open an initial application filing window with an end date no later than 90 days prior to the start of the funding year (*i.e.,* no later than April 1). Similar to the E-Rate Program, where the application filing window closes in advance of the funding year, these revisions will give the Administrator time to begin processing submitted RHC Program applications prior to the start of the funding year and, therefore, expedite the issuance of funding decisions. It will also provide more certainty to applicants by establishing an end date by which applications must be filed and provide sufficient time for the Administrator to publish a gross demand estimate prior to the start of the funding year. The Administrator will continue to treat all eligible health care providers filing within this initial window period as if their applications were simultaneously received. All funding requests submitted outside of a filing window will not be accepted unless and until the Administrator opens another filing window. Prior to announcing the initial opening and closing dates of the application filing window each year, the Administrator shall seek approval of the proposed dates from the Chief of the Bureau. This change will become effective for funding year 2021 to coincide with the Commission's change to the start date of the competitive bidding process for the RHC Program.

116. In the R&O, the Commission recognized the value in establishing a set application filing window for applicants for planning purposes, given the potential for unforeseeable events and variables; the Commission also seeks, however, to ensure that the Administrator is prepared to open the application filing window (*i.e.,* adequate staffing resources, information technology system is fully operational) prior to announcing it for a given funding year. The Commission believes that requiring the Administrator to establish an initial application filing window end date sufficiently far in advance of the start of the funding year provides applicants with a more predictable timeframe as they prepare their competitive bidding processes and applications. It also provides flexibility to the Administrator to take any steps necessary to prepare for the application filing window. Given that the Commission is providing applicants with a full year to conduct their competitive process and finalize contracts with their service providers prior to the start of the funding year, they should be in a better position to submit their funding requests upon the opening of the application filing window period.

117. The Commission also believes that establishing an initial application filing window that treats all eligible health care providers filing within the window as if their applications were simultaneously received rather than issuing funding requests on a rolling basis, provides more certainty to the application and funding commitment process. Specifically, by establishing a filing window period, the Commission provides a mechanism for the Administrator to more efficiently administer the RHC Program and process requests while providing an incentive for applicants to timely submit their applications for support. The Administrator will immediately begin reviewing applications submitted within the initial application filing window and will not wait until the close of the application filing window to begin its review.

118. If requests submitted during an established application filing window period exceed the RHC Program's cap, per the rules adopted, the Administrator shall prioritize support based on the prioritization categories until all available RHC Program funding is committed. If funding requests submitted during the initial application

filing window do not exceed the cap, the Administrator will determine, based on demand and available funding, and after consultation with Commission staff, whether to open additional application filing window periods and the duration of any such application filing window periods. To the extent the Administrator opens an additional application filing window period, it shall continue to provide notice and include either in that notice, or soon thereafter, the amount of remaining available funding. The Commission believes that these changes to the application filing window period will provide applicants with more certainty regarding the initial application filing window, thus making it easier for applicants to plan accordingly, and will allow the Administrator to start making commitments prior to the start of the funding year.

119. *Expanding the Administrator's Authorization to Extend Service Delivery Deadline.* Health care providers are required to use the services for which support has been committed by the Administrator within the funding year for which the support was sought. Consistent with this requirement, the Administrator has routinely issued funding commitments to RHC Program applicants for recurring and non-recurring eligible services with a funding end date no later than June 30. The Commission has acknowledged that external circumstances beyond a health care provider's control can create situations where implementing non-recurring services by the end of the applicable funding year is impractical. Further, the Commission realizes that many applicants understandably are hesitant to install services or begin construction before receipt of a funding commitment letter, particularly in instances where there is a significant financial obligation required. The Commission also recognizes that implementing non-recurring services, such as service installation, infrastructure and network construction, are significant undertakings, both in time and cost. If the Administrator does not issue funding commitments for a given funding year until the final quarter of that funding year, this then leaves insufficient time for applicants to complete their projects by the end of the applicable funding year. For those applicants where the Administrator has issued a funding commitment letter with a funding end date prior to June 30 to coincide with a contract end date, this further shortens the period of time an applicant that waits until the issuance of a funding commitment letter has to install services or complete a construction project to receive RHC Program support for eligible services. In these instances, applicants are precluded from maximizing the value of their funding commitments to cover the cost of eligible services for a given funding year.

120. Unlike the E-Rate Program, there is no mechanism in the RHC Program to seek an extension of the non-recurring service delivery deadline from the Administrator, except in the limited context of dark fiber. An RHC Program applicant's only recourse, in instances where they are unable to meet the service delivery deadline, is to seek a waiver of the service delivery deadline from the Commission. Until the Commission addresses the waiver request, an applicant is uncertain whether any charges incurred after the end of the non-recurring service delivery deadline will be granted.

121. To mitigate such uncertainty and reduce administrative burdens, in the R&O, the Commission took two actions to simplify the administration and resolution of service delivery deadline issues in the RHC Program. First, the Commission eliminated funding request-specific service delivery deadlines based on individual contract end dates, and established June 30 of the funding year for which the program support was sought as the service delivery deadline for all services in the RHC Program. This creates a single implementation deadline for the RHC Program that is easy for the Administrator to track and allows applicants to pursue options for maximizing their approved funding commitments up to the end of the funding year should circumstances beyond their control prevent delivery by an earlier contract date. Applicants will still be required to submit their service contracts to the Administrator with their funding requests, and the support amount approved must be limited to charges incurred during the contract's term. Stated differently, by establishing a universal June 30 service delivery deadline, the Commission does not making additional funding available to applicants beyond their contract terms. Thus, applicants whose contract term ends prior to June 30 must obtain a contract extension and notify the Administrator of such extension in order to receive funding through the June 30 service delivery deadline.

122. Second, the Commission adopted, with a few modifications, the E-Rate Program's rule authorizing the Administrator to grant a one-year extension of the service delivery deadline for non-recurring services. Specifically, effective funding year 2020, RHC Program applicants meeting the following criteria will qualify for a one-year extension of the service delivery deadline for non-recurring services: (1) Applicants whose funding commitment letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized; (2) applicants that receive service provider change authorizations or site and service substitution authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized; (3) applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or (4) applicants whose service providers are unwilling to complete delivery and installation because the applicant's funding request is under review by the Administrator for program compliance. The Administrator shall automatically extend the service delivery deadline in situations where criteria (1) or (2) are met. Applicants, however, must affirmatively request an extension on or before the June 30 deadline for criteria (3) and (4). The Commission directed the Administrator to create a mechanism for health care providers to submit such extension requests. The Commission also directed the Administrator to issue its decisions on service delivery deadline requests within two months.

123. March 1 is the key date for determining whether to extend the deadline based on criteria (1) or (2). If one of the conditions is satisfied before March 1 (of any year), the deadline will not be extended, and the applicant will have until June 30 of that calendar year to complete implementation. If one of the conditions is satisfied on or after March 1, the applicant will have until June 30 of the following calendar year to complete implementation. The Commission found that applicants who satisfy the conditions prior to March 1 have sufficient time before the end of the funding year to install services or complete their construction projects.

124. With regard to criterion (3)—applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control—the Commission recognizes that there may be a wide range of situations in which an applicant, through no fault of its own, is unable to complete installation by June 30. Unable to anticipate every type of circumstance that may arise, the Commission directed the Administrator to address such situations on a case-by-case basis. Applicants must submit documentation to the Administrator requesting relief on

these grounds on or before June 30 of the relevant funding year. That documentation must include, at a minimum, an explanation regarding the circumstances that make it impossible for installation to be completed by June 30 and a certification by the applicant that, to the best of its knowledge, the request is truthful.

125. Finally, with regard to criterion (4)—applicants whose service providers are unwilling to complete delivery and installation because the applicant's funding request is under review by the Administrator for program compliance—applicants must certify to the Administrator that their service provider was unwilling to deliver or install the non-recurring services before the end of the funding year. Applicants must make this certification on or before June 30 of the relevant funding year. The revised implementation date will be calculated based on the date the Administrator issues a funding commitment. For example, if the Administrator delays funding for funding year 2020 while reviewing an applicant's funding request for program compliance, the applicant will need to file a certification with the Administrator by June 30, 2021.

126. The Commission found that this one-year extension for all non-recurring services, including the existing one-year extension available for dark fiber, provides an appropriate timeframe within which to install services or complete construction, and is consistent with the Commission's existing extensions for non-recurring services and special construction under the E-Rate Program in order for the services to be eligible for support. Additionally, implementation of this policy will provide clarity to the Administrator and applicants by establishing a certain deadline for installation of services.

127. *Improving the Invoicing Process. Establishing a Uniform Invoicing Deadline.* To alleviate inefficiencies with respect to the Telecom Program funding disbursement process and harmonize the filing deadlines for the Telecom and Healthcare Connect Fund Programs, the Commission established a uniform invoice filing deadline for the RHC Program beginning with funding year 2020. This rule adopted by the Commission requires all invoices under the RHC Program to be submitted to the Administrator within four months (120 days) after the later of: (1) The service delivery deadline; or (2) the date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request. For example, for funding year 2020 funding commitments ending on June 30, 2021, the invoice deadline for submitting the invoice forms by the applicant to the Administrator, after approval by the service provider, is October 31, 2021. If the service delivery deadline is extended until June 30, 2022, then the invoice deadline would be October 31, 2022. Similarly, if the Administrator approves a post-commitment request for funding year 2020 (*e.g.,* a SPIN change request to change service providers or correct a service provider's identification number or a service substitution) and the Administrator issues a revised funding commitment letter dated December 31, 2021, the invoice deadline would be April 30, 2022.

128. The Commission recognized that a deadline of 120 days reduces the current invoice deadline under the Healthcare Connect Fund Program for applicants by 60 days, but believes that 120 days coupled with the one-time 120-day invoice deadline extension adopted, will provide applicants with sufficient time to submit their invoices and seek reimbursement from the Administrator. As the Commission has explained, filing deadlines are necessary for the efficient administration of the RHC Program. The Commission previously found in the E-Rate context that a uniform 120-day invoice deadline provides the right balance between the need for efficient administration of the program and the need to ensure applicants and service providers have sufficient time to finish their own invoicing processes. Establishing a uniform invoicing deadline will also provide certainty to applicants and service providers. Providing certainty on invoicing deadlines will allow the Administrator to de-obligate committed funds immediately after the invoicing deadline has passed, providing increased certainty about how much funding is available to be carried forward in future funding years. This approach will result in a more efficient and effective administration of the RHC Program's disbursement process as well as providing applicants with faster funding timetables. The Commission emphasized, however, that it is incumbent on the applicant and the service provider in each RHC Program to complete and timely submit their invoices to the Administrator or to timely seek an extension of the invoice deadline.

129. *Establishing a One-Time Invoice Deadline Extension.* The Commission also adopted a rule allowing service providers and billed entities to request and automatically receive a single one-time 120-day extension of the invoice deadline as is done in the E-Rate Program. The invoice deadline extension rule will be effective beginning in funding year 2020. The Commission recognized there may be circumstances beyond some applicants' or service providers' control that could prevent them from meeting the 120-day invoice filing deadline for the RHC Program. For example, an Administrator error, administrative process, or system issue may prevent or delay the timely submission of forms or invoices. In other instances, a pending appeal of a specific funding request may impact the applicant's ability to submit invoices before the invoicing deadline. Therefore, the Commission adopted a rule allowing service providers and billed entities to seek and receive from the Administrator a single one-time invoice extension for any given funding request, provided the extension request is made no later than the original invoice deadline.

130. By adopting such a rule, the Commission eliminates the need for applicants and service providers to identify a reason for the requested extension and the need for the Administrator to determine whether such timely requests meet certain criteria, which will ease the administrative burden of invoice extension requests on the Administrator. Additionally, it will provide applicants additional time to receive the service provider certification and for the service provider to submit the invoice to the Administrator. The Commission directed the Administrator to create a mechanism for service providers and billed entities to submit such extension requests.

131. *Strengthening Service Provider Certifications.* As part of the Commission's efforts to improve the invoicing process, the Commission also strengthened the certifications made by the service provider when submitting invoices under the Telecom and Healthcare Connect Fund Programs. Currently, the invoicing form for the Telecom Program requires the service provider to certify that ''the information contained in the invoice is correct and the health care providers and the Billed Account Numbers listed in the document have been credited with the amounts shown under Support Amount to be Paid by [the Administrator].'' The Commission took the opportunity in the R&O to strengthen the certifications under the Telecom Program and require the service provider, in addition to the current certification in the R&O, to certify that: (1) It has abided by all

program requirements, including all applicable Commission rules and orders; (2) it has received and reviewed the Health Care Provider Support Schedule (HSS), invoice form and accompanying documentation, and that the rates charged for the telecommunications services are accurate and comply with the Commission's rules; (3) the service provider's representative is authorized to submit the invoice on behalf of the service provider; (4) the health care provider paid the appropriate urban rate for the telecommunications services; and (5) it has charged the health care provider for only eligible services prior to submitting the form and accompanying documentation.

132. While the invoice form for the Healthcare Connect Fund Program requires a service provider to certify to the accuracy of the form and attachments, that its representative is authorized to make the certifications, and that it will apply the amount paid by the Administrator to the billing account of the health care provider, it does not include any certifications regarding compliance with the rules. The Commission therefore also strengthened the certifications under the Healthcare Connect Fund Program requiring the service provider, in addition to the current certifications, to certify that it has: (1) Abided by all program requirements, including all applicable Commission rules and orders and (2) charged the health care provider for only eligible services prior to submitting the form. The inclusion of these additional certifications on the invoicing forms does not impose any further burdens on service providers because, as participants in the RHC Program, they are already required to abide by RHC Program rules. These additional certifications simply serve as a reminder to service providers of their responsibilities under the RHC Program and help to further ensure compliance with the Commission's rules and program requirements as part of the ongoing efforts to reduce, waste, fraud, and abuse in the RHC Program. These certifications will become effective for funding year 2020.

133. *Site and Service Substitutions.* The Commission further aligned the RHC Programs by making the site and service substitution criteria under the Healthcare Connect Fund Program applicable to the Telecom Program. In 2012, the Commission adopted site and service substitution procedures for the Healthcare Connect Fund Program. Under these procedures, a consortium leader or health care provider may request a site and service substitution if: (1) The substitution is provided for in the contract, within the change clause, or constitutes a minor modification; (2) the site is an eligible health care provider and the service is an eligible service under the Healthcare Connect Fund Program; (3) the substitution does not violate any contract provision or state, Tribal or local procurement laws; and (4) the requested change is within the scope of the controlling request for services, including any applicable request for proposal used in the competitive bidding process. Additionally, support is restricted to qualifying site and service substitutions that do not increase the total amount of support under the applicable funding commitment.

134. The Commission found that allowing site and service substitutions decreased burdens on program participants and increased administrative efficiencies by allowing applicants to request the Administrator to substitute or modify a site or service without modifying the actual funding commitment letter. Moreover, the Commission found that these procedures recognized the changing broadband needs of health care providers by providing them with the flexibility to substitute alternative services if they satisfied certain criteria. Despite these procedural and administrative benefits, the Commission never adopted, and the Administrator has never established, similar procedures for the Telecom Program. The Commission's new rules make the site and service substitution criteria under the Healthcare Connect Fund Program applicable to the Telecom Program. The Commission believes that making these criteria applicable to both RHC Programs will decrease burdens on all program participants and increase administrative efficiencies by enabling applicants to request the Administrator to substitute or modify a site or service without modifying their funding commitment letter. The new rule will become effective for the Telecom Program for funding year 2020.

135. The Commission also requires applicants under both the Healthcare Connect Fund and Telecom Programs to file requests for site and service substitutions with the Administrator by no later the applicable service delivery deadline. Applicants and service providers seeking funding under the RHC Program are currently required to submit invoices for the services they are seeking funding for by the invoicing deadline. Applicants often file requests for site and service substitutions on or near the invoicing deadline, which increases administrative burdens on the Administrator and causes delays in the funding disbursement process. The Commission believes that requiring applicants under the RHC Program to submit requests for site and service substitution by no later than the applicable service delivery deadline will ensure that the Administrator has ample time to review such requests prior to the invoicing deadline or the extension thereof. This change will become effective funding year 2020 for all applicants under the RHC Program.

136. *Service Provider Identification Number (SPIN) Changes.* To further improve the administration of the RHC Program and to establish consistency between the universal service programs, the Commission adopted rules, similar to those used in the E-Rate Program, governing requests for SPIN changes applicable to both the Telecom and the Healthcare Connect Fund Programs. A SPIN is a unique number that the Administrator assigns to an eligible service provider seeking to participate in the universal service support mechanisms. When requesting funding under the RHC Program, an applicant must use the SPIN to identify its chosen service provider when filing an FCC Form 462 (Healthcare Connect Fund Program) or an FCC Form 466 (Telecom Program). An applicant may change the SPIN on its FCC Form 462 or FCC Form 466 by filing a written request with the Administrator. While the Administrator has general procedures for implementing SPIN changes, there are no established program-wide procedures for the RHC Program.

137. To establish consistency between the universal service programs and provide guidance to RHC program participants, the SPIN change rules adopted by the Commission are modeled after the SPIN change procedures established under the E-Rate Program. As part of the rules, the Commission defined ''corrective'' SPIN changes as any ''amendment to the SPIN associated with a Funding Request Number that does not involve a change to the service provider associated with that Funding Request Number.'' Similar to the E-Rate Program, an applicant may request a ''corrective'' SPIN change if the applicant is: (1) Correcting data entry errors (*e.g.,* fixing clerical errors such naming the correct service provider in the funding request but providing the incorrect SPIN); (2) updating a service provider's SPIN that has changed due to the merger of companies or the acquisition of one company by another; or (3) effectuating a change that was not imitated by the applicant. The Commission also defined ''operational'' SPIN changes as ''any

change to the service provider associated with a specific Funding Request Number.'' Limiting ''operational'' SPIN changes to situations where: (1) The applicant has a legitimate reason to change providers (*e.g.,* breach of contract or the service provider is unable to perform); and (2) and the applicant's newly selected service provider received the next highest point value in the original bid evaluation, assuming there were multiple bidders.

138. Additionally, the Commission will require applicants to file requests for either a ''corrective'' or ''operational'' SPIN change in a manner prescribed by the Administrator by no later than the service delivery deadline as defined by the rules. Accordingly, the Commission directed the Administrator to implement procedures for requesting either a corrective or operational SPIN change consistent with the new rules and the R&O. The Commission believes that these rules will provide applicants with clarity on what is considered to be permissible SPIN changes under the RHC Program. Further, the Commission believes that requiring applicants to file their requests by no later than the service delivery date will help alleviate the administrative burdens on the Administrator and reduce the number of requests for waiver of the invoicing deadline filed with the Commission. These rules will become effective for funding year 2020.

139. *Consolidating and Simplifying RHC Program Rules.* As part of the efforts to streamline the RHC Program, the Commission consolidated duplicative rules that exist between the Telecom and Healthcare Connect Fund Programs. For example, merging § 54.619 (Telecom Program) and § 54.648 (Healthcare Connect Fund Program) of the current rules into a single program-wide rule governing audits and recordkeeping. The Commission also created a single program-wide competitive bidding rule that combines the existing rules under the Telecom and Healthcare Connect Fund Programs, as amended and harmonized. Further, the Commission included some additional definitions in other sections of the current rules into the ''Definitions'' section. The Commission included those merged rules, and the new rules adopted by the R&O that apply, for the most part, to both the Telecom and Healthcare Connect Fund Programs, under the ''General Provisions'' section of the RHC Program rules. All rules specifically applicable to either the Telecom or Healthcare Connect Fund Program will remain under separate sections within the rules. The Commission, to the extent possible, in consolidating the rules, retained the language of the current rules.

140. The Commission also reorganized and renumbered the RHC Program rules to reflect consolidation efforts. Where necessary, the Commission also simplified the language in the rules to use plain language so they are more easily understood by RHC Program stakeholders. Once these rules are published in the **Federal Register,** RHC Program participants are encouraged to familiarize themselves with the rules and the new format of the RHC Program rules. The Commission believes that these changes to the rules will reduce the administrative burdens on RHC Program stakeholders by making the rules easier to read and providing clarity on which rule requirements are program specific and which are program-wide. It will also help ensure that future amendments to program rules that apply to all RHC Program participants are implemented consistently in the Code of Federal Regulations.

141. Given the complexities associated with reforming the RHC Program and modifying the rules, the Commission directed the Bureau to make any further ministerial rule revisions as necessary to ensure the changes to the RHC Program adopted in the R&O are properly codified. This includes correcting any technical or textual conflicts between new and/or revised rules and existing rules, as well as addressing any technical or textual omissions or oversights. If any such ministerial rule changes are warranted, the Bureau shall be responsible for such changes.

142. *Streamlining and Improving the RHC Program Forms and Data Collection.* As part of the Commission's efforts to simplify and improve the efficiency of the application process for RHC Program participants, the Commission directed the Administrator to streamline the data collection requirements and consolidate the RHC Program online forms in order to reduce the administrative burden on RHC Program participants. The record strongly supports making procedural improvements to the process that will reduce the time it takes the Administrator to issue funding commitment decisions. Specifically, to the extent possible, the Commission directed the Bureau to work with the Administrator to streamline the data collection requirements and consolidate the program forms. The Commission also directed the Bureau to work with the Administrator to align the data collections between the Healthcare Connect Fund and Telecom Programs, to the extent possible, for ease of use and consistency between the Programs.

143. The Commission recognizes, that in some instances, it may be necessary to include some additional data elements to certain online forms to harmonize the RHC Program and ensure compliance with the Commission's rules and procedures (*e.g.,* requiring RHC Program applicants to list the requested services for which they seek bids, including service provider certifications on the invoice forms to ensure that the rates charged for services are accurate and that services are eligible). The Commission also realizes that some changes to the data collection requirements may be dependent upon the changes made to the RHC information technology systems. To the extent certain changes can be made to the data collection requirements within the existing RHC information technology systems, and do not require approval pursuant to the Paperwork Reduction Act, the Administrator will implement such changes so that they will become effective for funding year 2020. All other changes to the data collection requirements shall become effective no later than funding year 2021. Making this process easier for RHC Program applicants will reduce the administrative cost for health care providers by reducing the need for hiring skilled professionals to navigate the process and reducing the number of hours spent on completing the forms.

144. Additionally, as part of the improving the application process, the Administrator shall provide RHC Program participants with direction on the proper use of all the forms by posting a guide for each form which includes screenshots and instructions for completing and submitting each form. This will help those applicants who are new to the RHC Program or only occasionally participate in the program with guidance on how to complete the forms and the ability view screenshots of various sections of the form in order to better understand in advance how each section relates to other sections within a form. Because the RHC Program includes both large and small stakeholders, the Administrator should be particularly careful to draft the form instructions, and all other correspondence from the Administrator to RHC Program participants, in a simple, direct, user-friendly, and helpful manner. The Commission believes that these improvements to the Administrator's application process and communications will reduce applicant

confusion, ensure parties have the information necessary to comply with the rules and the Administrator's procedures, and expedite the application process. These requirements will become effective for funding year 2020.

145. *Ensuring Effective Procedures for Program Administration.* The Administrator enforces and implements the Commission's rules and performs its functions as the Administrator of the RHC Program, through various administrative procedures. In the E-Rate Program, the Administrator submits its administrative procedures for application review to the Bureau for approval on an annual basis, and submits its administrative procedures for other functions at the Bureau's request. This process enables the Bureau to assess whether the Administrator's procedures sufficiently address the requirements of the rules, and to better understand the demands that are being made of program participants to demonstrate compliance with the rules. Given the increasing demand for limited RHC Program funds, it is imperative that the Administrator carefully review funding applications to ensure that support is distributed in accordance with the rules, including the new measures adopted in the R&O. It is also critically important that the Administrator's post-commitment processes, including invoicing, appeals, and recovery actions, are implemented efficiently and in accord with the precedent. At the same time, the Commission is committed to making participation in the RHC Program as straight-forward and predictable as possible. Health care providers and service providers should be required to demonstrate compliance with RHC Program rules to receive funding and should also understand the questions being asked, why they are being asked those questions, and what data and documents are required to answer those questions. There should also be a clear process for each potential step of a funding request's life cycle—from the filing of an application through disbursements or review of a decision by the Administrator—so that RHC Program participants can understand the status of their requests and advocate for them as necessary.

146. To effectuate these ends and enable the Commission to perform its oversight role, the Commission directed the Administrator to document all of its administrative procedures for the RHC Program, including procedures for measures adopted by the R&O, and submit them to the Commission staff for review and approval. Specifically, the Commission directed the Administrator to submit to the Bureau within 90 days from October 11, 2019, and annually thereafter, comprehensive, consolidated, written procedures for: (1) Application review; (2) post-commitment reviews (*e.g.,* SPIN changes); (3) recovery actions; (4) invoicing; (5) appeals; and (6) any other procedures as further directed by the Bureau. The Bureau will review the procedures to determine whether further action is needed and whether such procedures should be adopted. The Commission believes formalizing the annual review and approval process for RHC Program procedures will promote greater transparency, efficiency, and timeliness regarding review of RHC Program forms and appeals and will enable quicker decisions for RHC Program participants. The Commission directed the Bureau to oversee the format for the submission of these procedures and the timeline going forward for submitting the annual RHC Program procedures to the Bureau for review and approval.

147. *Outreach.* The Commission recognizes that program participants will have questions about how the reforms adopted by the R&O will be implemented and how they can best prepare for the substantive and procedural changes. Although the Commission concluded that the effective dates established for the new rules provide sufficient time for health care and service providers to make any necessary adjustments, particularly given that the new rules reduce and streamline their procedural obligations, the Commission understands that they need clear information to successfully navigate the reformed RHC Program. Accordingly, the Commission directed the Administrator to prepare a series of outreach materials that set forth step-by-step requirements for health care and service providers under the new program rules. The outreach materials should include, at a minimum: (1) Filing guides setting forth the requirements of each form or online submission that health care and service providers are required to submit to the Administrator; (2) webinars separately addressing what health care and service providers must do to successfully participate in the Telecom Program and the Healthcare Connect Fund Program, from eligibility determinations through funding decisions and all post-commitment activities; and (3) updates to the Administrator's website providing the aforementioned information and materials. The Commission further directed the Administrator to collect the questions that it receives about the implementation of the new rules, identify the most commonly asked questions, and prepare answers to those questions that can be posted on its website in a Questions and Answers section. The Commission believes that providing clear and easily accessible information to program participants about the implementation of the new rules will ease their concerns about transitioning to them and allow them to take full advantage of the more predictable, transparent, and streamlined processes.

148. *Promoting Data Quality and Transparency.* As part of the Commission's efforts to improve transparency into the RHC Program, the Commission directed the Administrator to continue to timely publish through electronic means all non-confidential RHC data in open, standardized, electronic formats, consistent with the Open, Public, Electronic and Necessary (OPEN) Government Data Act. In doing so, the Commission recognized the efforts already made by the Administrator to publicize RHC Program data taken from the RHC FCC Forms in an open, electronic format. In July 2019, the Administrator released initial RHC Program data on its website, including information related to commitments and disbursements. The Commission directed the Administrator to provide a robust dataset that includes information on the type of services being requested and the rates charged by service providers for services provided to health care providers similar to the type of information provided for the E-Rate Program as part of the Administrator's Open Data. The Administrator shall continue to provide the public with the ability to easily view and download non-confidential RHC Program data, for both individual datasets and aggregate data. The Administrator must also design open and accessible data solutions in a modular format to allow extensibility and agile development, such as providing for the use of application programming interfaces (APIs) where appropriate and releasing the code, as open source code, where feasible. The Administrator's solutions must also be accessible to people with disabilities, as is required for federal agency information technology. Additionally, the solutions must meet the federal information security and privacy requirements.

149. The record supports the Administrator releasing RHC Program data in as open a manner as possible so that health care providers that receive support from the RHC Program and their associated service providers can view

funding request and pricing information, track the status of their RHC applications and requests for discounts, and so that they, and the public at large, can benefit from greater program transparency and public accountability. Commenters also assert that making RHC Program funding requests publicly and readily available will promote increased competition in the RHC Program and help to reduce waste, fraud, and abuse in the program. Further, making non-confidential RHC data open and accessible will allow members of the public to develop new and innovative methods to analyze RHC Program data, which will benefit all stakeholders, including the Commission, as the Commission continued to improve the RHC Program. Releasing RHC Program data in this manner should also enable greater integration with other datasets such as those maintained by the Health Resources & Services Administration (HRSA)'s Federal Office of Rural Health Policy. This integration will create opportunities for new and innovative analyses about connectivity to the nation's health care facilities to support medical care to rural communities.

150. *Implementation Schedule.* The RHC Program reforms will be effective November 12, 2019 unless specifically identified or if a rule contains an ''information collection'' subject to approval under the Paperwork Reduction Act. Because there are several interlocking changes to the rules, the Commission summarized when certain rules will take effect to ease the burden on program applicants.

151. In funding year 2020, rules for prioritizing funding if demand exceeds the available funding, rules governing majority-rural requirement for Healthcare Connect Fund Program, consortia certification rules, competitive bidding rules, invoicing rules, site and service substitutions and SPIN change rules, service delivery deadline and extension rules, gift rules, and rules governing use of consultants and other third parties will all take effect. In funding year 2021, the rules for determining urban and rural rates in the Telecom Program, the rule providing additional time to complete the competitive bidding process, and the application filing window rule will take effect.

III. Procedural Matters

A. Paperwork Reduction Act Analysis

152. The R&O contain new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new and modified information collection requirements contained in the proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, it previously sought specific comments on how to ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis (FRFA).

B. Congressional Review Act

153. The Commission will send a copy of the R&O to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

C. Final Regulatory Flexibility Analysis

154. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, the Commission included an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in the *2017 Promoting Telehealth NPRM & Order.* The Commission sought written public comment on the proposals in the *2017 Promoting Telehealth NPRM & Order,* including comment on the IRFA. The Commission did not receive any relevant comments in response to this IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

155. *Need for, and Objectives of, the Report and Order.* Section 254(h)(1)(A) of the Telecommunications Act of 1996 (1996 Act) mandates that telecommunications carriers provide telecommunications services for health care purposes to eligible rural public or non-profit health care providers at rates that are ''reasonably comparable'' to rates in urban areas. In addition, section 254(h)(2)(A) of the 1996 Act directs the Commission to establish competitively neutral rules to enhance, to the extent technically feasible and economically reasonable, access to ''advanced telecommunications and information services'' for public and non-profit health care providers. Based on this legislative mandate, the Commission established the two components of the Rural Health Care (RHC) Program—the Telecommunications (Telecom) Program and the Healthcare Connect Fund Program. The Telecom Program subsidizes the difference between urban and rural rates for telecommunications services. Eligible rural health care providers can obtain rates on telecommunications services for their rural health care facilities that are reasonably comparable to rates charged for similar services in corresponding urban areas. The Telecom Program has not undergone any significant change since its creation more than two decades ago. The Healthcare Connect Fund Program, created in 2012, provides a flat 65% discount on an array of advanced telecommunications and information services. These services include internet access, dark fiber, business data, traditional Digital Subscriber Line (DSL), and private carriage services. With the Healthcare Connect Fund Program, the Commission intended to promote the use of broadband services and facilitate the formation of health care provider consortia.

156. Demand for RHC Program funding has rapidly increased over the past few years. As the demand for robust broadband has increased throughout the country, the RHC Program has witnessed a dramatic increase in health care provider participation. This recent increase in RHC Program demand necessitated a re-evaluation of the RHC Program rules and procedures to promote the efficient allocation of limited funds and provide predictability and transparency for the RHC Program. To this end, in December 2017, the Commission released the *2017 Promoting Telehealth NPRM & Order* seeking comments on various ways to improve the RHC Program. Specifically, the Commission sought comment on whether and how to reform the calculation of urban and rural rates used to determine the amount of support available to health care providers under the Telecom Program. The Commission also sought comment on whether and how to prioritize RHC Program funding when demand exceeds the cap to ensure limited support is better targeted to rural and Tribal health care providers. Additionally, the Commission sought comment on the rules concerning the appropriate percentage of rural versus non-rural health care providers in Healthcare Connect Fund Program consortia; various actions to prevent waste, fraud, and abuse in the RHC

Program; and how to better align procedures between the Telecom and Healthcare Connect Fund Programs.

157. In the R&O, the Commission implemented a number of the proposals in the *2017 Promoting Telehealth NPRM & Order* to improve the RHC Program. First, the Commission reformed the Telecom Program to more efficiently distribute RHC Program funding and minimize the potential for waste, fraud, and abuse in the program in order to better maximize RHC Program funding. Second, the Commission took several actions to target and prioritize funding to those rural areas in the most need of health care services and ensure that eligible rural health care providers continue to benefit from RHC Program funding. Third, the Commission implemented a variety of measures directed at strengthening the competitive bidding requirements under the RHC Program to ensure that program participants comply with the RHC Program rules and procedures, and improve uniformity and transparency across the RHC Program. Fourth, the Commission adopted a series of program-wide rules and procedures, applying both to the Telecom and Healthcare Connect Fund Programs, intended to simplify the application process for program participants and provide more clarity regarding the RHC Program procedures. Lastly, the Commission directed the Administrator, the administrator of the universal service programs, to take a variety of actions to simplify the RHC Program's applications process, increase transparency in the RHC Program, and ensure that all applicants receive complete and timely information to help inform their decisions regarding RHC eligible services and purchases. The Commission believes that these changes, taken together, will increase the ability of health care providers to better utilize telecommunications and broadband services to meet the health care needs in their communities, and will ensure that RHC Program dollars are serving their intended purpose.

158. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rule(s) as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rule(s) in this proceeding.

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

160. Small entities potentially affected by the reforms adopted in the R&O include eligible non-profit and public health care providers and the eligible service providers offering them services, including telecommunications service providers, Internet Service Providers (ISPs), and service providers of the services and equipment used for dedicated broadband networks.

161. Several of the rule changes will result in additional recordkeeping and compliance requirements for small entities. For all of those rule changes, the Commission has determined that the benefits of an RHC Program that is more aligned with its intended mission, administratively streamlined, and stronger in its deterrence of waste, fraud, and abuse outweigh the burden of the increased recordkeeping and compliance requirements. Other rule changes decrease recordkeeping requirements for small entities and make the RHC Program administratively less burdensome.

162. All of the rules implemented by the Commission impose minimal burden on small entities by requiring them to become familiar with the new rules to comply with them. For many new rules such as—determining the urban and rural rates, prioritizing funding based on rurality tiers and Medically Underserved Area/Population (MUA/P) designations, expanding the timeframe to conduct a competitive bidding process, establishing an application filing window, implementing a ''fair and open'' competitive bidding standard, establishing competitive bidding exemptions and gift rules—the burden of becoming familiar with the new rules, including the new format, in order to comply with them is the only burden the news rules impose.

163. *Expanding USAC's Authorization to Extend Service Delivery Deadline.* The Commission adopted a service delivery deadline of June 30 and four criteria for extending this deadline for non-recurring services for qualified applicants. While the Administrator will automatically extend the service delivery deadline in situations where criteria (1) and (2) are met, applicants must affirmatively request an extension and provide documentation to the Administrator for criteria (3) and (4). For those applicants seeking an extension under criteria (3) or (4), this will minimally increase their recordkeeping requirements. The benefit to rural health care providers in receiving additional time to implement eligible services outweighs this burden.

164. *Extending the Invoice Deadline.* The Commission adopted a uniform invoice filing deadline for the RHC Program. Service providers and billed entities may request and automatically receive an extension of this deadline. For those service providers and billed entities seeking an extension, this will minimally increase their recordkeeping requirements. The benefit to rural health care providers in receiving additional time to submit their invoices to receive universal service support outweighs this burden.

165. *Strengthening Service Provider Invoice Certifications.* Requiring service providers to make additional certifications on the Telecom and Healthcare Connect Fund Program invoice forms increases their compliance requirements. However, the inclusion of these additional certifications does not impose any further burdens on service providers because, as participants in the RHC Program, they are already required to abide by RHC Program rules. These additional certifications simply serve as reminder to service providers of their current responsibilities under the RHC Program and help to further ensure compliance with the Commission's rules and program requirements as part of the ongoing efforts to reduce, waste, fraud, and abuse in the RHC Program.

166. *Site and Service Substitutions.* The Commission aligned the RHC Programs and made the site and service substitution criteria under the Healthcare Connect Fund Program applicable to the Telecom Program. Those rural health care providers under the Telecom Program seeking to make such substitutions must submit requests to the Administrator with supporting documentation. While this rule will increase rural health care providers' recordkeeping requirements, the benefit to health care providers of having a mechanism to request substitutions or modifications to a site or service without modifying their funding commitment letter outweighs this burden.

167. *Service Provider Identification Number (SPIN) Changes.* The Commission adopted a rule permitting

rural health care providers to make service provider changes under certain conditions. Although the rule will increase rural health care providers' recordkeeping requirements, the benefit to rural health care providers of having a mechanism for requesting such changes and clarity on what is considered to be permissible SPIN changes under the RHC Program outweighs this burden.

168. *Requiring Applicants to Seek Bids for Particular Services.* Requiring RHC Program applicants to list the requested services for which they seek bids (*e.g.,* internet access, bandwidth), and to provide sufficient information to enable bidders to reasonably determine the needs of the applicant and provide responsive bids, will increase applicants' recordkeeping requirements. Ensuring a more equitable distribution of limited RHC Program funding justifies this burden.

169. *Cost-Effective Documentation.* In the R&O, the Commission required applicants to submit documentation to support their certifications that they have selected the most cost-effective option increases recordkeeping requirements, but found that this is necessary to help protect against wasteful spending and ensure that RHC Program funds can be distributed as widely and equitably as possible.

170. *Competitive Bidding Certifications and Documentation.* The Commission took a variety of measures to harmonize the competitive bidding rules between the Telecom and Healthcare Connect Fund Programs, including harmonizing the certifications that applicants must make when requesting service, harmonizing and expanding two key competitive bidding documentation requirements, and codifying the requirement that both Telecom Program applicants and Healthcare Connect Fund Program applicants submit a declaration of assistance identifying each consultant or outside expert who aided in the preparation of their application in addition to describing the nature of the relationship. While these rules increase compliance and recordkeeping requirements, the increased burden is outweighed by the increase in competitive bidding transparency and accountability within the RHC Program.

171. *Certifications Governing Consultants.* The Commission adopted rules requiring both rural health care providers and service providers to certify that that they have not solicited or accepted a gift or any other thing of value from those seeking to participate or participating in the RHC Program. While the rules increase compliance requirements, the burden is outweighed by the interest in ensuring that the competitive bidding process is not unduly or improperly influenced by the receipt of gifts.

172. *Cost-Based Rates.* The Commission eliminated the cost-based mechanism for service providers to establish a rural rate, which will decrease recordkeeping requirements for those service providers that use the mechanism.

173. *Limitation of Support for Satellite Services.* The Commission eliminated § 54.609(d) of the rules which allows rural health care providers to receive discounts for satellite service even where wireline services are available, but caps the discount at the amount providers would have received if they purchased functionally similar wireline alternatives. Elimination of the rules will decrease recordkeeping requirements for rural health care providers.

174. *Eliminating Distance-Based Support.* The Commission eliminated distance-based support which allows rural health care providers to obtain support for charges based on distance. Elimination of the rule will decrease recordkeeping requirements for rural health care providers.

175. *Streamlining and Improving the RHC Program Forms and Data Collection.* Streamlining the data collection requirements and consolidating the Telecom and Healthcare Connect Fund Programs' online forms should reduce recordkeeping requirements for RHC Program participants.

176. *Data Quality and Transparency.* Requiring the Administrator to release RHC Program data in as open a manner as possible will benefit rural health care providers and service providers by enabling them to view funding and pricing information and track the status of their applications, thereby promoting competition within the RHC Program and increasing access to pertinent information.

177. *FCC Form Directions.* Providing direction on the use of the FCC Forms, should make it easier for small entities, particularly those who are new to the RHC Program or only occasionally participate in the program, to complete the forms by reducing applicant confusion and ensuring that entities have the information necessary to comply with the Commission's rules and the Administrator's procedures, and expedite the application process.

178. *Competitive Bidding Exemptions.* The Commission adopted a rule aligning the RHC Program rules exempting certain applicants from the competitive bidding requirements in the Telecom and Healthcare Connect Fund Programs. The rule will decrease rural health care providers' recordkeeping requirements under the Telecom Program because those applicants qualifying for a competitive bidding exemption will not be required to initiate a bidding process by preparing and posting a request for services.

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

180. This rulemaking could impose additional burdens on small entities. The Commission considered alternatives to the rulemaking changes that increase projected reporting, recordkeeping and other compliance requirements for small entities. Specifically, in determining how best to establish urban and rural rates under the Telecom Program, the Commission concluded that the Administrator is the best entity to make publicly available a standardized set of urban and rural rates for use with all Telecom Program applications. Although the Commission could obtain this information from rural health care providers or service providers, the Administrator is in the best position as a single expert entity to establish a publicly accessible urban and rural rate database and will greatly lessen the administrative burden on rural health care providers and their service providers.

IV. Ordering Clauses

181. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1–4, 201–205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 151 through 154, 201 through 205, 214, 254, 303(r), and 403, that the R&O is ADOPTED, effective November 12, 2019, except that modifications to Paperwork Reduction Act burdens shall become effective upon approval by OMB and any new rules that contain information collection requirements shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

182. *It is further ordered* that Part 54 of the Commission's rules, 47 CFR part 54 IS AMENDED as set forth in the Final Rules, and such rule amendments shall be effective November 12, 2019, except those rules and requirements which contain new or modified information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act. The new rules that contain information collections subject to PRA review *shall become effective* immediately upon announcement in the **Federal Register** of OMB approval.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, Internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 to read as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Revise Subpart G to read as follows:

Subpart G—Defined Terms and Eligibility

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§ 54.600 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) *Funding year.* A ''funding year'' for purposes of the funding cap shall be the period between July 1 of the current calendar year through June 30 of the next calendar year.

(b) *Health care provider.* A ''health care provider'' is any:

(1) Post-secondary educational institution offering health care instruction, including a teaching hospital or medical school;

(2) Community health center or health center providing health care to migrants;

(3) Local health department or agency;

(4) Community mental health center;

(5) Not-for-profit hospital;

(6) Rural health clinic;

(7) Skilled nursing facility (as defined in section 395i–3(a) of Title 42); or a

(8) Consortium of health care providers consisting of one or more entities described in paragraphs (b)(1) through (7) in this section.

(c) *Off-site administrative office.* An ''off-site administrative office'' is a facility that does not provide hands-on delivery of patient care but performs administrative support functions that are critical to the provision of clinical care by eligible health care providers.

(d) *Off-site data center.* An ''off-site data center'' is a facility that serves as a centralized repository for the storage, management, and dissemination of an eligible health care provider's computer systems, associated components, and data, including (but not limited to) electronic health records.

(e) *Rural area.* A ''rural area'' is an area that is entirely outside of a Core Based Statistical Area; is within a Core Based Statistical Area that does not have any Urban Area with a population of 25,000 or greater; or is in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but is within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000. For purposes of this rule, ''Core Based Statistical Area,'' ''Urban Area,'' and ''Place'' are as identified by the Census Bureau.

(f) *Rural health care provider.* A ''rural health care provider'' is an eligible health care provider site located in a rural area.

(g) *Urbanized area.* An ''urbanized area'' is an area with 50,000 or more people as designated by the Census Bureau based on the most recent decennial Census.

§ 54.601 Health care provider eligibility.

(a) *Eligible health care providers.* (1) Only an entity that is either a public or non-profit health care provider, as defined in this subpart, shall be eligible to receive support under this subpart.

(2) Each separate site or location of a health care provider shall be considered an individual health care provider for purposes of calculating and limiting support under this subpart.

(b) *Determination of health care provider eligibility for the Healthcare Connect Fund Program.* Health care providers in the Healthcare Connect Fund Program may certify to the eligibility of particular sites at any time prior to, or concurrently with, filing a request for services to initiate competitive bidding for the site. Applicants who utilize a competitive bidding exemption must provide eligibility information for the site to the Administrator prior to, or concurrently with, filing a request for funding for the site. Health care providers must also notify the Administrator within 30 days of a change in the health care provider's name, site location, contact information, or eligible entity type.

§ 54.602 Health care support mechanism.

(a) *Telecommunications Program.* Eligible rural health care providers may request support for the difference, if any, between the urban and rural rates for telecommunications services, subject to the provisions and limitations set forth in §§ 54.600 through 54.602 and 54.603 through 54.606. This support is referred to as the ''Telecommunications Program.''

(b) *Healthcare Connect Fund Program.* Eligible health care providers may request support for eligible services, equipment, and infrastructure, subject to the provisions and limitations

set forth in §§ 54.600 through 54.602 and 54.607 through 54.618. This support is referred to as the ''Healthcare Connect Fund Program.''

(c) *Allocation of discounts.* An eligible health care provider that engages in both eligible and ineligible activities or that collocates with an ineligible entity shall allocate eligible and ineligible activities in order to receive prorated support for the eligible activities only. Health care providers shall choose a method of cost allocation that is based on objective criteria and reasonably reflects the eligible usage of the facilities.

(d) *Health care purposes.* Services for which eligible health care providers receive support from the Telecommunications Program or the Healthcare Connect Fund Program must be reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under the law in the state in which such health care services or instruction are provided.

Telecommunications Program

§ 54.603 Consortia, telecommunications services, and existing contracts.

(a) *Consortia.* (1) Under the Telecommunications Program, an eligible health care provider may join a consortium with other eligible health care providers; with schools, libraries, and library consortia eligible under subpart F of this part; and with public sector (governmental) entities to order telecommunications services. With one exception, eligible health care providers participating in consortia with ineligible private sector members shall not be eligible for supported services under this subpart. A consortium may include ineligible private sector entities if such consortium is only receiving services at tariffed rates or at market rates from those providers who do not file tariffs.

(2) For consortia, universal service support under the Telecommunications Program shall apply only to the portion of eligible services used by an eligible health care provider.

(b) *Telecommunications services.* Any telecommunications service that is the subject of a properly completed bona fide request by a rural health care provider shall be eligible for universal service support. Upon submitting a bona fide request to a telecommunications carrier, each eligible rural health care provider is entitled to receive the most cost-effective, commercially-available telecommunications service, and a telecommunications service carrier that is eligible for support under the Telecommunications Program shall provide such service at the urban rate, as defined in § 54.604.

(c) *Existing contracts.* A signed contract for services eligible for Telecommunications Program support pursuant to this subpart between an eligible health care provider, as defined under § 54.600, and a service provider shall be exempt from the competitive bid requirements as set forth in § 54.622(i).

§ 54.604 Determining the urban rate.

(a) *Urban rate.* An applicant shall use the applicable urban rate currently available in the Administrator's database when requesting funding. The ''urban rate'' shall be the median of all available rates identified by the Administrator for functionally similar services in all urbanized areas of the state where the health care provider is located to the extent that urbanized area falls within the state.

(b) *Database.* The Administrator shall create and maintain on its website a database that lists, by state, the eligible Telecommunications Program services and the related urban rate.

§ 54.605 Determining the rural rate.

(a) *Rural rate.* An applicant shall use the lower of the applicable ''rural rate'' currently available in the Administrator's database or the rural rate included in the service agreement that the health care provider enters into with the service provider when requesting funding.

(1) For purposes of paragraph (a) of this section, The rural rate will be determined using the following tiers in which a health care provider is located:

(i) *Extremely Rural.* Areas entirely outside of a Core Based Statistical Area.

(ii) *Rural.* Areas within a Core Based Statistical Area that does not have an Urban Area with a population of 25,000 or greater.

(iii) *Less rural.* Areas in a Core Based Statistical Area that contains an Urban Area with a population of 25,000 or greater, but are within a specific census tract that itself does not contain any part of a Place or Urban Area with a population of greater than 25,000.

(iv) *Frontier.* For health care providers located in Alaska only, areas outside of a Core Based Statistical Area that are inaccessible by road as determined by the Alaska Department of Commerce, Community, and Economic Development, Division of Community and Regional Affairs. The ''rural rate'' shall be the median of all available rates for the same or functionally similar service offered within the rural tier, applicable to the health care provider's location within the state. The Administrator shall not include any rates reduced by universal service support mechanisms. The ''rural rate'' shall be used as described in this subpart to determine the credit or reimbursement due to a telecommunications carrier that provides eligible telecommunications services to eligible health care providers.

(b) *Database.* The Administrator shall create and maintain on its website a database that lists, by state, the eligible Telecommunications Program services and the related rural rate for each such service and for each rural tier.

(c) *Request for waiver.* A petition for a waiver of the ''rural rate,'' as described in paragraph (a) in this section, may be granted if the service provider demonstrates that application of the rural rate published by the Administrator would result in a projected rate of return on the net investment in the assets used to provide the rural health care service that is less than the Commission-prescribed rate of return for incumbent rate of return local exchange carriers (LECs). All waiver requests must articulate specific facts that demonstrate that ''good cause'' exists to grant the requested waiver and that granting the requested waiver would be in the public interest. To satisfy this standard, the waiver request must be substantiated through documentary evidence as stated in the following. A waiver request will not be entertained if it does not also set forth a rural rate that the service provider demonstrates will permit it to obtain no more than the current Commission prescribed rate of return authorized for incumbent rate of return local exchange carriers.

(1) For purposes of paragraph (c), petitions seeking a waiver must include all financial data and other information to verify the service provider's assertions, including, at a minimum, the following information:

(i) Company-wide and rural health care service gross investment, accumulated depreciation, deferred state and federal income taxes, and net investment; capital costs by category expressed as annual figures (*e.g.,* depreciation expense, state and federal income tax expense, return on net investment); operating expenses by category (*e.g.,* maintenance expense, administrative and other overhead expenses, and tax expense other than income tax expense); the applicable state and federal income tax rates; fixed charges (*e.g.,* interest expense); and any income tax adjustments;

(ii) An explanation and a set of detailed spreadsheets showing the

direct assignment of costs to the rural health care service and how company-wide common costs are allocated among the company's services, including the rural health care service, and the result of these direct assignments and allocations as necessary to develop a rate for the rural health care service;

(iii) The company-wide and rural health care service costs for the most recent calendar year for which full-time actual, historical cost data are available;

(iv) Projections of the company-wide and rural health care service costs for the funding year in question and an explanation of those projections;

(v) Actual monthly demand data for the rural health care service for the most recent three calendar years (if applicable);

(vi) Projections of the monthly demand for the rural health care service for the funding year in question, and the data and details on the methodology used to make those projections;

(vii) The annual revenue requirement (capital costs and operating expenses expressed as an annual number plus a return on net investment) and the rate for the funded service (annual revenue requirement divided by annual demand divided by twelve equals the monthly rate for the service), assuming one rate element for the service), based on the projected rural health care service costs and demands;

(viii) Audited financial statements and notes to the financial statements, if available, and otherwise unaudited financial statements for the most recent three fiscal years, specifically, the cash flow statement, income statement, and balance sheets. Such statements shall include information regarding costs and revenues associated with, or used as a starting point to develop, the rural health care service rate; and

(ix) Density characteristics of the rural area or other relevant geographical areas including square miles, road miles, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the high cost of servicing the health care providers.

§ 54.606 Calculating support.

(a) The amount of universal service support provided for an eligible service to be funded from the Telecommunications program shall be the difference, if any, between the urban rate and the rural rate charged for the services, as defined in this section. In addition, all reasonable charges that are incurred by taking such services, such as state and federal taxes, shall be eligible for universal service support. Charges for termination liability, penalty surcharges, and other charges not included in the cost of taking such service shall not be covered by the universal service support mechanisms.

(b) The universal service support mechanisms shall provide support for intrastate telecommunications services, as set forth in § 54.101(a), provided to rural health care providers as well as interstate telecommunications services.

(c) *Mobile rural health care providers*—(1) *Calculation of support.* The support amount allowed under the Telecommunications Program for satellite services provided to mobile rural health care providers is calculated by comparing the rate for the satellite service to the rate for an urban wireline service with a similar bandwidth. Support for satellite services shall not be capped at an amount of a functionally similar wireline alternative. Where the mobile rural health care provider provides service in more than one state, the calculation shall be based on the urban areas in each state, proportional to the number of locations served in each state.

(2) *Documentation of support.* (i) Mobile rural health care providers shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services in the urban area in the state or states where the service is provided. Mobile rural health care providers shall provide to the Administrator the number of sites the mobile health care provider will serve during the funding year.

(ii) Where a mobile rural health care provider serves less than eight different sites per year, the mobile rural health care provider shall provide to the Administrator documentation of the price of bandwidth equivalent wireline services. In such case, the Administrator shall determine on a case-by-case basis whether the telecommunications service selected by the mobile rural health care provider is the most cost-effective option. Where a mobile rural health care provider seeks a more expensive satellite-based service when a less expensive wireline alternative is most cost-effective, the mobile rural health care provider shall be responsible for the additional cost.

Healthcare Connect Fund Program

§ 54.607 Eligible recipients.

(a) *Rural health care provider site—individual and consortium.* Under the Healthcare Connect Fund Program, an eligible rural health care provider may receive universal service support by applying individually or through a consortium. For purposes of the Healthcare Connect Fund Program, a ''consortium'' is a group of two or more health care provider sites that request support through a single application. Consortia may include health care providers who are not eligible for support under the Healthcare Connect Fund Program, but such health care providers cannot receive support for their expenses and must participate pursuant to the cost allocation guidelines in § 54.617(d).

(b) *Limitation on participation of non-rural health care provider sites in a consortium.* An eligible non-rural health care provider site may receive universal service support only as part of a consortium that includes more than 50 percent eligible rural health care provider sites. The majority-rural consortia percentage requirement will increase by 5 percent for the following funding year (up to a maximum of 75 percent) if the Commission must prioritize funding for a given year because Rural Health Care Program demand exceeds the funding cap.

(c) *Limitation on large non-rural hospitals.* Each eligible non-rural public or non-profit hospital site with 400 or more licensed patient beds may receive no more than $30,000 per year in Healthcare Connect Fund Program support for eligible recurring charges and no more than $70,000 in Healthcare Connect Fund Program support every five years for eligible nonrecurring charges, exclusive in both cases of costs shared by the network.

§ 54.608 Eligible service providers.

For purposes of the Healthcare Connect Fund Program, eligible service providers shall include any provider of equipment, facilities, or services that is eligible for support under the Healthcare Connect Fund Program.

§ 54.609 Designation of Consortium Leader.

(a) *Identifying a Consortium Leader.* Each consortium seeking support under the Healthcare Connect Fund Program must identify an entity or organization that will lead the consortium (the ''Consortium Leader'').

(b) *Consortium Leader eligibility.* The Consortium Leader may be the consortium itself (if it is a distinct legal entity); an eligible health care provider participating in the consortium; or a state organization, public sector (governmental) entity (including a Tribal government entity), or non-profit entity that is ineligible for Healthcare Connect Fund Program support.

Ineligible state organizations, public sector entities, or non-profit entities may serve as Consortium Leaders or provide consulting assistance to consortia only if they do not participate as potential service providers during the competitive bidding process. An ineligible entity that serves as the Consortium Leader must pass on the full value of any discounts, funding, or other program benefits secured to the consortium members that are eligible health care providers.

(c) *Consortium Leader responsibilities.* The Consortium Leader's responsibilities include the following:

(1) *Legal and financial responsibility for supported activities.* The Consortium Leader is the legally and financially responsible entity for the activities supported by the Healthcare Connect Fund Program. By default, the Consortium Leader is the responsible entity if audits or other investigations by Administrator or the Commission reveal violations of the Act or Commission rules, with individual consortium members being jointly and severally liable if the Consortium Leader dissolves, files for bankruptcy, or otherwise fails to meet its obligations. Except for the responsibilities specifically described in paragraphs (c)(2) through (6) in this section, consortia may allocate legal and financial responsibility as they see fit, provided that this allocation is memorialized in a formal written agreement between the affected parties (*i.e.,* the Consortium Leader, and the consortium as a whole and/or its individual members), and the written agreement is submitted to the Administrator for approval with, or prior to, the request for services. Any such agreement must clearly identify the party(ies) responsible for repayment if the Administrator, at a later date, seeks to recover disbursements of support to the consortium due to violations of program rules.

(2) *Point of contact for the FCC and Administrator.* The Consortium Leader is responsible for designating an individual who will be the ''Project Coordinator'' and serve as the point of contact with the Commission and the Administrator for all matters related to the consortium. The Consortium Leader is responsible for responding to Commission and Administrator inquiries on behalf of the consortium members throughout the application, funding, invoicing, and post-invoicing period.

(3) *Typical applicant functions, including forms and certifications.* The Consortium Leader is responsible for submitting program forms and required documentation and ensuring that all information and certifications submitted are true and correct. The Consortium Leader must also collect and retain a Letter of Agency (LOA) from each member, pursuant to § 54.610.

(4) *Competitive bidding and cost allocation.* The Consortium Leader is responsible for ensuring that the competitive bidding process is fair and open and otherwise complies with Commission requirements. If costs are shared by both eligible and ineligible entities, the Consortium Leader must ensure that costs are allocated in a manner that ensures that only eligible entities receive the benefit of program discounts.

(5) *Invoicing.* The Consortium Leader is responsible for notifying the Administrator when supported services have commenced and for submitting invoices to the Administrator.

(6) *Recordkeeping, site visits, and audits.* The Consortium Leader is also responsible for compliance with the Commission's recordkeeping requirements and for coordinating site visits and audits for all consortium members.

§ 54.610 Letters of agency (LOA).

(a) *Authorizations.* Under the Healthcare Connect Fund Program, the Consortium Leader must obtain the following authorizations:

(1) Prior to the submission of the request for services, the Consortium Leader must obtain authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the request for services and prepare and post the request for proposal on behalf of the member.

(2) Prior to the submission of the funding request, the Consortium Leader must secure authorization, the necessary certifications, and any supporting documentation from each consortium member to permit the Consortium Leader to submit the funding request and manage invoicing and payments on behalf of the member.

(b) *Optional two-step process.* The Consortium Leader may secure both required authorizations from each consortium member in either a single LOA or in two separate LOAs.

(c) *Required information in a LOA.* (1) An LOA must include, at a minimum, the name of the entity filing the application (*i.e.,* lead applicant or Consortium Leader); the name of the entity authorizing the filing of the application (*i.e.,* the participating health care provider/consortium member); the physical location of the health care provider/consortium member site(s); the relationship of each site seeking support to the lead entity filing the application; the specific timeframe the LOA covers; the signature, title and contact information (including phone number, mailing address, and email address) of an official who is authorized to act on behalf of the health care provider/consortium member; the signature date; and the type of services covered by the LOA.

(2) For health care providers located on Tribal lands, if the health care facility is a contract facility that is run solely by the tribe, the appropriate Tribal leader, such as the Tribal chairperson, president, or governor, shall also sign the LOA, unless the health care responsibilities have been duly delegated to another Tribal government representative.

§ 54.611 Health care provider contribution.

(a) *Health care provider contribution.* All health care providers receiving support under the Healthcare Connect Fund Program shall receive a 65 percent discount on the cost of eligible expenses and shall be required to contribute 35 percent of the total cost of all eligible expenses.

(b) *Limits on eligible sources of health care provider contribution.* Only funds from eligible sources may be applied toward the health care provider's required contribution.

(1) Eligible sources include the applicant or eligible health care provider participants; state grants, appropriations, or other sources of state funding; federal grants, loans, appropriations except for other federal universal service funding, or other sources of federal funding; Tribal government funding; and other grants, including private grants.

(2) Ineligible sources include (but are not limited to) in-kind or implied contributions from health care providers; direct payments from service providers, including contractors and consultants to such entities; and for-profit entities.

(c) *Disclosure of health care provider contribution source.* Prior to receiving support, applicants are required to identify with specificity their sources of funding for their contribution of eligible expenses.

(d) *Future revenues from excess capacity as source of health care provider contribution.* A consortium applicant that receives support for participant-owned network facilities under § 54.614 may use future revenues from excess capacity as a source for the required health care provider

contribution, subject to the following limitations:

(1) The consortium's selection criteria and evaluation for ''cost-effectiveness,'' pursuant to § 54.622(g)(1), cannot provide a preference to bidders that offer to construct excess capacity;

(2) The applicant must pay the full amount of the additional costs for excess capacity facilities that will not be part of the supported health care network;

(3) The additional cost of constructing excess capacity facilities may not count toward a health care provider's required contribution;

(4) The inclusion of excess capacity facilities cannot increase the funded cost of the dedicated health care network in any way;

(5) An eligible health care provider (typically the consortium, although it may be an individual health care provider participating in the consortium) must retain ownership of the excess capacity facilities. It may make the facilities available to third parties only under an indefeasible right of use (IRU) or lease arrangement. The lease or IRU between the participant and the third party must be an arm's length transaction. To ensure that this is an arm's length transaction, neither the service provider that installs the excess capacity facilities nor its affiliate is eligible to enter into an IRU or lease with the participant;

(6) Any amount prepaid for use of the excess capacity facilities (IRU or lease) must be placed in an escrow account. The participant can then use the escrow account as an eligible source of funds for the participant's 35 percent contribution to the project; and

(7) All revenues from use of the excess capacity facilities by the third party must be used for the health care provider contribution or for the sustainability of the health care network supported by the Healthcare Connect Fund Program. Network costs that may be funded with any additional revenues that remain will include: Administration costs, equipment, software, legal fees, or other costs not covered by the Healthcare Connect Fund Program, as long as they are relevant to sustaining the network.

§ 54.612 Eligible services.

(a) *Eligible services.* Subject to the provisions of §§ 54.600 through 54.602 and 54.607 through 54.633, eligible health care providers may request support under the Healthcare Connect Fund Program for any advanced telecommunications or information service that enables health care providers to post their own data, interact with stored data, generate new data, or communicate, by providing connectivity over private dedicated networks or the public internet for the provision of health information technology.

(b) *Eligibility of dark fiber.* A consortium of eligible health care providers may receive support for ''dark'' fiber where the customer, not the service provider, provides the modulating electronics, subject to the following limitations:

(1) Support for recurring charges associated with dark fiber is only available once the dark fiber is ''lit'' and actually being used by the health care provider. Support for non-recurring charges for dark fiber is only available for fiber lit within the same funding year, but applicants may receive up to a one-year extension to light fiber, consistent with § 54.626(b), if they provide documentation to the Administrator that construction was unavoidably delayed due to weather or other reasons.

(2) Requests for proposals that solicit dark fiber solutions must also solicit proposals to provide the needed services over lit fiber over a time period comparable to the duration of the dark fiber lease or indefeasible right of use.

(3) If an applicant intends to request support for equipment and maintenance costs associated with lighting and operating dark fiber, it must include such elements in the same request for proposal as the dark fiber so that the Administrator can review all costs associated with the fiber when determining whether the applicant chose the most cost-effective bid.

(c) *Dark and lit fiber maintenance costs.* (1) Both individual and consortium applicants may receive support for recurring maintenance costs associated with leases of dark or lit fiber.

(2) Consortium applicants may receive support for upfront payments for maintenance costs associated with leases of dark or lit fiber, subject to the limitations in § 54.616.

(d) *Reasonable and customary installation charges.* Eligible health care providers may obtain support for reasonable and customary installation charges for eligible services, up to an undiscounted cost of $5,000 per eligible site.

(e) *Upfront charges for service provider deployment of new or upgraded facilities.* (1) Participants may obtain support for upfront charges for service provider deployment of new or upgraded facilities to serve eligible sites.

(2) Support is available to extend service provider deployment of facilities up to the ''demarcation point,'' which is the boundary between facilities owned or controlled by the service provider, and facilities owned or controlled by the customer.

§ 54.613 Eligible equipment.

(a) Both individual and consortium applicants may receive support for network equipment necessary to make functional an eligible service supported under the Healthcare Connect Fund Program.

(b) Consortium applicants may also receive support for network equipment necessary to manage, control, or maintain an eligible service or a dedicated health care broadband network. Support for network equipment is not available for networks that are not dedicated to health care.

(c) Network equipment eligible for support includes the following:

(1) Equipment that terminates a carrier's or other provider's transmission facility and any router/switch that is directly connected to either the facility or the terminating equipment. This includes equipment required to light dark fiber, or equipment necessary to connect dedicated health care broadband networks or individual health care providers to middle mile or backbone networks;

(2) Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops) that are used exclusively for network management;

(3) Software used for network management, maintenance, or other network operations, and development of software that supports network management, maintenance, and other network operations;

(4) Costs of engineering, furnishing (*i.e.,* as delivered from the manufacturer), and installing network equipment; and

(5) Equipment that is a necessary part of health care provider-owned network facilities.

(d) Additional limitations: Support for network equipment is limited to equipment:

(1) Purchased or leased by a Consortium Leader or eligible health care provider; and

(2) Used for health care purposes.

§ 54.614 Eligible participant-constructed and owned network facilities for consortium applicants.

(a) Subject to the funding limitations of this subsection and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an

eligible health care provider) or eligible health care providers within the consortium. Subject to the funding limitations under §§ 54.616 and 54.619 and the following restrictions, consortium applicants may receive support for network facilities that will be constructed and owned by the consortium (if the consortium is an eligible health care provider) or eligible health care providers within the consortium.

(1) Consortia seeking support to construct and own network facilities are required to solicit bids for both:

(i) Services provided over third-party networks; and

(ii) Construction of participant-owned network facilities, in the same request for proposals. Requests for proposals must provide sufficient detail so that cost-effectiveness can be evaluated over the useful life of the proposed network facility to be constructed.

(2) Support for participant-constructed and owned network facilities is only available where the consortium demonstrates that constructing its own network facilities is the most cost-effective option after competitive bidding, pursuant to § 54.622(g)(1).

(b) [Reserved]

§ 54.615 Off-site data centers and off-site administrative offices.

(a) The connections and network equipment associated with off-site data centers and off-site administrative offices used by eligible health care providers for their health care purposes are eligible for support under the Healthcare Connect Fund Program, subject to the conditions and restrictions set forth in paragraph (b) in this section.

(b) *Conditions and restrictions.* The following conditions and restrictions apply to support provided under this section.

(1) Connections eligible for support are only those that are between:

(i) Eligible health care provider sites and off-site data centers or off-site administrative offices;

(ii) Two off-site data centers;

(iii) Two off-site administrative offices;

(iv) An off-site data center and the public internet or another network;

(v) An off-site administrative office and the public internet or another network; or

(vi) An off-site administrative office and an off-site data center.

(2) The supported connections and network equipment must be used solely for health care purposes.

(3) The supported connections and network equipment must be purchased by an eligible health care provider or a public or non-profit health care system that owns and operates eligible health care provider sites.

(4) If traffic associated with one or more ineligible health care provider sites is carried by the supported connection and/or network equipment, the ineligible health care provider sites must allocate the cost of that connection and/or equipment between eligible and ineligible sites, consistent with the ''fair share'' principles set forth in § 54.617(d)(1).

§ 54.616 Upfront payments.

(a) Upfront payments include all non-recurring costs for services, equipment, or facilities, other than reasonable and customary installation charges of up to $5,000.

(b) The following limitations apply to all upfront payments:

(1) Upfront payments associated with services providing a bandwidth of less than 1.5 Mbps (symmetrical) are not eligible for support; and

(2) Only consortium applicants are eligible for support for upfront payments.

(c) The following limitations apply if a consortium makes a request for support for upfront payments that exceeds, on average, $50,000 per eligible site in the consortium:

(1) The support for the upfront payments must be prorated over at least three years; and

(2) The upfront payments must be part of a multi-year contract.

§ 54.617 Ineligible expenses.

(a) *Equipment or services not directly associated with eligible services.* Expenses associated with equipment or services that are not necessary to make an eligible service functional, or to manage, control, or maintain an eligible service or a dedicated health care broadband network are ineligible for support. For purposes of paragraph (a) of this section, examples of ineligible expenses include:

(1) Costs associated with general computing, software, applications, and internet content development are not supported, including the following:

(i) Computers, including servers, and related hardware (*e.g.,* printers, scanners, laptops), unless used exclusively for network management, maintenance, or other network operations;

(ii) End user wireless devices, such as smartphones and tablets;

(iii) Software, unless used for network management, maintenance, or other network operations;

(iv) Software development (excluding development of software that supports network management, maintenance, and other network operations);

(v) Helpdesk equipment and related software, or services, unless used exclusively in support of eligible services or equipment;

(vi) Web server hosting;

(vii) website portal development;

(viii) Video/audio/web conferencing equipment or services; and

(ix) Continuous power source.

(2) Costs associated with medical equipment (hardware and software), and other general health care provider expenses are not supported, including the following:

(i) Clinical or medical equipment;

(ii) Telemedicine equipment, applications, and software;

(iii) Training for use of telemedicine equipment;

(iv) Electronic medical records systems; and

(v) Electronic records management and expenses.

(b) *Inside wiring/internal connections.* Expenses associated with inside wiring or internal connections are ineligible for support under the Healthcare Connect Fund Program.

(c) *Administrative expenses.* Administrative expenses are not eligible for support under the Healthcare Connect Fund Program. For purposes of paragraph (c) of this section, ineligible administrative expenses include, but are not limited to, the following expenses:

(1) Personnel costs (including salaries and fringe benefits), except for personnel expenses in a consortium application that directly relate to designing, engineering, installing, constructing, and managing a dedicated broadband network. Ineligible costs of this category include, for example, personnel to perform program management and coordination, program administration, and marketing;

(2) Travel costs, except for travel costs that are reasonable and necessary for network design or deployment and that are specifically identified and justified as part of a competitive bid for a construction project;

(3) Legal costs;

(4) Training, except for basic training or instruction directly related to and required for broadband network installation and associated network operations;

(5) Program administration or technical coordination (*e.g.,* preparing application materials, obtaining letters of agency, preparing requests for proposals, negotiating with service providers, reviewing bids, and working with the Administrator) that involves anything other than the design, engineering, operations, installation, or construction of the network;

(6) Administration and marketing costs (*e.g.,* administrative costs; supplies and materials, except as part of network installation/construction; marketing studies, marketing activities, or outreach to potential network members; and evaluation and feedback studies);

(7) Billing expenses (*e.g.,* expenses that service providers may charge for allocating costs to each health care provider in a network);

(8) Helpdesk expenses (*e.g.,* equipment and related software, or services); and

(9) Technical support services that provide more than basic maintenance.

(d) *Cost allocation for ineligible sites, services, or equipment.* (1) *Ineligible sites.* Eligible health care provider sites may share expenses with ineligible sites, as long as the ineligible sites pay their fair share of the expenses. An applicant may seek support for only the portion of a shared eligible expense attributable to eligible health care provider sites. To receive support, the applicant must ensure that ineligible sites pay their fair share of the expense. The fair share is determined as follows:

(i) If the service provider charges a separate and independent price for each site, an ineligible site must pay the full undiscounted price.

(ii) If there is no separate and independent price for each site, the applicant must prorate the undiscounted price for the ''shared'' service, equipment, or facility between eligible and ineligible sites on a proportional fully-distributed basis. Applicants must make this cost allocation using a method that is based on objective criteria and reasonably reflects the eligible usage of the shared service, equipment, or facility. The applicant bears the burden of demonstrating the reasonableness of the allocation method chosen.

(2) Ineligible components of a single service or piece of equipment. Applicants seeking support for a service or piece of equipment that includes an ineligible component must explicitly request in their requests for proposals that service providers include pricing for a comparable service or piece of equipment that is comprised of only eligible components. If the selected service provider also submits a price for the eligible component on a stand-alone basis, the support amount is calculated based on the stand-alone price of the eligible component. If the service provider does not offer the eligible component on a stand-alone basis, the full price of the entire service or piece of equipment must be taken into account, without regard to the value of the ineligible components, when determining the most cost-effective bid.

(3) *Written description.* Applicants must submit a written description of their allocation method(s) to the Administrator with their funding requests.

(4) *Written agreement.* If ineligible entities participate in a network, the allocation method must be memorialized in writing, such as a formal agreement among network members, a master services contract, or for smaller consortia, a letter signed and dated by all (or each) ineligible entity and the Consortium Leader.

§ 54.618 Data collection and reporting.

(a) Each applicant must file an annual report with the Administrator on or before September 30 for the preceding funding year, with the information and in the form specified by the Wireline Competition Bureau.

(b) Each applicant must file an annual report for each funding year in which it receives support from the Healthcare Connect Fund Program.

(c) For consortia that receive large upfront payments, the reporting requirement extends for the life of the supported facility.

General Provisions

§ 54.619 Cap.

(a) *Amount of the annual cap.* The aggregate annual cap on federal universal service support for health care providers shall be $571 million per funding year, of which up to $150 million per funding year will be available to support upfront payments and multi-year commitments under the Healthcare Connect Fund Program.

(1) *Inflation increase.* In funding year 2018 and subsequent funding years, the $571 million cap on federal universal support in the Rural Health Care Program shall be increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) in this section. In funding year 2020 and subsequent funding years, the $150 million cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program shall also be increased annually to take into account increases in the rate of inflation as calculated in paragraph (a)(2) in this section.

(2) *Increase calculation.* To measure increases in the rate of inflation for the purposes of paragraph (a)(1) in this section, the Commission shall use the Gross Domestic Product Chain-type Price Index (GDP–CPI). To compute the annual increase as required by paragraph (a)(1) in this section, the percentage increase in the GDP–CPI from the previous year will be used. For instance, the annual increase in the GDP–CPI from 2017 to 2018 would be used for the 2018 funding year. The increase shall be rounded to the nearest 0.1 percent by rounding 0.05 percent and above to the next higher 0.1 percent. This percentage increase shall be added to the amount of the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program from the previous funding year. If the yearly average GDP–CPI decreases or stays the same, the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program shall remain the same as the previous year.

(3) *Public notice.* After calculating the annual Rural Health Care Program funding cap and the internal cap on multi-year commitments and upfront payments in the Healthcare Connect Fund Program based on the GDP–CPI, the Wireline Competition Bureau shall publish a public notice in the **Federal Register** within 60 days announcing any increase of the annual funding cap based on the rate of inflation.

(4) *Amount of unused funds.* All unused collected funds shall be carried forward into subsequent funding years for use in the Rural Health Care Program in accordance with the public interest and notwithstanding the annual cap. The Administrator, on a quarterly basis, shall report to the Commission on unused Rural Health Care Program funding from prior years.

(5) *Application of unused funds.* On an annual basis, in the second quarter of each calendar year, all unused collected funds from prior years shall be available for use in the next full funding year of the Rural Health Care Program notwithstanding the annual cap as described in paragraph (a) in this section. The Wireline Competition Bureau, in consultation with the Office of the Managing Director, shall determine the proportion of unused funding for use in the Rural Health Care Program in accordance with the public interest to either satisfy demand notwithstanding the annual cap, reduce collections for the Rural Health Care Program, or to hold in reserve to address contingencies for subsequent funding years. The Wireline Competition Bureau shall direct the Administrator to carry out the necessary actions for the use of available funds consistent with the direction specified in this section.

(b) [Reserved]

§ 54.620 Annual filing requirements and commitments.

(a) *Annual filing requirement.* Health care providers seeking support under the RHC Program shall file new funding requests for each funding year consistent with the filing periods established under this subpart, except for health care providers who have received a multi-year funding commitment in this section.

(b) *Long-term contracts.* If health care providers enter into long-term contracts for eligible services, the Administrator shall only commit funds to cover the portion of such a long-term contract scheduled to be delivered during the funding year for which universal service support is sought, except for multi-year funding commitments as described in this section.

(c) *Multi-year commitments under the Healthcare Connect Fund Program.* Participants in the Healthcare Connect Fund Program are permitted to enter into multi-year contracts for eligible expenses and may receive funding commitments from the Administrator for a period that covers up to three years of funding. If a long-term contract covers a period of more than three years, the applicant may also have the contract designated as ''evergreen'' under § 54.622(i)(3), which will allow the applicant to re-apply for funding under the contract after three years without having to undergo additional competitive bidding.

§ 54.621 Filing window for requests and prioritization of support.

(a) *Filing window for requests.* (1) The Administrator shall open an initial application filing window with an end date no later than 90 days prior to the start of the funding year (*i.e.,* no later than April 1). Prior to announcing the initial opening and closing dates, the Administrator shall seek the approval of the proposed dates from the Chief of the Wireline Competition Bureau.

(2) The Administrator, after consultation with the Wireline Competition Bureau, may implement such additional filing periods as it deems necessary. To the extent that the Administrator opens an additional filing period, it shall provide notice and include in that notice or soon thereafter the amount of remaining available funding.

(3) The Administrator shall treat all health care providers filing an application within a filing window period as if their applications were simultaneously received. All funding requests submitted outside of a filing window will not be accepted unless and until the Administrator opens another filing window.

(b) *Prioritization of support.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) in this section, is in effect. When a filing period described in paragraph (a) in this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period. If the total demand during the filing window period exceeds the total remaining support available for the funding year, then the Administrator shall distribute the available funds consistent with the following priority schedule:

TABLE 1 TO PARAGRAPH (b)—PRIORITIZATION SCHEDULE

Health care provider site is located in:	In a medically underserved area/population (MUA/P)	Not in MUA/P
Extremely Rural Tier (counties entirely outside of a Core Based Statistical Area)	*Priority 1*	*Priority 4.*
Rural Tier (census tracts within a Core Based Statistical Area that does not have an urban area or urban cluster with a population equal to or greater than 25,000).	*Priority 2*	*Priority 5.*
Less Rural Tier (census tracts within a Core Based Statistical Area with an urban area or urban cluster with a population equal to or greater than 25,000, but where the census tract does not contain any part of an urban area or urban cluster with population equal to or greater than 25,000).	*Priority 3*	*Priority 6.*
Non-Rural Tier (all other non-rural areas)	*Priority 7*	*Priority 8.*

(1) *Application of prioritization schedule.* The Administrator shall fully fund all eligible requests falling under the first prioritization category before funding requests in the next lower prioritization category. The Administrator shall continue to process all funding requests by prioritization category until there are no available funds remaining. If there is insufficient funding to fully fund all requests in a particular prioritization category, then the Administrator will pro-rate the available funding among all eligible requests in that prioritization category only pursuant to the proration process described in paragraph (b)(2) in this section.

(2) *Pro-rata reductions.* The Administrator shall act in accordance with this section when a filing window period for the Telecommunications Program and the Healthcare Connect Fund Program, as described in paragraph (a) in this section, is in effect. When a filing window period described in paragraph (a) in this section closes, the Administrator shall calculate the total demand for Telecommunications Program and Healthcare Connect Fund Program support submitted by all applicants during the filing window period. If the total demand during a filing window period exceeds the total remaining support available for the funding year, the Administrator shall take the following steps:

(i) The Administrator shall divide the total remaining funds available for the funding year by the demand within the specific prioritization category to produce a pro-rata factor;

(ii) The Administrator shall multiply the pro-rata factor by the total dollar amount requested by each applicant in the prioritization category; and

(iii) The Administrator shall commit funds to each applicant for Telecommunications Program and Healthcare Connect Fund Program support consistent with this calculation.

§ 54.622 Competitive bidding requirements and exemptions.

(a) *Competitive bidding requirement.* All applicants are required to engage in a competitive bidding process for supported services, facilities, or equipment, as applicable, consistent with the requirements set forth in this section and any additional applicable state, Tribal, local, or other procurement requirements, unless they qualify for an exemption listed in paragraph (j) in this section. In addition, applicants may engage in competitive bidding even if they qualify for an exemption.

Applicants who utilize a competitive bidding exemption may proceed directly to filing a funding request as described in § 54.623.

(b) *Fair and open process.* (1) Applicants participating in the Telecommunications Program or Healthcare Connect Fund Program must conduct a fair and open competitive bidding process. The following actions are necessary to satisfy the ''fair and open'' competitive standard in the Telecommunications Program and the Healthcare Connect Fund Program:

(i) All potential bidders and service providers must have access to the same information and must be treated in the same manner throughout the procurement process.

(ii) Service providers who intend to bid on supported services many not simultaneously help the applicant complete its request for proposal (RFP) or Request for Services form.

(iii) Service providers who have submitted a bid to provide supported services, equipment, or facilities to a health care provider may not simultaneously help the health care provider evaluate submitted bids or choose a winning bid.

(iv) Applicants must respond to all service providers that have submitted questions or proposals during the competitive bidding process.

(v) All applicants and service providers must comply with any applicable state, Tribal, or local procurement laws, in addition to the Commission's competitive bidding requirements. The competitive bidding requirements in this section are not intended to preempt such state, Tribal, or local requirements.

(c) *Selecting a cost-effective service.* In selecting a provider of eligible services, the applicant shall carefully consider all bids submitted and must select the most cost-effective means of meeting its specific health care needs. ''Cost-effective'' is defined as the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services. In the Healthcare Connect Fund Program, when choosing the most ''cost-effective'' bid, price must be a primary factor, but need not be the only primary factor. A non-price factor may receive an equal weight to price, but may not receive a greater weight than price.

(d) *Bid evaluation criteria.* Applicants must develop weighted evaluation criteria (*e.g.,* a scoring matrix) that demonstrates how the applicant will choose the most cost-effective bid before submitting its request for services. The applicant must specify on its bid evaluation worksheet and/or scoring matrix the requested services for which it seeks bids, the information provided to bidders to allow bidders to reasonably determine the needs of the applicant, its minimum requirements for the developed weighted evaluation criteria, and each service provider's proposed service levels for the criteria. The applicant must also specify the disqualification factors, if any, that it will use to remove bids or bidders from further consideration. After reviewing the bid submissions and identifying the bids that satisfy the applicant's specific needs, the applicant must then select the service provider that offers the most cost-effective service.

(e) *Request for Services.* Applicants must submit the following documents to the Administrator in order to initiate competitive bidding:

(1) *Request for Services, including certifications.* The applicant must submit a Request for Services and make the following certifications as part of its Request for Services:

(i) The health care provider seeking supported services is a public or nonprofit entity that falls within one of the seven categories set forth in the definition of health care provider, listed in § 54.600;

(ii) The health care provider seeking supported services is physically located in a rural area as defined in § 54.600, or is a member of a Healthcare Connect Fund Program consortium which satisfies the rural health care provider composition requirements set forth in § 54.607(b);

(iii) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium applicant;

(iv) The person signing the application has examined the Request for Services and all attachments, and to the best of his or her knowledge, information, and belief, all statements contained in the request are true;

(v) The applicant has complied with any applicable state, Tribal, or local procurement rules;

(vi) All requested Rural Health Care Program support will be used solely for purposes reasonably related to the provision of health care service or instruction that the health care provider is legally authorized to provide under the law of the state in which the services are provided;

(vii) The supported services will not be sold, resold, or transferred in consideration for money or any other thing of value;

(viii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules; and

(ix) The applicant has reviewed all applicable requirements for the Telecommunications Program or the Healthcare Connect Fund Program, as applicable, and will comply with those requirements.

(2) *Aggregated purchase details.* If the service or services are being purchased as part of an aggregated purchase with other entities or individuals, the full details of any such arrangement, including the identities of all co-purchasers and the portion of the service or services being purchased by the health care provider, must be submitted.

(3) *Bid evaluation criteria.* Requirements for bid evaluation criteria are described in paragraph (d) in this section and must be included with the applicant's Request for Services.

(4) *Declaration of Assistance.* All applicants must submit a ''Declaration of Assistance'' with their Request for Services. In the Declaration of Assistance, the applicant must identify each and every consultant, service provider, and other outside expert, whether paid or unpaid, who aided in the preparation of its applications. The applicant must also describe the nature of the relationship it has with each consultant, service provider, or other outside expert providing such assistance.

(5) *Request for proposal (if applicable).* (i) Any applicant may use an RFP. Applicants who use an RFP must submit the RFP and any additional relevant bidding information to the Administrator with its Request for Services.

(ii) An applicant must submit an RFP:

(A) If it is required to issue an RFP under applicable State, Tribal, or local procurement rules or regulations;

(B) If the applicant is a consortium seeking more than $100,000 in program support during the funding year, including applications that seek more than $100,000 in program support for a multi-year commitment; or

(C) If the applicant is a consortium seeking support for participant-constructed and owned network facilities.

(iii) RFP requirements.

(A) An RFP must provide sufficient information to enable an effective competitive bidding process, including describing the health care provider's service needs and defining the scope of the project and network costs (if applicable).

(B) An RFP must specify the time period during which bids will be accepted.

(C) An RFP must include the bid evaluation criteria described in paragraph (d) in this section, and solicit sufficient information so that the criteria can be applied effectively.

(D) Consortium applicants seeking support for long-term capital investments whose useful life extends beyond the time period of the funding commitment (*e.g.,* facilities constructed and owned by the applicant, fiber indefeasible rights of use) must seek bids in the same RFP from service providers who propose to meet those needs via services provided over service provider-owned facilities, for a time period comparable to the life of the proposed capital investment.

(E) Applicants may prepare RFPs in any manner that complies with the rules in this subpart and any applicable state, Tribal, or local procurement rules or regulations.

(6) *Additional requirements for Healthcare Connect Fund Program consortium applicants.*

(i) *Network plan.* Consortium applicants must submit a narrative describing specific elements of their network plan with their Request for Services. Consortia applicants are required to use program support for the purposes described in their narrative. The required elements of the narrative include:

(A) Goals and objectives of the network;

(B) Strategy for aggregating the specific needs of health care providers (including providers that serve rural areas) within a state or region;

(C) Strategy for leveraging existing technology to adopt the most efficient and cost-effective means of connecting those providers;

(D) How the supported network will be used to improve or provide health care delivery;

(E) Any previous experience in developing and managing health information technology (including telemedicine) programs; and

(F) A project management plan outlining the project's leadership and management structure, and a work plan, schedule, and budget.

(ii) *Letters of agency (LOA).* Consortium applicants must submit LOAs pursuant to § 54.610.

(f) *Public posting by the Administrator.* The Administrator shall post on its website the following competitive bidding documents, as applicable:

(1) Request for Services;

(2) Bid evaluation criteria;

(3) RFP; and

(4) Network plans for Healthcare Connect Fund Program applicants.

(g) *28-day waiting period.* After posting the documents described in paragraph (f) in this section, as applicable, on its website, the Administrator shall send confirmation of the posting to the applicant. The applicant shall wait at least 28 days from the date on which its competitive bidding documents are posted on the Administrator's website before selecting and committing to a service provider. The confirmation from the Administrator shall include the date after which the applicant may sign a contract with its chosen service provider(s).

(1) *Selection of the most ''cost-effective'' bid and contract negotiation.* Each applicant is required to certify to the Administrator that the selected bid is, to the best of the applicant's knowledge, the most cost-effective option available. Applicants are required to submit the documentation, identified in § 54.623, to support their certifications.

(2) Applicants who plan to request evergreen status under this section must enter into a contract that identifies both parties, is signed and dated by the health care provider or Consortium Leader after the 28-day waiting period expires, and specifies the type, term, and cost of service(s).

(h) *Gift restrictions.* (1) Subject to paragraphs (h)(3) and (4) in this section, an eligible health care provider or consortium that includes eligible health care providers, may not directly or indirectly solicit or accept any gift, gratuity, favor, entertainment, loan, or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program. No such service provider shall offer or provide any such gift, gratuity, favor, entertainment, loan, or other thing of value except as otherwise provided in this section. Modest refreshments not offered as part of a meal, items with little intrinsic value intended solely for presentation, and items worth $20 or less, including meals, may be offered or provided, and accepted by any individual or entity subject to this rule, if the value of these items received by any individual does not exceed $50 from any one service provider per funding year. The $50 amount for any service provider shall be calculated as the aggregate value of all gifts provided during a funding year by the individuals specified in paragraph (h)(2)(ii) in this section.

(2) For purposes of this paragraph:

(i) The terms ''health care provider'' or ''consortium'' shall include all individuals who are on the governing boards of such entities and all employees, officers, representatives, agents, consultants, or independent contractors of such entities involved on behalf of such health care provider or consortium with the Rural Health Care Program, including individuals who prepare, approve, sign, or submit Rural Health Care Program applications, or other forms related to the Rural Health Care Program, or who prepare bids, communicate, or work with Rural Health Care Program service providers, consultants, or with the Administrator, as well as any staff of such entities responsible for monitoring compliance with the Rural Health Care Program; and

(ii) The term ''service provider'' includes all individuals who are on the governing boards of such an entity (such as members of the board of directors), and all employees, officers, representatives, agents, consultants, or independent contractors of such entities.

(3) The restrictions set forth in this paragraph shall not be applicable to the provision of any gift, gratuity, favor, entertainment, loan, or any other thing of value, to the extent given to a family member or a friend working for an eligible health care provider or consortium that includes eligible health care providers, provided that such transactions:

(i) Are motivated solely by a personal relationship;

(ii) Are not rooted in any service provider business activities or any other business relationship with any such eligible health care provider; and

(iii) Are provided using only the donor's personal funds that will not be reimbursed through any employment or business relationship.

(4) Any service provider may make charitable donations to an eligible health care provider or consortium that includes eligible health care providers in the support of its programs as long as such contributions are not directly or indirectly related to the Rural Health Care Program procurement activities or decisions and are not given by service providers to circumvent competitive bidding and other Rural Health Care Program rules, including those in § 54.611(a), requiring health care providers under the Healthcare Connect Fund Program to contribute 35 percent of the total cost of all eligible expenses.

(i) *Exemptions to the competitive bidding requirements*—(1) *Government Master Service Agreement (MSA).* Eligible health care providers that seek support for services and equipment

purchased from MSAs negotiated by federal, state, Tribal, or local government entities on behalf of such health care providers and others, if such MSAs were awarded pursuant to applicable federal, state, Tribal, or local competitive bidding requirements, are exempt from the competitive bidding requirements under this section.

(2) *Master Service Agreements approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program.* An eligible health care provider site may opt into an existing MSA approved under the Rural Health Care Pilot Program or Healthcare Connect Fund Program and seek support for services and equipment purchased from the MSA without triggering the competitive bidding requirements under this section, if the MSA was developed and negotiated in response to an RFP that specifically solicited proposals that included a mechanism for adding additional sites to the MSA.

(3) *Evergreen contracts.* (i) The Administrator may designate a multi-year contract as ''evergreen,'' which means that the service(s) covered by the contract need not be re-bid during the contract term.

(ii) A contract entered into by a health care provider or consortium as a result of competitive bidding may be designated as evergreen if it meets all of the following requirements:

(A) Is signed by the individual health care provider or consortium lead entity;

(B) Specifies the service type, bandwidth, and quantity;

(C) Specifies the term of the contract;

(D) Specifies the cost of services to be provided; and

(E) Includes the physical location or other identifying information of the health care provider sites purchasing from the contract.

(iii) Participants may exercise voluntary options to extend an evergreen contract without undergoing additional competitive bidding if:

(A) The voluntary extension(s) is memorialized in the evergreen contract;

(B) The decision to extend the contract occurs before the participant files its funding request for the funding year when the contract would otherwise expire; and

(C) The voluntary extension(s) do not exceed five years in the aggregate.

(4) *Schools and libraries program master contracts.* Subject to the provisions in § 54.500, § 54.501(c)(1), and § 54.503, an eligible health care provider in a consortium with participants in the schools and libraries universal service support program and a party to the consortium's existing contract is exempt from the competitive bidding requirements if the contract was approved in the schools and libraries universal service support program as a master contract. The health care provider must comply with all Rural Health Care Program rules and procedures except for those applicable to competitive bidding.

(5) *Annual undiscounted cost of $10,000 or less.* An applicant under the Healthcare Connect Fund Program that seeks support for $10,000 or less of total undiscounted eligible expenses for a single year is exempt from the competitive bidding requirements under this section, if the term of the contract is one year or less. This exemption does not apply to applicants under the Telecommunications Program.

§ 54.623 Funding requests.

(a) Once a service provider is selected, applicants must submit a Request for Funding (and supporting documentation) to provide information about the services, equipment, or facilities selected; rates, service provider(s); and date(s) of service provider selection, as applicable.

(1) *Certifications.* The applicant must provide the following certifications as part of its Request for Funding:

(i) The person signing the application is authorized to submit the application on behalf of the health care provider or consortium.

(ii) The applicant has examined the form and all attachments, and to the best of his or her knowledge, information, and belief, all statements of fact contained in this section are true.

(iii) The health care provider or consortium has considered all bids received and selected the most cost-effective method of providing the requested services.

(iv) All Rural Health Care Program support will be used only for eligible health care purposes.

(v) The health care provider or consortium is not requesting support for the same service from both the Telecommunications Program and the Healthcare Connect Fund Program.

(vi) The health care provider or consortium and/or its consultant, if applicable, has not solicited or accepted a gift or any other thing of value from a service provider participating in or seeking to participate in the Rural Health Care Program.

(vii) The applicant satisfies all of the requirements under section 254 of the Act and applicable Commission rules and understands that any letter from the Administrator that erroneously commits funds for the benefit of the applicant may be subject to rescission.

(viii) The applicant has reviewed all applicable rules and requirements for the Rural Health Care Program and will comply with those rules and requirements.

(ix) The applicant will retain all documentation associated with the applications, including all bids, contracts, scoring matrices, and other information associated with the competitive bidding process, and all billing records for services received, for a period of at least five years.

(x) The consultants or third parties hired by the applicant do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with the Rural Health Care Program rules, including the Commission's rules requiring a fair and open competitive bidding process.

(xi) *Additional certification for the Telecom Program.* Telecom Program applicants must certify that the rural rate on their Request for Funding does not exceed the appropriate rural rate determined by the Administrator.

(2) *Contracts or other documentation.* All applicants must submit a contract or other documentation, as applicable, that clearly identifies the service provider(s) selected and the health care provider(s) who will receive the services; costs for which support is being requested; and the term of the service agreement(s) if applicable (*i.e.,* if services are not being provided on a month-to-month basis). For services provided under contract, the applicant must submit a copy of the contract signed and dated (after the Allowable Contract Selection Date) by the individual health care provider or Consortium Leader. If the services are not being provided under contract, the applicant must submit a bill, service offer, letter, or similar document from the service provider that provides the required information.

(3) *Competitive bidding documents.* Applicants must submit documentation to support their certifications that they have selected the most cost-effective option, including a copy of each bid received (winning, losing, and disqualified), the bid evaluation criteria, and the following documents (as applicable): Completed bid evaluation worksheets or matrices; explanation for any disqualified bids; a list of people who evaluated bids (along with their title/role/relationship to the applicant organization); memos, board minutes, or similar documents related to the service provider selection/award; copies of notices to winners; and any correspondence with service providers prior to and during the bidding,

evaluation, and award phase of the process. Applicants who claim a competitive bidding exemption must submit relevant documentation to allow the Administrator to verify that the applicant is eligible for the claimed exemption.

(4) *Cost allocation for ineligible entities or components.* Where applicable, applicants must submit a description of how costs will be allocated for ineligible entities or components, as well as any agreements that memorialize such arrangements with ineligible entities.

(5) *Additional documentation for Healthcare Connect Fund Program consortium applicants.* A consortium applicant must also submit the following:

(i) Any revisions to the network plan submitted with the Request for Services pursuant to § 54.622, as necessary. If not previously submitted, the consortium should provide a narrative description of how the network will be managed, including all administrative aspects of the network, including, but not limited to, invoicing, contractual matters, and network operations. If the consortium is required to provide a sustainability plan as set forth in the following, the revised budget should include the budgetary factors discussed in the sustainability plan requirements.

(ii) A list of each participating health care provider and all of their relevant information, including eligible (and ineligible, if applicable) cost information.

(iii) Evidence of a viable source for the undiscounted portion of supported costs.

(iv) Sustainability plans for applicants requesting support for long-term capital expenses: Consortia that seek funding to construct and own their own facilities or obtain indefeasible right of use or capital lease interests are required to submit a sustainability plan with their funding requests demonstrating how they intend to maintain and operate the facilities that are supported over the relevant time period. Applicants may include by reference other portions of their applications (*e.g.,* project management plan, budget). The sustainability plan must, at a minimum, address the following points:

(A) *Projected sustainability period.* Indicate the sustainability period, which at a minimum is equal to the useful life of the funded facility. The consortium's budget must show projected income and expenses (*i.e.,* for maintenance) for the project at the aggregate level, for the sustainability period.

(B) *Principal factors.* Discuss each of the principal factors that were considered by the participant to demonstrate sustainability. This discussion must include all factors that show that the proposed network will be sustainable for the entire sustainability period. Any factor that will have a monetary impact on the network must be reflected in the applicant's budget.

(C) *Terms of membership in the network.* Describe generally any agreements made (or to be entered into) by network members (*e.g.,* participation agreements, memoranda of understanding, usage agreements, or other similar agreements). The sustainability plan must also describe, as applicable:

(*1*) Financial and time commitments made by proposed members of the network;

(*2*) If the project includes excess bandwidth for growth of the network, describe how such excess bandwidth will be financed; and

(*3*) If the network will include ineligible health care providers and other network members, describe how fees for joining and using the network will be assessed.

(D) *Ownership structure.* Explain who will own each material element of the network (*e.g.,* fiber constructed, network equipment, end user equipment). For purposes of this subsection, ''ownership'' includes an indefeasible right of use interest. Applicants must clearly identify the legal entity that will own each material element. Applicants must also describe any arrangements made to ensure continued use of such elements by the network members for the duration of the sustainability period.

(E) *Sources of future support.* Describe other sources of future funding, including fees to be paid by eligible health care providers and/or non-eligible entities.

(F) *Management.* Describe the management structure of the network for the duration of the sustainability period. The applicant's budget must describe how management costs will be funded.

(v) *Material change to sustainability plan.* A consortium that is required to file a sustainability plan must maintain its accuracy. If there is a material change to a required sustainability plan that would impact projected income or expenses by more than 20 percent or $100,000 from the previous submission, or if the applicant submits a funding request based on a new Request for Funding (*i.e.,* a new competitively bid contract), the consortium is required to re-file its sustainability plan. In the event of a material change, the applicant must provide the Administrator with the revised sustainability plan no later than the end of the relevant quarter, clearly showing (*i.e.,* by redlining or highlighting) what has changed.

§ 54.624 Site and service substitutions.

(a) Health care providers or Consortium Leaders may request a site or service substitution if:

(1) The substitution is provided for in the contract, within the change clause, or constitutes a minor modification;

(2) The site is an eligible health care provider and the service is an eligible service under the Telecommunications Program or the Healthcare Connect Fund Program;

(3) The substitution does not violate any contract provision or state, Tribal, or local procurement laws; and

(4) The requested change is within the scope of the controlling Request for Services, including any applicable RFP used in the competitive bidding process.

(b) Filing deadline. An applicant must file their request for a site or service change to the Administrator no later than the service delivery deadline as defined in § 54.626.

§ 54.625 Service Provider Identification Number (SPIN) changes.

(a) *Corrective SPIN change.* A ''corrective SPIN change'' is any amendment to the SPIN associated with a Funding Request Number that does not involve a change to the service provider associated with that Funding Request Number. An applicant under the Telecommunications Program or the Healthcare Connect Fund Program may file a request for a corrective SPIN change with the Administrator to:

(1) Correct ministerial errors;

(2) Update the service provider's SPIN that resulted from a merger or acquisition of companies; or

(3) Effectuate a change to the SPIN that does not involve a change to the service provider of a funding request and was not initiated by the applicant.

(b) *Operational SPIN Change.* An ''operational SPIN change'' is any change to the service provider associated with a Funding Request Number. An applicant under the Telecommunications Program or the Healthcare Connect Fund Program may file a request for an operational SPIN change with the Administrator if:

(1) The applicant has a legitimate reason to change providers (*e.g.,* breach of contract or the service provider is unable to perform); and

(2) The applicant's newly selected service provider received the next highest point value in the original bid evaluation, assuming there were multiple bidders.

(c) *Filing deadline.* An applicant must file their request for a corrective or

operational SPIN change with the Administrator no later than the service delivery deadline as defined by § 54.626.

§ 54.626 Service delivery deadline and extension requests.

(a) *Service delivery deadline.* Except as provided in the following, applicants must use all recurring and non-recurring services for which Telecommunications Program and Healthcare Connect Fund Program funding has been approved by June 30 of the funding year for which the program support was sought. The Administrator will deem ineligible for Telecommunications Program and Healthcare Connect Fund Program support all charges incurred for services delivered before or after the close of the funding year.

(b) *Deadline extension for non-recurring services.* An applicant may request and receive from the Administrator a one-year extension of the implementation deadline for non-recurring services if it satisfies one of the following criteria:

(1) Applicants whose funding commitment letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized;

(2) Applicants that receive service provider change authorizations or site and service authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized;

Note 1 to paragraphs (b)(1) and (b)(2): The Administrator shall automatically extend the service delivery deadline for applicants who satisfy paragraphs (b)(1) or (2) in this section. When calculating the extended deadline, March 1 is the key date for determining whether to extend the service delivery deadline. If one of the conditions listed in paragraph (b) in this section is satisfied before March 1 (of any year), the deadline will not be extended and the applicant will have until June 30 of that calendar year to complete implementation. If one of the conditions under paragraph (b)(1) through (2) in this section is satisfied on or after March 1 the calendar year, the applicant will have until June 30 of the following calendar year to complete implementation.

(3) Applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or

Note 1 to paragraph (b)(3): An applicant seeking a one-year extension must affirmatively request an extension on or before the June 30 deadline for paragraph (b)(3) in this section. The Administrator will address any situations arising under paragraph (b)(3) in this section on a case-by-case basis. Applicants must submit documentation to the Administrator requesting relief pursuant to paragraph (b)(3) in this section on or before June 30 of the relevant funding year. That documentation must include, at a minimum, an explanation regarding the circumstances that make it impossible for installation to be completed by June 30 and a certification by the applicant that, to the best of their knowledge, the request is truthful.

(4) Applicants whose service providers are unwilling to complete delivery and installation because the applicant's funding request is under review by the Administrator for program compliance.

Note 1 to Paragraph (b)(4): An applicant seeking a one-year extension must affirmatively request an extension on or before the June 30 deadline for paragraph (b)(4) in this section. Applicants seeking an extension under paragraph (b)(4) in this section must certify to the Administrator that their service provider was unwilling to deliver or install the non-recurring services before the end of the funding year. Applicants must make this certification on or before June 30 of the relevant funding year. The revised implementation date will be calculated based on the date the Administrator issues a funding commitment.

§ 54.627 Invoicing process and certifications.

(a) *Invoice filing deadline.* Invoices must be submitted to the Administrator within 120 days after the later of:

(1) The service delivery deadline, as defined in § 54.626; or

(2) The date of a revised funding commitment letter issued pursuant to an approved post-commitment request made by the applicant or service provider or a successful appeal of a previously denied or reduced funding request. Before the Administrator may process and pay an invoice, it must receive a completed invoice from the service provider.

(b) *Invoice deadline extension.* Service providers or billed entities may request a one-time extension of the invoicing deadline by no later than the deadline calculated pursuant to paragraph (a) in this section. The Administrator shall grant a 120-day extension of the invoice filing deadline, if it is timely requested.

(c) *Telecommunications Program.* (1) The applicant must submit documentation to the Administrator confirming the service start date, the service end or disconnect date, or whether the service was never turned on.

(2) Upon receipt of the invoice(s) and supporting documentation, the Administrator shall generate a Health Care Provider Support Schedule (HSS), which the service provider shall use to determine how much credit the applicant will receive for the services.

(3) *Certifications.* Before the Administrator may process and pay an invoice, both the health care provider and the service provider must make the following certifications.

(i) The health care provider must certify that:

(A) The service has been or is being provided to the health care provider;

(B) The universal service credit will be applied to the telecommunications service billing account of the health care provider or the billed entity as directed by the health care provider;

(C) It is authorized to submit this request on behalf of the health care provider;

(D) It has examined the invoice and supporting documentation and that to the best of its knowledge, information and belief, all statements of fact contained in the invoice and supporting documentation are true;

(E) It or the consortium it represents satisfies all of the requirements and will abide by all of the relevant requirements, including all applicable Commission rules, with respect to universal service benefits provided under 47 U.S.C. 254; and

(F) It understands that any letter from the Administrator that erroneously states that funds will be made available for the benefit of the applicant may be subject to rescission.

(ii) The service provider must certify that:

(A) The information contained in the invoice is correct and the health care providers and the Billed Account Numbers have been credited with the amounts shown under ''Support Amount to be Paid by USAC;''

(B) It has abided by all of the relevant requirements, including all applicable Commission rules;

(C) It has received and reviewed the HSS, invoice form and accompanying documentation, and that the rates charged for the telecommunications services, to the best of its knowledge, information and belief, are accurate and comply with the Commission's rules;

(D) It is authorized to submit the invoice;

(E) The health care provider paid the appropriate urban rate for the telecommunications services;

(F) The rural rate on the invoice does not exceed the appropriate rural rate determined by the Administrator;

(G) It has charged the health care provider for only eligible services prior to submitting the invoice for payment and accompanying documentation;

(H) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services; and

(I) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding.

(J) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.

(d) *Healthcare Connect Fund Program.* (1) *Certifications.* Before the Administrator may process and pay an invoice, the Consortium Leader (or health care provider, if participating individually) and the service provider must make the following certifications:

(i) The Consortium Leader or health care provider must certify that:

(A) It is authorized to submit this request on behalf of the health care provider or consortium;

(B) It has examined the invoice form and attachments and, to the best of its knowledge, information, and belief, all information contained on the invoice form and attachments are true and correct;

(C) The health care provider or consortium members have received the related services, network equipment, and/or facilities itemized on the invoice form; and

(D) The required 35 percent minimum contribution for each item on the invoice form was funded by eligible sources as defined in the Commission's rules and that the required contribution was remitted to the service provider.

(ii) The service provider must certify that:

(A) It has been authorized to submit this request on behalf of the service provider;

(B) It has applied the amount submitted, approved, and paid by the Administrator to the billing account of the health care provider(s) and Funding Request Number (FRN)/FRN ID listed on the invoice;

(C) It has examined the invoice form and attachments and that, to the best of its knowledge, information, and belief, the date, quantities, and costs provided in the invoice form and attachments are true and correct;

(D) It has abided by all program requirements, including all applicable Commission rules and orders;

(E) It has charged the health care provider for only eligible services prior to submitting the invoice form and accompanying documentation;

(F) It has not offered or provided a gift or any other thing of value to the applicant (or to the applicant's personnel, including its consultant) for which it will provide services;

(G) The consultants or third parties it has hired do not have an ownership interest, sales commission arrangement, or other financial stake in the service provider chosen to provide the requested services, and that they have otherwise complied with Rural Health Care Program rules, including the Commission's rules requiring fair and open competitive bidding; and

(H) As a condition of receiving support, it will provide to the health care providers, on a timely basis, all documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries.

§ 54.628 Duplicate support.

(a) Eligible health care providers that seek support under the Healthcare Connect Fund Program for telecommunications services may not also request support from the Telecommunications Program for the same services.

(b) Eligible health care providers that seek support under the Telecommunications Program or the Healthcare Connect Fund Program may not also request support from any other universal service program for the same expenses.

§ 54.629 Prohibition on resale.

(a) *Prohibition on resale.* Services purchased pursuant to universal support mechanisms under this subpart shall not be sold, resold, or transferred in consideration for money or any other thing of value.

(b) *Permissible fees.* The prohibition on resale set forth in paragraph (a) in this section shall not prohibit a health care provider from charging normal fees for health care services, including instruction related to services purchased with support provided under this subpart.

§ 54.630 Election to offset support against annual universal service fund contribution.

(a) A service provider that contributes to the universal service support mechanisms under this subpart and subpart H of this part to eligible health care providers may, at the election of the contributor:

(1) Treat the amount eligible for support under this subpart as an offset against the contributor's universal service support obligation for the year in which the costs for providing eligible services were incurred; or

(2) Receive direct reimbursement from the Administrator for that amount.

(b) Service providers that are contributors shall elect in January of each year the method by which they will be reimbursed and shall remain subject to that method for the duration of the calendar year. Any support amount that is owed a service provider that fails to remit its monthly universal service contribution obligation shall first be applied as an offset to that contributor's contribution obligation. Such a service provider shall remain subject to the offsetting method for the remainder of the calendar year in which it failed to remit its monthly universal service obligation. A service provider that continues to be in arrears on its universal service contribution obligations at the end of a calendar year shall remain subject to the offsetting method for the next calendar year.

(c) If a service provider providing services eligible for support under this subpart elects to treat that support amount as an offset against its universal service contribution obligation and the total amount of support owed exceeds its universal service obligation, calculated on an annual basis, the service provider shall receive a direct reimbursement in the amount of the difference. Any such reimbursement due a service provider shall be provided by the Administrator no later than the end of the first quarter of the calendar year following the year in which the costs were incurred and the offset against the contributor's universal service obligation was applied.

§ 54.631 Audits and recordkeeping.

(a) *Random audits.* All participants under the Telecommunications Program and Healthcare Connect Fund Program shall be subject to random compliance audits to ensure compliance with program rules and orders.

(b) *Recordkeeping.* Participants, including Consortium Leaders and health care providers, shall maintain records to document compliance with program rules and orders for at least five years after the last day of service delivered in a particular funding year sufficient to establish compliance with all rules in this subpart.

(1) *Telecommunications Program.* (i) Participants must maintain, among other things, records of allocations for consortia and entities that engage in eligible and ineligible activities, if applicable.

(ii) Mobile rural health care providers shall maintain annual logs for a period

of five years. Mobile rural health care providers shall maintain annual logs indicating: The date and locations of each clinical stop; and the number of patients served at each clinical stop. Mobile rural health care providers shall make their logs available to the Administrator and the Commission upon request.

(iii) Service providers shall retain documents related to the delivery of discounted services for at least five years after the last day of the delivery of discounted services. Any other document that demonstrates compliance with the statutory or regulatory requirements for the rural health care mechanism shall be retained as well.

(2) *Healthcare Connect Fund Program.* (i) Participants who receive support for long-term capital investments in facilities whose useful life extends beyond the period of the funding commitment shall maintain records for at least five years after the end of the useful life of the facility. Participants shall maintain asset and inventory records of supported network equipment to verify the actual location of such equipment for a period of five years after purchase.

(ii) Service providers shall retain records related to the delivery of supported services, facilities, or equipment to document compliance with the Commission rules or orders pertaining to the Healthcare Connect Fund Program for at least five years after the last day of the delivery of supported services, equipment, or facilities in a particular funding year.

(c) *Production of records.* Both participants and service providers under the Telecommunications Program and Healthcare Connect Fund Program shall produce such records at the request of the Commission, any auditor appointed by the Administrator or Commission, or any other state or federal agency with jurisdiction.

(d) *Obligation of service providers.* Service providers in the Telecommunications Program and Healthcare Connect Fund Program must certify, as a condition of receiving support, that they will provide to health care providers, on a timely basis, all information and documents regarding supported equipment, facilities, or services that are necessary for the health care provider to submit required forms or respond to Commission or Administrator inquiries. The Administrator may withhold disbursements for the service provider if the service provider, after written notice from the Administrator, fails to comply with this requirement.

§ 54.632 Signature requirements for certifications.

(a) For individual health care provider applicants, required certifications must be provided and signed by an officer or director of the health care provider, or other authorized employee of the health care provider.

(b) For consortium applicants, an officer, director, or other authorized employee of the Consortium Leader must sign the required certifications.

(c) Pursuant to § 54.633, electronic signatures are permitted for all required certifications.

§ 54.633 Validity of electronic signatures and records.

(a) For the purposes of this subpart, an electronic signature (defined by the Electronic Signatures in Global and National Commerce Act, as an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record) has the same legal effect as a written signature.

(b) For the purposes of this subpart, an electronic record (defined by the Electronic Signatures in Global and National Commerce Act, as a contract or other record created, generated, sent, communicated, received, or stored by electronic means) constitutes a record.

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Part III

Department of State

22 CFR Part 40

Visas: Ineligibility Based on Public Charge Grounds; Interim Final Rule

DEPARTMENT OF STATE

22 CFR Part 40

[Public Notice: 10922]

RIN 1400–AE87

Visas: Ineligibility Based on Public Charge Grounds

AGENCY: State Department.

ACTION: Interim final rule; request for public comment.

SUMMARY: This final rule amends Department of State (''Department'') regulations by prescribing how consular officers will determine whether an alien is ineligible for a visa under the Immigration and Nationality Act (''INA''), because he or she is likely at any time to become a public charge. Aliens who seek a visa, application for admission, or adjustment of status must establish that they are not likely at any time to become a public charge, unless Congress has expressly exempted them from this ground of ineligibility or if the alien obtained a waiver. This interim final rule adds certain definitions, including definitions of public charge, public benefit, alien's household, and receipt of public benefit. This interim final rule reflects the Department's interpretation of the pertinent section of the INA as it applies to visa applicants. This rulemaking is also intended to align the Department's standards with those of the Department of Homeland Security, to avoid situations where a consular officer will evaluate an alien's circumstances and conclude that the alien is not likely at any time to become a public charge, only for the Department of Homeland Security to evaluate the same alien when he seeks admission to the United States on the visa issued by the Department of State and finds the alien inadmissible on public charge grounds under the same facts. The Department is also removing the reference to fee collection for review and assistance with submitting an affidavit of support at consular posts as consular posts do not collect this fee, and an obsolete process related to bonds.

DATES: This interim final rule is effective 12 a.m., Eastern Time, October 15, 2019. The Department of State will accept comments up to November 12, 2019.

ADDRESSES: You may send comments, identified by [DOS–2019–0035 and/or RIN: 1400–AE87], by the Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Megan Herndon, Deputy Director for Legal Affairs, Visa Services, Bureau of Consular Affairs, Department of State, 600 19th St NW, Washington, DC 20006, (202) 485–7586, *VisaRegs@state.gov.*

SUPPLEMENTARY INFORMATION:

I. What changes are in § 40.41?

This interim final rule codifies changes to 22 CFR 40.41, which is the Department of State's (''Department'') interpretation and implementation of the public charge ground of visa ineligibility, section 212(a)(4) of the Immigration and Nationality Act (''INA'' or ''Act''), 8 U.S.C. 1182(a)(4). This interim final rule supersedes all prior inconsistent guidance on the public charge visa ineligibility. Accordingly, this supersedes all Department guidance that previously limited the interpretation of ''likely at any time to become a public charge'' as likely to become primarily dependent on the government (federal, state, or local) for subsistence (previously limited to public cash assistance for income maintenance or institutionalization for long-term care at government expense).

The INA renders inadmissible (and therefore ineligible for a visa, ineligible for admission to the United States, and ineligible for adjustment of status) any alien who, in the opinion of a consular officer (or the Departments of Homeland Security (''DHS'') or Justice (''DOJ''), as applicable) is likely at any time to become a public charge. The statute does not define the term ''public charge.'' The statutory public charge provision provides that administering agencies must ''at a minimum consider the alien's age; health; family status; assets, resources, and financial status; and education and skills.'' The agencies may also consider any affidavit of support, under section 213A of the INA, 8 U.S.C. 1183a, (*i.e.,* Form I–864, Affidavit of Support Under Section 213A of the INA) submitted on the alien's behalf. INA 212(a)(4)(B), 8 U.S.C. 1182(a)(4)(B). In general, the public charge ineligibility applies to both nonimmigrants and immigrants, although some classes of nonimmigrants and immigrants are exempt from the ineligibility ground. The DHS regulation at 8 CFR 212.23(a) lists the categories of exempt aliens. This interim final rule neither alters the classifications of aliens who are exempt from this ineligibility ground nor bears on the classifications of visas available to aliens.

The interim final rule makes several changes to paragraph (a) *Basis for Determination of Ineligibility.* First, the interim final rule adds language from the statute, ''at any time,'' to the existing regulatory language. Next, the interim final rule adds a reference to INA 212(a)(4)(D), 8 U.S.C. 1182(a)(4)(D), the requirement that an employment-based immigrant whose relative filed the immigrant visa petition or has a significant ownership interest in the entity that filed the immigrant visa petition, is ineligible unless such relative has executed a sufficient affidavit of support for such alien. The interim final rule adds language indicating that the consular officer will ''consider whether any third party'' listed in the affidavit of support will be ''willing and able to financially support the alien while the alien is in the United States.'' The Department is not changing the temporal reference for the consular officer's determination, which currently and under the interim final rule, is any time ''after admission.''

Next, in paragraph (a), the interim final rule incorporates ''more likely than not,'' the preponderance of the evidence standard, as the Department's interpretation of ''likely'' relating to the standard that consular officers will use when evaluating whether an alien is likely to become a public charge.

Additionally in paragraph (a), the interim final rule cites to the statutory requirement from section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), that consular officers will at the time of visa application take into account statutory factors, including the alien's age; health; family status; assets, resources, financial status; and education and skills. More specifically, the interim final rule codifies Department of State Foreign Affairs Manual (''FAM'') guidance that consular officers must consider, at a minimum, those factors as part of the totality of the applicant's circumstances. This interim final rule then explains the Department's interpretation of each factor.

Age: Consular officers will consider whether the alien's age makes the alien more likely than not to become a public charge in the totality of the circumstances, such as by impacting the alien's ability to work. Consular officers will consider an alien's age between 18 and 62 as a positive factor. Age will be considered a negative factor for aliens who are under the age of 18 or over 62. However, consular officers may consider other factors, such as the support provided to a minor child by a parent, legal guardian, or other source, that in the totality of the circumstances may offset the alien's age as a negative factor. This generally restates current FAM guidance that being under 18 years old is a negative factor in the totality of the circumstances if the visa applicant

is neither accompanied by a parent or guardian or following to join a parent or guardian. The interim final rule also codifies into regulation existing FAM guidance that an applicant's age is a negative factor in the totality of the circumstances, if the consular officer believes it adversely affects the person's ability to obtain or perform work or may increase the potential for healthcare related costs that would be borne by the public.

Health: Under the interim final rule, consular officers will consider whether the alien's health serves as a positive or negative factor in the totality of the circumstances, including whether the alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work (if authorized). This new provision clarifies current FAM guidance. The new provision adds that consular officers will consider the report of a medical examination performed by the panel physician where such examination is required, including any medical conditions noted by the panel physician. A Class B medical condition, including Class B forms of communicable diseases of public health significance, as defined in 42 CFR part 34, will not, standing alone, result in a finding of ineligibility for public charge. In assessing the effect of the alien's health on a public charge determination, the interim final rule provides that the consular officer will consider evidence of health insurance or the ability to pay for reasonably foreseeable medical expenses in the United States a positive factor in the totality of the circumstances. Under this standard, lack of health insurance alone would not make an alien more likely than not to become a public charge at any time, but would instead be considered in the totality of the alien's circumstances. This standard generally reflects existing guidance that certain health issues could increase the burden on the applicant to provide information demonstrating the ability to pay for medical expenses in the United States, potentially including proof of health insurance.

Family status: The interim final rule reflects that when considering an alien's family status, consular officers will consider the size of the alien's household, and whether the alien's household size makes the alien likely to become a public charge at any time in the future. The term ''alien's household'' is defined in paragraph (d). Household size is a positive factor if the family size makes the alien unlikely to receive public benefits at any time in the future.

Assets, resources, and financial status: The interim final rule specifies several nonexclusive aspects of the alien's assets, resources, and financial status consular officers will consider. First, with regard to an alien's household gross income, the interim final rule specifies that annual gross income for the applicant's household size of at least 125 percent of the most recent Federal Poverty Guidelines based on the applicant's household size (or 100 percent for an applicant on active duty, other than training, in the Armed Forces), is a positive factor. Second, if the applicant's annual household gross income is less than 125 percent of the most recent Federal Poverty Guidelines (or 100 percent for an applicant on active duty, other than training, in the Armed Forces) based on the applicant's household size, the applicant can submit evidence of ownership of assets, which may affect the consular officer's determination. If the total value of the household assets, offsetting for liabilities, is at least five times the difference between the applicant's household gross income and 125 percent of the Federal Poverty Guidelines (or 100 percent for an applicant on active duty, other than training, in the Armed Forces) for the applicant's household size, then that will be considered a positive factor. However, if the alien is the spouse or child of a U.S. citizen, assets totaling three times the difference between the alien's household gross income and 125 percent of the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor. If the alien is a child who will be adopted in the United States and who will likely receive citizenship under INA 320, 8 U.S.C. 1432, then assets equivalent to or greater than the difference between the alien's household gross income and 125 percent of the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor. This reflects a change from existing FAM guidance, which recognizes income above 125 percent of the Federal Poverty Guideline and assets in the amount of five times 125 percent of the Federal Poverty Guideline generally as sufficient resources for overcoming public charge concerns.

The interim final rule provides that, when considering an alien's assets, resources, and financial status, consular officers may not consider any income from illegal activities or sources, such as proceeds from illegal gambling or drug sales, or income from public benefits, as defined in the interim final rule. This policy is being explicitly articulated for the first time. The interim final rule then lists several specific nonexclusive factors consular officers will consider in evaluating whether the alien's assets, resources, and financial status make an alien likely to become a public charge. These include the alien's household gross income; the alien's cash assets and resources; non-cash assets and resources that can be converted into cash within twelve months of the date of the visa application; the alien's financial liabilities; whether the alien has applied for, been certified to receive or approved to receive, or received, one or more public benefits, as defined in paragraph (c) of this section on or after October 15, 2019, or whether the alien has disenrolled or requested to be disenrolled from such benefits; whether the alien has received an immigration benefit fee waiver from DHS on or after the interim final rule's effective date; and whether the applicant has private health insurance or other financial resources sufficient to pay for reasonably foreseeable medical costs. This interpretation introduces two factors: past DHS fee waivers and private health insurance or other means to cover reasonably foreseeable medical costs, both of which have direct bearing on the visa applicant's assets, resources, and financial status.

The interim final rule also changes how consular officers will consider past receipt of public benefits. Current FAM guidance directs consular officers to consider receipt of public assistance of any type by the visa applicant or a family member in the visa applicant's household when determining the likelihood a visa applicant would become a public charge. The interim final rule explicitly addresses the applicant's receipt of public benefits, and incorporates the Department's new definition of public benefit. Consular officers will only consider listed public benefits received on or after October 15, 2019, except that consular officers will consider as a negative factor, but not a heavily weighted negative factor, receipt of cash assistance for income maintenance or programs supporting institutionalization for long term care in the United States, received, or certified for receipt before October 15, 2019. Additionally, the current FAM guidance does not specifically limit a consular officer's consideration to U.S. forms of public assistance, but the interim final

rule only covers United States (federal, state, local, or tribal) public assistance.

Education and skills: When considering an alien's education and skills, consular officers will consider both positive and negative factors associated with whether the alien has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid being likely to become a public charge. In assessing whether the alien's level of education and skills makes the alien likely to become a public charge, the consular officer must consider, among other factors, the alien's history of employment, educational level (high school diploma, or its equivalent, or a higher educational degree), any occupational skills, certifications, or licenses, and proficiency in English or proficiency in other languages in addition to English. This standard provides additional detail and in some respects changes the guidance currently given to consular officers in the FAM. Currently, FAM guidance directs consular officers to consider the applicant's skills, length of employment, and frequency of job changes, and permitted consular offices to consider that work experience is evidence of skills. The Department is superseding the FAM's treatment of work experience as evidence of skills, by requiring only that consular officers consider the alien's history of employment. The Department is also introducing the new concept of whether an alien is a primary caregiver, considering as a positive factor under the totality of the circumstances if the alien is over 18 years of age and has ''significant responsibility for actively caring for and managing the well-being of a minor, elderly, ill, or disabled person residing in the alien's household, such that the alien lacks an employment history or current employment, or is not employed full time.''

Prospective Visa Classification: The interim final rule adds consideration of the alien's prospective visa classification.

Affidavit of Support: The interim final rule states that a sufficient Affidavit of Support Under Section 213A of the INA, where it is required, is a positive factor in the totality of the circumstances if the sponsor is likely to actually provide the alien with the statutorily required amount of financial support and other related considerations that may indicate the ability or willingness of the sponsor to provide support. Department guidance has reflected this interpretation since January 2018. Also, in paragraph (a)(7), the Department removed reference to fee collection for review and assistance with submitting an affidavit of support at consular posts, as consular posts do not collect an affidavit of support fee overseas.

Heavily Weighted Factors: The interim final rule then introduces certain factors and factual circumstances that will weigh heavily in determining whether an alien is likely to become a public charge, including negative and positive factors. The heavily weighted negative factors are:

- The alien is not a full-time student and is authorized to work, but is unable to satisfy the consular officer that he or she is currently employed, has recent employment history, or a reasonable prospect of future employment;
- The alien has received, or has been certified or approved to receive, one or more public benefits, as defined in 22 CFR 40.41(c), for more than 12 months in the aggregate within any 36-month period (such that for instance receipt of two benefits in one month, counts as two months' worth of benefits), beginning no earlier than 12 a.m., October 15, 2019, or 36 months prior to the adjudication of the alien's visa application, whichever is later;
- The alien has been diagnosed with a medical condition that is likely to require extensive treatment or institutionalization or that will interfere with the alien's ability to provide for himself or herself, attend school, or work;
- The alien has no health insurance for use in the United States and has neither the prospect of obtaining private health insurance, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition;
- The alien was previously found inadmissible or deportable on public charge grounds by an Immigration Judge or the Board of Immigration Appeals.

The heavily weighted positive factors are:

- The alien's household has income, assets, resources, or support of at least 250 percent of the Federal Poverty Guidelines for the alien's household size. Consular officers may not consider any income from illegal activities, *e.g.,* proceeds from illegal gambling or drug sales, or any income derived from any public benefit as defined in 22 CFR 40.41(c);
- The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for the alien's household size. Consular officers may not consider any income from illegal activities, *e.g.,* proceeds from illegal gambling or drug sales; and
- The alien has private health insurance (other than health insurance obtained with premium tax credits under the Affordable Care Act) for use in the United States covering the expected period of admission.

Treatment of forms of public assistance received before October 15, 2019. Under this interim final rule, consular officers will consider as a negative factor, but not as a heavily weighted negative factor as described in paragraph (a)(8) of this section, forms of assistance received prior to October 15, 2019 only if such assistance would have been considered in the public charge determination between May 25, 1999 and January 2, 2018. These are limited to (1) any amount of cash assistance for income maintenance, including Supplemental Security Income (''SSI''), Temporary Assistance for Needy Families (''TANF''), State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs), and (2) programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received before October 15, 2019. Short-term institutionalization for rehabilitation (including under Medicaid), received before October 15, 2019, will not be considered in the public charge determination under the interim final rule. Under this interim final rule, the Department will no longer authorize consular officers to consider other forms of public assistance, domestic or foreign, in the totality of the circumstances public charge calculation.

Public Charge Definition: In paragraph (b), the interim final rule introduces a new definition of public charge. Under previous Department guidance in effect since May 1999, consular officers considered an applicant likely to become a public charge if the applicant is likely, at any time after admission, to become primarily dependent on the U.S. Government (which includes Federal, state, or local governments) for subsistence. Public charge, for purposes of INA 212(a)(4)(A) and (B), 8 U.S.C. 1182(a)(4)(A) and (B), is defined under the interim final rule as an alien who receives one or more public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits).

Public Benefit Definition: In paragraph (c), the interim final rule introduces a new definition of public benefit. Prior guidance limited the types of benefits to receipt of public cash assistance for income maintenance and

institutionalization for long-term care at U.S. Government expense. The Department adopted this interpretation in the FAM based on the former Immigration and Naturalization Service (''INS'') interpretation of the public charge inadmissibility, as explained in the INS Notice, *Field Guidance on Deportability and Inadmissibility on Public Charge* Grounds, 64 FR 28689 (May 26, 1999).

Under the Department's new definition, ''public benefit'' means:

- Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:
  - Supplemental Security Income (SSI), 42 U.S.C. 1381 *et seq.;*
  - Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 *et seq.;*
  - Federal, State or local cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but which also exist under other names);
- Supplemental Nutrition Assistance Program (SNAP), 7 U.S.C. 2011 *et seq.;*
- Medicaid under 42 U.S.C. 1396 *et seq.,* except for:
  - Benefits received for an emergency medical condition as described in section 1903(v)(2)–(3) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v)(2)–(3), 42 CFR 440.255(c);
  - services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.;*
  - school-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law; or
  - benefits received by an alien under 21 years of age, or a woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).
- Public housing and rental assistance programs under sections 8–9 of the Housing Act of 1937, 42 U.S.C. 1437f–g.

Exclusions from the Public Benefit Definition: Public benefit, under the interim final rule, does not include any public benefit received by an alien who at the time of receipt of the public benefit, or at the time of visa application or visa adjudication, is or was:

- Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2) (or is the spouse or child of such person),
- serving in active duty or in the Ready Reserve component of the U.S. Armed Forces (or is the spouse or child of such person), or
- the spouse or child of an individual enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or in the Ready Reserve component of the U.S. Armed Forces.

For the purpose of visa adjudication for which the public charge ground of ineligibility applies, public benefit, as defined in this section, does not include any public benefit received by an alien during periods in which the alien was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as set forth in 8 CFR 212.23(a), or for which the alien received a waiver of public charge inadmissibility from DHS. Public benefit does not include health services for immunizations and for testing and treatment of communicable diseases, including communicable diseases of public health significance as defined in 42 CFR part 34. Public benefits are limited to benefits received from governmental and tribal entities in the United States and does not include benefits from foreign governments. Public benefit also does not include any public benefit received by:

- Children of U.S. citizens whose lawful admission for permanent residence and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship under the Child Citizenship Act of 2000, Public Law 106–395, 114 Stat. 1631 (INA section 320(a)–(b), 8 U.S.C. 1431(a)–(b) in accordance with 8 CFR part 320);
- children of U.S. citizens whose lawful admission for permanent residence will result automatically in the child's acquisition of citizenship upon finalization of adoption, if the child satisfies the requirements applicable to adopted children under INA 101(b)(1), 8 U.S.C. 1101(b)(1) in the United States by the U.S. citizen parent(s) and meets other eligibility criteria as required by the Child Citizenship Act of 2000, Public Law 106–395, 114 Stat. 16341 (INA section 320(a)–(b), 8 U.S.C. 1431(a)–(b), in accordance with 8 CFR part 320); or
- children of U.S. citizens who are entering the United States for the purpose of attending an interview under section 322 of the INA, 8 U.S.C. 1433, in accordance with 8 CFR part 322.

Additionally, the interim final rule makes clear that only certain forms of public assistance received on or after 12:00 a.m., October 15, 2019 fall within the definition of ''public benefit'' for the purpose of applying the public charge ground of ineligibility, with the exception of cash assistance for income maintenance and programs supporting institutionalization for long term care in the United States, as detailed in § 40.41(a)(9).

Alien's Household: The interim final rule sets out new standards to determine the members of an ''alien's household'' at paragraph (d). One standard applies to aliens who are twenty-one years of age or older and also applies to married individuals under twenty-one, whereas a separate standard applies to children, who are defined by the INA as unmarried persons under twenty-one years of age. If the alien is twenty-one years of age or older, or married and of any age, the alien's household includes:

- The alien;
- The alien's spouse, if physically residing or intending to physically reside with the alien in the United States;
- The alien's children, as defined in 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), if physically residing or intending to physically reside with the alien;
- The alien's other children, as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), not physically residing or not intending to physically reside with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;
- Any other individuals (including a spouse not physically residing or not intending to physically reside with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support or who are listed as dependents on the alien's United States federal income tax return; and
- Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

If the alien is a child as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), the alien's household includes the following individuals:

- The alien;
- The alien's children as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), physically residing or intending to physically reside with the alien;
- The alien's other children as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), not physically residing or not intending to physically reside with the alien, for whom the alien provides or is required to provide

at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

- The alien's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the alien's financial support to the alien as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;
- The parents' or legal guardians' other children as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), physically residing or intending to physically reside with the alien;
- The alien's parents' or legal guardians' other children as defined in section 101(b)(1) of the INA, 8 U.S.C. 1101(b)(1), not physically residing or not intending to physically reside with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and
- Any other individual(s) to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of such individual's financial support or who is listed as a dependent on the parent's or legal guardian's federal income tax return.

This definition varies in certain aspects from existing FAM guidance. First, the Department is adopting different standards for applicants who are at least 21 years of age (or married and any age), and children. Prior guidance did not make such distinctions and placed more focus on the alien's sponsor, if required. However, the text of INA 212(a)(4), 8 U.S.C. 1182(a)(4), focuses on whether the visa applicant will become a public charge and requires the Department to consider the applicant's family status.

Receipt of Public Benefit: In paragraph (e), the interim final rule sets out new standards for what constitutes ''receipt of public benefit.'' Receipt of public benefit occurs when a public benefit granting agency provides a public benefit, as defined in § 40.41(c), to the visa applicant as a beneficiary, whether in the form of cash, voucher, services, or insurance coverage. Application or certification for a public benefit does not constitute receipt of public benefit, but it may be considered as a factor suggesting likelihood of future receipt. An alien's receipt of, application for, or certification for, a public benefit solely on behalf of another individual does not constitute receipt of, application for, or certification for, such alien, regardless of whether the alien might gain personally from the third party's benefit. This new standard will help consular officers implement the new ''public charge'' definition at paragraph (b), referring to an alien who receives one or more public benefits, as defined in paragraph (c) of this section, for more than 12 months in the aggregate within any 36-month period. It also clarifies that consular officers must evaluate whether the alien is likely to receive one or more public benefits, the impact of certification for future receipt of a public benefits, and that the relevant consideration is the alien's future receipt, or expected receipt, of public benefits, not an application or certification solely on behalf of another person. Because 40.41(c) limits the definition of ''public benefit'' to specified forms of public assistance received on or after 12 a.m., October 15, 2019, an alien will not be considered to have received a public benefit before that date.

The paragraph in § 40.41 titled *Prearranged Employment,* formerly (e), is redesignated (f). The interim final rule does not change the text of these sections. Finally, the Department is removing *Posting of a Bond,* formerly (d), and *Joint Sponsors,* formerly paragraph (c) and *Use of the Federal Poverty Line Where INA 213A Not Applicable,* formerly paragraph (f). These paragraphs were removed because language was not necessary; they either restated statutory requirements or were obsolete.

II. Why is the Department promulgating this rule?

A. Background

On August 14, 2019, DHS issued a final rule outlining its new interpretation of the public charge ground of inadmissibility. *See Inadmissibility on Public Charge Grounds,* 84 FR 41292. Under DHS's prior interpretation of ''public charge'' an alien would be inadmissible if he or she would be ''primarily dependent on the Government for subsistence, as demonstrated by either the receipt of public cash assistance for income maintenance or institutionalization for long-term care at Government expense.'' Since May 1999, Department guidance has used the same standard. As a consequence, an alien's reliance on or receipt of non-cash benefits such as SNAP, Medicaid, housing vouchers and other housing subsidies, and other programs that DHS now considers ''public benefit'' pursuant to its new definition of ''public charge'' were not previously considered by DHS or the Department in determining whether an alien is deemed likely at any time to become a public charge.

DHS revised its interpretation of ''public charge'' to incorporate consideration of such benefits in order to better ensure that aliens subject to the public charge inadmissibility ground are not dependent on public resources to meet their needs, but rather rely on their own capabilities, as well as the resources of family members, sponsors, and private organizations. The DHS rule redefines the term ''public charge'' to mean an alien who receives one or more designated public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits). The DHS final rule defines the term 'public benefit' with a finite list of public benefits that are considered for purposes of the public charge determination, including Federal, state, local or tribal cash assistance for income maintenance, Supplemental Security Income (''SSI''), SNAP, most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher (''HCV'') Program, Section 8 Project-Based Rental Assistance, and certain other forms of subsidized housing. *See* Inadmissibility on Public Charge Grounds, 84 FR 41292 (Aug. 14, 2019).

Because section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), renders inadmissible aliens ineligible to receive visas and ineligible to be admitted to the United States, the Department is also modifying its interpretation in some respects. The Department's new standards are intended to avoid situations where a consular officer will evaluate an alien's circumstances and conclude that the alien is not likely at any time to become a public charge, only for DHS to evaluate the same alien when he seeks admission to the United States on the visa issued by the Department of State and finds the alien inadmissible on public charge grounds under the same facts. Although the Department has chosen to follow DHS's approach in many respects, this interim final rule reflects the Department's independent interpretations and policies. In addition, some aspects of the rule may deviate from the DHS approach due to the differing circumstances of visa applicants, who

reside outside the United States and typically have not spent substantial time in the United States, as contrasted with applicants for USCIS-administered benefits, which applicants commonly are in the United States and have spent substantial time there.

B. Specific Provisions

In addition to the reasons cited in Section (II)(A), the Department adopts the interpretations set forth in the interim final rule based on the additional considerations below.

1. Basis for Determination of Ineligibility

The new reference to the Affidavit of Support provision for certain employment-based immigrants reflects the statutory requirement that aliens who are the beneficiary of petitions filed pursuant to section 212(a)(4)(D) of the INA, 8 U.S.C. 1182(a)(4)(D), by a relative or an entity in which a relative has a significant ownership interest are ineligible without an Affidavit of Support from such relative. Significant ownership interest means 5 percent or more under existing Department guidance. *See also* 8 CFR 213a.1. This addition does not reflect a policy change. The Department is also clarifying that consular officers will consider whether a third party is willing and able to financial support the alien in the United States. A third party could be the sponsor, or, for example, for a B–1/B–2 applicant, the alien's parent or child. This clarifies current policy and is not a policy change.

Also in paragraph (a), the interim final rule incorporates ''more likely than not'' as the standard that consular officers will use when evaluating whether an alien is ''likely'' to become a public charge. Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), specifies that the public charge ground will apply to ''any alien who, in the opinion of the consular officer . . . is likely at any time to become a public charge''. The Department believes that the word ''likely'' could be ambiguous to consular officers, particularly given the overall subjective nature of the standard (''in the opinion of the consular officer''), and that both consular officers and visa applicants would benefit from having a more clear standard of proof and adjudicatory framework.

The requisite degree of proof in civil matters is generally a preponderance of the evidence, which is synonymous with ''more likely than not.'' The standard of proof specified by the INA that must be met by individuals applying for visas is ''to the satisfaction of the consular officer.'' *See* INA 291, 8 U.S.C. 1361. However, most provisions in section 212(a) of the INA, 8 U.S.C. 1182(a), also require consular officers either to have a ''reason to believe'' or to evaluate whether as a factual matter something has happened in the past (*e.g.,* that a visa applicant was convicted of a particular crime or engaged in trafficking activity). The public charge provision, like certain other provisions, requires a consular officer to assess the likelihood of an event happening in the future, which here serves as the sole criterion for whether the ineligibility applies. To clarify the standard for consular officers, the Department is interpreting ''likely'' as ''more likely than not'' in the context of the public charge ineligibility ground, which will eliminate ambiguity from the phrase ''likely at any time'' by requiring a consular officer to make a finding that it is probable, *i.e.,* more likely than not, that an applicant will at any time in the future become a public charge for this ground of ineligibility to apply. Conversely, this standard makes clear to applicants that they can avoid application of the public charge ground of ineligibility by demonstrating that it is *not* more likely than not that they will become a public charge at any time in the future.

The interim final rule also cites in paragraph (a) to the statutory requirement from section 212(a)(4)(B) of the INA, 8 U.S.C. 1182(a)(4)(B), that consular officers will, at the time of visa application, take into account statutory factors, including the alien's age; health; family status; assets, resources, financial status; and education and skills. The rule also explains that consular officers must consider those factors, among others, as part of the totality of the applicant's circumstances. The interim final rule then explains the Department's interpretation of each factor. The Department's standards will be implemented through guidance that is consistent with standards announced in the DHS final rule, and will mitigate against the possibility that consular officers would issue a visa to an individual whom DHS would find inadmissible based on the same facts. However, the Department's standards are in some ways tailored specifically for unique aspects of visa adjudication.

a. Age

Consular officers will consider whether the alien's age makes the alien more likely than not to become a public charge in the totality of the circumstances, such as by impacting the alien's ability to obtain and perform work. Consular officers will consider an alien's age between 18 and 62 as a positive factor, which takes into consideration ''early retirement age'' for Social Security set forth in 42 U.S.C. 416(l)(2). The 18-through-62 age range is based on the ages at which people are generally able to work full-time and prior to an individual's general ability to retire with some social security retirement benefits under Federal law.

Under this provision, being under 18 would be a negative factor. The Department notes this approach reflects the common understanding of when people are generally able to work full-time and that children under the age of 18 generally face difficulties working full-time. Federal laws, such as the Fair Labor Standards Act, and some state laws place restrictions on the ability of children under the age of 18 to work full-time. Additionally, individuals under the age of 18 may be more likely to qualify for and receive public benefits. For example, the U.S. Census reported that persons under the age of 18 were more likely to receive means-tested benefits than other age groups. See Jessica L. Semega et al., U.S. Census Bureau, *Income and Poverty in the United States: 2016,* at 13 tbl.3 (Sept. 2017), available at *https://www.census.gov/content/dam/Census/library/publications/2017/demo/P60-259.pdf.*

However, consular officers will also review the support provided by a parent or other source (assets, resources, and financial status) as part of the totality of the circumstances. For example, in the case of a 17-year old child in a United States boarding school, consular officers would consider age to be a negative factor. However, the alien's financial status or support, such as having education and living expenses paid for by someone else, would be a positive factor that in the totality of the circumstances could lead to the conclusion that the applicant is not likely to become a public charge. Likewise, in the case of a 17-year-old who has a credible offer of lawful employment that would make him- or herself-sufficient, the alien's age would be a negative factor, but a credible offer of employment that would make the alien self-sufficient would be a positive factor.

In codifying existing FAM guidance that an applicant's age above early retirement age is a negative factor in the totality of the circumstances if the consular officer believes it negatively affects the person's ability to work or may increase the potential for healthcare related costs, the Department does not intend this standard to imply that individuals over early retirement age are unable to work. These factors

will be weighed by consular officers in analyzing the totality of the applicant's circumstances.

b. Health

The interim final rule generally restates FAM guidance that directs consular officers to consider a visa applicant's health when assessing whether the applicant is likely to become a public charge. As explained below, the rule introduces additional factors related to assets, resources, and financial status, including whether an applicant will have health insurance or other means to cover reasonably foreseeable medical costs (relating to health issues existing at the time of visa adjudication). Lack of health insurance alone would not make an alien more likely than not to become a public charge at any time, but would instead be considered in the totality of the alien's circumstances.

c. Family Status

Under the interim final rule, consular officers will consider whether the alien has a household to support, or whether the alien is being supported by another household and whether the alien's household size makes the alien likely to become a public charge. Household size is a positive factor if the family size makes the alien unlikely to receive public benefits at any time in the future.

The Department notes that consular officers will frequently view family status in connection with, among other things, the alien's assets and resources, because the amount of assets and resources necessary to support a larger number of people in a household is generally greater. Thus, as described in the section below on ''Assets, resources, and financial status,'' consular officers will consider annual gross income for the applicant's household size of at least 125 percent of the most recent Federal Poverty Guidelines based on the applicant's household size (or 100 percent for an applicant on active duty, other than training, in the Armed Forces) a positive factor. The Department also recognizes DHS analyses showing that receipt of non-cash benefits generally increases as family size increases, and therefore family size is relevant to assessing whether an alien is likely to become a public charge. *See Inadmissibility on Public Charge Grounds,* 83 FR 51114, 51185, Tables 16 and 17 (proposed Oct. 10, 2018). Regardless of household size, an alien may present other factors (*e.g.,* assets, resources, financial status, education, and skills) that weigh for or against a finding that the alien is likely to become a public charge. For instance, an alien who is part of a large household may have his or her own income or access to additional assets and resources that would assist in supporting the household. All of these factors would be considered in the totality of the circumstances.

The Department notes that this approach deviates somewhat from the DHS rule, in that the Department's approach focuses on the alien's intended household in the United States, rather than any members of his foreign household he or she will leave behind. This difference in effect aligns the two Departments' approaches.

d. Assets, Resources, and Financial Status

The Department's interpretation of this factor in the interim final rule comports with the totality of the circumstances test. Household gross income above 125 percent of the Federal Poverty Guidelines for the alien's household size (100 percent for an alien on active duty, other than training, in the Armed Forces), or assets five times the difference between the applicant's household gross income and the Federal Poverty Guidelines for the applicant's household, is a positive factor. However, if the alien is the spouse or child of a U.S. citizen, assets totaling three times the difference between the alien's household gross income and 125 percent of the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor. If the alien is a child who will be adopted in the United States and who will likely receive citizenship under INA 320, 8 U.S.C. 1432, then assets equivalent to or greater than the difference between the alien's household gross income and 125 percent the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor. This significant assets provision allows an alien whose income is below the applicable income threshold to demonstrate assets to support himself or herself, thereby reducing the likelihood of becoming a public charge. This reflects a change from existing FAM guidance, which recognizes income above 125 percent of the Federal Poverty Guidelines and assets in the amount of five times 125 percent of the Federal Poverty Guidelines generally as sufficient resources for overcoming public charge concerns. This new standard is more consistent with DHS Affidavit of Support requirements, outlined in 8 CFR 213a.2(c)(2)(iii)(B), and the framework DHS will use for public charge inadmissibility determinations. *See* 8 CFR 212.22(b)(4).

It is still possible that other factors, such as an alien's health and inability to pay for reasonably foreseeable health costs, could mean that a consular officer could find an alien with such financial resources likely to become a public charge. The Department recognizes that this factor will be more relevant to immigrant visa applicants who will reside permanently in the United States than nonimmigrant applicants who intend to travel to the United States for a short duration.

The interim final rule introduces two factors related to assets, resources, and financial status: Previous DHS fee waivers and health insurance or other means to cover foreseeable medical costs. DHS fee waivers are based on an individual's inability to pay. 8 CFR 103.7(c). A recently granted fee waiver is relevant to whether an applicant is likely to become a public charge, although the factor is less relevant if the applicant's financial status has materially improved since the waiver was granted. Additionally, a fee waiver granted by DHS is not considered as a factor in the public charge inadmissibility determination if the alien applied for and was granted a fee waiver as part of an application for a benefit request for which a public charge inadmissibility under section 212(a)(4) of the Act, 8 U.S.C. 1182(a)(4) was not required.

The interim final rule's addition of private health insurance as a factor relevant to assets, resources, and financial status reflects the fact that medical costs can be significant and certain public benefits are designed to help individuals with limited resources to cover medical costs. The fact that an applicant has health insurance or other sufficient financial resources makes it less likely that an alien will resort to public benefits to cover medical expenses. A consular officer will consider an alien's health insurance coverage or other financial resources, in light of reasonably foreseeable medical costs (those related to medical issues existing at the time of visa adjudication), in the totality of the applicant's circumstances. Lack of health insurance alone would not make an alien more likely than not to become a public charge at any time, but would instead be considered in the totality of the alien's circumstances.

The Department also considered whether to include a visa applicant's credit score or credit report among the other factors relevant to assets, resources, and financial status. The

Department is aware that the DHS final rule includes an alien's credit history and credit score among the types of evidence USCIS adjudicators consider. The Department did not include credit history or credit score in this interim final rule, primarily because visa applicants generally would not have an active or recent credit history in the United States.

The interim final rule codifies some changes to how consular officers will consider past receipt of public benefits. Current guidance directs consular officers to consider receipt of public assistance of any type by the visa applicant or a family member in the visa applicant's household when determining the likelihood a visa applicant would become a public charge. The interim final rule revises this by focusing on receipt of public benefits only by the applicant and incorporates the Department's new definition of public benefit. Both of these elements align with the DHS rule, ensure consistent administration of the INA's public charge provisions, and minimize the possibility of a consular officer issuing a visa to an alien who is later found to be inadmissible by DHS on the same facts.

The Department's new definition of ''public benefit'' includes only certain forms of public assistance received on or after 12 a.m., October 15, 2019, although, as explained below in Section (II)(B)(1)(i), consular officers may consider any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt, before October 15, 2019 as a negative factor (but not a heavily weighted negative factor).

e. Education and Skills

When considering an alien's education and skills, consular officers will consider whether the alien has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid being likely to become a public charge. In assessing whether the alien's level of education and skills makes the alien likely to become a public charge, the consular officer must consider, among other factors, the alien's history of employment, educational level (high school diploma or higher educational degree), any occupational skills, certifications or licenses, and language proficiency. Current guidance directs consular officers to consider the applicant's skills, length of employment, and frequency of job changes, and permitted consular offices to consider work experience as evidence of skills. Although the interim final rule does not treat work experience as evidence of skills, it does require that consular officers consider the alien's history of employment. Section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), directs officers to consider the alien's education and skills. The interim final rule implements Congress's directive on this mandatory statutory factor. This formulation is also more similar to the new DHS guidance, and is aimed to mitigate against situations where a consular officer will issue a visa to an alien who is later found inadmissible by DHS on the same facts.

The interim final rule introduces a requirement that consular officers consider the following additional information relevant to education and skills: Educational level (high school diploma, or its equivalent, or higher educational degree), any occupational skills, certifications or licenses, and language proficiency. Various studies and data show that a higher level of education and skills is a positive indicator of self-sufficiency. The U.S. Bureau of Labor Statistics (BLS) observed in 2016 a relationship between educational level and the unemployment rate. *See* U.S. Bureau of Labor Statistics, Employment Projections, Unemployment Rates and Earnings by Educational Attainment, 2016, available at *https://www.bls.gov/emp/chart-unemployment-earnings-education.htm* (last updated Mar. 27, 2018). According to that report, the unemployment rate for an individual with a doctoral degree was only 1.6 percent, compared to 7.4 percent for an individual with less than a high school diploma. According to the U.S. Census Bureau, lower educational attainment was associated with higher public benefit program participation rates for people over the age of 18. *See* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance*? (May 2015), available at *https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.* That report reflected that in 2012, 37.3 percent of people who did not graduate from high school received means-tested benefits, compared with 21.6 percent of high school graduates and 9.6 percent of individuals with one or more years of college.

Additionally, data suggest that people who have lower education levels are not only more likely to receive public benefits but also more likely to receive them for longer periods. For example, 49.4 percent of people with less than four years of high school who received public benefits from a major means-tested program between January 2009 and December 2012 continued to participate in the benefit program for 37 to 48 months. In contrast, only 39.3 percent of high school graduates and 29.0 percent of those with one or more years of college who received public benefits during the same time period continued to participate in the public benefit program for 37 to 48 months. *See id.* The data suggests that a lack of education increases the likelihood of poverty and unemployment, which may in turn increase the likelihood of applying for, and participating in, public assistance programs.

The Department's treatment of education and skills in the interim final rule is supported by DHS's analysis of Survey of Income and Program Participation data, which shows a relationship between education level and self-sufficiency. *See Inadmissibility on Public Charge Grounds,* 83 FR 51114, 51190–51196 (proposed Oct. 10, 2018).

The interim final rule recognizes the implications of whether the alien is a primary caregiver. This factor is intended to take into consideration difficult-to-monetize contributions by aliens who may lack current employment or an employment history due to their full-time, unpaid care of household members. For example, a visa applicant may care for a household member who will not travel with the visa applicant to the United States. The visa applicant's employment history would not accurately reflect the alien's unpaid work as a primary caregiver. In this respect, serving as a primary caregiver could be a positive factor in the totality of the circumstances.

f. Prospective Visa Classification

The interim final rule adds that consular officers will consider the visa classification sought. This factor relates to the alien's ability to financially support himself or herself and the members of his or her household while in the United States. For example, a consular officer's public charge analysis of an applicant for a B–1 nonimmigrant visa, who plans to attend a week-long business meeting, would differ from a longer term nonimmigrant applicant, such as an H–1B nonimmigrant

specialty worker, who would reside and work in the United States for years at a time, and would differ even more from an immigrant visa applicant who intends to reside permanently in the United States and may not have pre-arranged employment. In this respect, the visa classification, including the purpose and duration of travel, are relevant to assessing the likelihood that an alien would avail himself or herself of public benefits (noting that in many cases visa applicants may not be eligible for public benefits in the United States), and therefore consular officers must evaluate these factors on a case-by-case basis.

That is not to say that a B–1 nonimmigrant applicant is subject to a lower standard than an H–1B nonimmigrant or immigrant under the statute or this interim final rule, but the immigration status sought by the applicant will be highly relevant context for the consular officer's totality of the circumstances determination. An applicant with a serious chronic health condition seeking medical treatment in the United States on a tourist visa would be expected to establish that he or she has the means and intent to pay for all reasonably foreseeable treatment. By demonstrating the ability to cover the medical expenses anticipated on a short-term trip to the United States, the applicant can demonstrate that even though health presents as a negative factor, the applicant has financial resources that make it unlikely the applicant would avail himself or herself of one or more public benefits. However, an immigrant visa applicant with the same serious chronic health condition and need for ongoing treatment would have to satisfy a consular officer that he or she has the means to pay for long-term care.

g. Affidavit of Support

The interim final rule provides that a properly filed, non-fraudulent, and sufficient Affidavit of Support, in those cases where it is required, is a positive factor in the totality of the circumstances. In the totality of the circumstances review, the consular officer would take into consideration the likelihood that the sponsor actually would provide the required financial support, based on the any available relevant information about the sponsor. Since January 2018, FAM guidance has reflected that a properly filed, non-fraudulent Affidavit of Support, in those cases where it is required, is a positive factor in the totality of the circumstances analysis, and that an alien who is required to submit an Affidavit of Support but who fails to submit a sufficient Affidavit of Support is ineligible as a public charge. To be sufficient, an Affidavit of Support must meet the requirements of 8 CFR part 213a. Also, in paragraph (b), the Department removed reference to fee collection for review and assistance with submitting an affidavit of support at consular posts because consular posts do not collect an affidavit of support fee overseas.

h. Heavily Weighted Factors

The interim final rule provides that certain factors or factual circumstances will weigh heavily in determining whether an alien is likely to become a public charge. The mere presence of one of these enumerated circumstances would not, alone, be determinative. A heavily weighted factor could be outweighed by countervailing evidence in the totality of the circumstances. While heavily weighted factors are circumstances the Department considers particularly indicative of the likelihood an alien will become a public charge, they are evaluated in conjunction with other relevant positive and negative factors in the totality of the alien's circumstances.

i. Heavily Weighted Negative Factors

The interim final rule provides that certain factors are weighted as heavily negative because these factors are particularly indicative of a likelihood that the alien would become a public charge, particularly with regard to the alien's ability to be self-sufficient. Heavily weighted negative factors include:

a. Lack of Recent Employment or Prospect of Future Employment

As long as an alien is not a full-time student and is authorized to work in the alien's place of residence abroad and, if relevant, in the United States, the interim final rule sets the absence of current employment, employment history, or reasonable prospect of future employment as a heavily weighted negative factor. Self-sufficiency generally involves people being capable and willing to work and being able to secure and maintain gainful employment. Various studies and data show that a person's education, skills, and employment history, are positive factors for self-sufficiency. *See* Section (II)(B)(1)(e), above. In addition, the lack of positive employment history and demonstrable marketable skills are indicative of an increased likelihood that an individual would avail himself or herself of public benefits. This concept is supported by two Census Bureau studies covering 2004 to 2007 and 2009 to 2012, which show that, in each of the covered years, individuals with full-time work were less likely to receive means-tested benefits during the year (ranging from 4.5 percent to 5.1 percent of full-time workers who received benefits) than those who were unemployed (ranging from 24.8 percent to 31.2 percent of unemployed individuals who received benefits). *See* Jeongsoo Kim, Shelley K. Irving, & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2004 to 2007 and 2009—Who Gets Assistance*? (July 2012), available at *https://www2.census.gov/library/publications/2012/demo/p70-130.pdf;* Shelley K. Irving & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2009–2012: Who Gets Assistance*? (May 2015), available at *https://www.census.gov/content/dam/Census/library/publications/2015/demo/p70-141.pdf.* The Department recognizes that not everyone authorized to work needs to work and thus the Department does not require a working age alien to have an employment history as part of the public charge determination. Some aliens may have sufficient assets and resources, including a household member's income and assets, which may overcome any negative factor related to lack of employment. For example, some student visa applicants may have scholarships that cover the cost of education as well as living expenses during the time of their studies. Further, students generally acquire skills as part of their studies so that post-education they will be able to obtain employment. Consular officers will review those considerations in the totality of the circumstances.

b. Current or Certain Past Receipt of Public Benefits

Under § 40.41(a)(8)(i)(B), receipt of one or more public benefits, as defined in § 40.41(c), is a heavily weighted negative factor in a consular officer's public charge determination if an alien has received or has been certified or approved to receive one or more public benefits for more than 12 months in the aggregate within any 36-month period, beginning no earlier than 36 months prior to the alien's visa application or after October 15, 2019, whichever is later. Under this interim final rule, receipt of two benefits in one month counts as two months' worth of benefits. Current receipt of one or more public benefits, alone, will not always justify a finding of ineligibility on public charge grounds. However, an alien's current

receipt of one or more public benefits suggests that the alien may continue to receive one or more public benefits in the future and would be more likely to be a public charge as defined under § 40.41(b).

With regard to current receipt of public benefits, according to U.S. Census Bureau data, the largest share of participants (43.0 percent) who benefited from one or more means-tested assistance programs between January 2009 and December 2012 continued to receive program benefits for between 37 and 48 months. *See* U.S. Census Bureau, *News Release: 21.3 Percent of U.S. Population Participates in Government Assistance Programs Each Month* (May 28, 2015), available at *https://www.census.gov/newsroom/press-releases/2015/cb15-97.html.* A separate U.S. Census Bureau study showed that an individual who received benefits at any point during a two-year timespan was likely to receive benefits every month during the period studied, suggesting relatively long periods of receipt of benefits. Between January 2004 and December 2005, a greater share of the population received one or more means-tested benefits for the entire 24-month study period (10.2 percent) than for either one to 11 months (8.5 percent) or 12 to 23 months (6.5 percent). *See* Jeongsoo Kim, Shelley K. Irving, & Tracy A. Loveless, U.S. Census Bureau, *Dynamics of Economic Well-Being: Participation in Government Programs, 2004 to 2007 and 2009—Who Gets Assistance?* (July 2012), available at *https://www2.census.gov/library/publications/2012/demo/p70-130.pdf.* The Department views current receipt of public benefits as a strong indicator that an alien will continue to receive public benefits after admission to the United States and is, therefore, likely to become a public charge. However, an alien may be able to establish circumstances indicating that the receipt of public benefits will stop in the near future, prior to admission to the United States on the visa being sought.

An alien's past receipt of public benefits at any time on or after October 15, 2019, for more than 12 months in the aggregate within the 36 months immediately preceding his or her application is a heavily weighted negative factor in determining whether the alien is likely to become a public charge. However, an alien's past receipt of T any designated public benefits is considered a negative factor, even if not a heavily weighted one. For example, the receipt of a public benefit five years ago (assuming the evaluation was on or after October 1, 2024) would be a negative factor; however, a public benefit received within the previous three years prior to the visa application and for more than twelve months (assuming the twelve months occurred after October 15, 2019 and was for more than 12 of 36 months in the aggregate) is considered a heavily weighted negative factor. The weight given to the receipt of public benefits will depend not only on how long ago and for how long the alien received the benefits, but also on whether the alien received multiple benefits.

The interim final rule makes clear that consular officers will only consider past receipt of public benefits on or after October 15, 2019, as a heavily weighted negative factor. The definition of ''public benefit'' in § 40.41(c) only applies to benefits received on or after October 15, 2019.

c. Lack of Financial Means to Pay for Medical Costs

An alien presents a high risk of becoming a public charge if he or she does not have private health insurance and also lacks the prospect of obtaining private health insurance or the financial resources to pay for reasonably foreseeable medical costs related to an existing medical condition. The risk increases if the alien is likely to require extensive medical treatment or institutionalization or the condition will interfere with the alien's ability to provide care for him- or herself, to attend school, or to work. If the applicant has no medical conditions existing at the time of visa adjudication, he or she would have no reasonably foreseeable medical costs.

Certain chronic medical conditions can be costly to treat and an alien is a high risk of incurring significant medical costs if he or she has such a condition. *See* U.S. Dep't of Health & Human Servs., *Research In Action, Issue #19: The High Concentration of U.S. Health Care Expenditures* (June 2006), available at *https://archive.ahrq.gov/research/findings/factsheets/costs/expriach/expendria.pdf; see also https://www.cdc.gov/chronicdisease/about/costs/index.htm* (costs associated with certain chronic diseases).

Certain conditions may adversely affect an applicant's ability and capacity to obtain and retain gainful employment. Other conditions could result in long-term institutionalization in a health care facility. *Id.* According to the *Multiple Chronic Conditions Chartbook 2010 Medical Expenditure Panel Survey* Data, 86 percent of the nation's $2.7 trillion annual health care expenditures were for individuals with chronic or mental health conditions. *Id.* Consular officers will learn of medical conditions through panel physician medical examinations or the alien's disclosure of a medical condition. If a consular officer has reason to believe a visa applicant's medical condition will require extensive medical treatment or institutionalization, or will interfere with the alien's ability to provide for himself or herself, attend school, or work, the consular officer will require the visa applicant to explain how he or she will cover medical costs in the United States. It is a heavily weighted negative factor if such an alien does not have private health insurance to cover such expenses in the United States and has neither the prospect of obtaining private health insurance to cover medical expenses in the United States, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition.

d. Prior Public Charge Inadmissibility or Deportability Finding

A prior finding by an Immigration Judge or the Board of Immigration Appeals that the visa applicant was inadmissible under INA 212(a)(4), 8 U.S.C. 1182(a)(4), or deportable under INA 237(a)(5), 8 U.S.C. 1227(a)(5) (for having become a public charge within five years after date of entry to the United States, not from causes affirmatively shown to have arisen since entry) is a heavily weighted negative factor; however, a past public charge finding is not necessarily dispositive of whether the individual subsequently will be denied a visa on public charge grounds. The Department recognizes that individual circumstances can change with the passage of time. This approach aligns with the DHS final rule.

ii. Heavily Weighted Positive Factors

The interim final rule provides that certain factors will be weighted as heavily positive, because they strongly indicate the alien would not become a public charge. Heavily weighted positive factors include:

a. Alien's Household Has Income, Assets, Resources, or Support of at Least 250 Percent of the Federal Poverty Guidelines

If the alien's household has financial assets, resources, support or annual income of at least 250 percent of the Federal Poverty Guidelines for the alien's household size, then that will be considered a heavily weighted positive factor in the totality of the circumstances. DHS's analysis of Survey of Income and Program Participation data on income and participation in public benefit programs shows that participation in programs that

administer ''public benefits,'' as defined for the purpose of this rule, declines significantly for individuals with an income at least 250 percent of the Federal Poverty Guidelines. *See Inadmissibility on Public Charge Grounds,* 83 FR 51206, (October 10, 2018) (noting, *e.g.,* that use of SNAP benefits declines from a 21.2 percent participation rate for those with income between 125–250 percent of the Federal Poverty Guidelines to 15 percent for those with incomes between 250–400 percent of the Federal Poverty Guidelines). This approach aligns with the DHS final rule. Accordingly, the Department will treat income, assets, resources, or support that is at least 250 percent of the Federal Poverty Guidelines as a heavily weighted positive factor.

b. Alien With Work Authorization Has Income of at Least 250 Percent of the Federal Poverty Guidelines

The Department will consider an alien with work authorization and income of at least 250 percent of the Federal Poverty Guidelines as a heavily weighted positive factor. In addition to the reasons provided in the prior paragraph, this level of income suggests that the alien has obtained a level of self-sufficiency and that he or she would be less likely to become a public charge, barring unforeseen changes in circumstances. This aligns with the DHS final rule.

c. Alien Has Private Health Insurance

Additionally, consular officers will consider as a heavily weighted positive factor that an alien is covered by private health insurance (other than health insurance obtained with premium tax credits under the Affordable Care Act) that can be used in the United States during the entire period of the alien's anticipated stay in the United States. This approach is supported by DHS's analysis of Survey of Income and Program Participation data, which indicates that the fact that an alien has health insurance is indicative of the alien's ability to be self-sufficient. *See Inadmissibility on Public Charge Grounds,* 84 FR 41292, 41449 (Aug. 14, 2019). In excluding health insurance obtained with premium tax credits under the Affordable Care Act from the category of heavily weighted positive factors, though not from consideration as a positive factor, the Department observes that DHS adopted this approach in its final rule.

i. Treatment of Benefits Received Before October 15, 2019

Under the interim final rule, consular officers will consider, as a negative factor, but not as a heavily weighted negative factor, any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt, before October 15, 2019. This is reflective of the fact that under previous Department guidance in effect since May 1999, consular officers considered an applicant likely to become a public charge if the applicant was likely, at any time after admission, to become primarily dependent on the U.S. Government (which includes Federal, state, or local governments) for subsistence. However, the mere receipt of these benefits does not automatically make an alien ineligible for the visa. Consular officers will make each determination on a case-by-case basis in the context of the totality of the circumstances. The Department will not consider as a negative factor any other public assistance received, or certified for receipt, before October 15, 2019.

2. Public Charge Definition

The Department's interim final rule interprets public charge as the receipt of one or more public benefits, as defined in paragraph (b) of § 40.41, for more than 12 months in the aggregate within any 36-month period. Receipt of two benefits in one month counts as receiving benefits for two months. Prior Department guidance limited the interpretation of ''likely to become a public charge'' to ''likely to become primarily dependent on the U.S. Government (which includes Federal, state, or local governments) for subsistence'' (previously meaning receipt of public cash assistance for income maintenance or institutionalization for long-term care at U.S. Government expense). The Department believes this new, more rigorous implementation of the public charge visa ineligibility is consistent with section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4), and congressional objectives stated in the Personal Responsibility and Work Opportunity Act of 1996 (PRWORA), where Congress noted that aliens subject to the public charge visa ineligibility should ''not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.'' *See* 8 U.S.C. 1601(2)(A).

There is a scarcity of legislative guidance and case law interpreting public charge. Legislative history, however, suggests a link between public charge and the receipt of public benefits. According to a 1950 Senate Judiciary Committee report, which led up to passage of the INA in 1952, a Senate subcommittee highlighted concerns raised by an immigration inspector about aliens receiving old age assistance. The Senate subcommittee recommended against establishing a strict statutory definition of public charge. Because the circumstances that indicate any given individual's likelihood of becoming a public charge vary, the subcommittee instead recommended that the determination of whether an alien is likely to become a public charge should rest within the discretion of consular officers and the Commissioner. *See* 1950 Omnibus Report of the Senate Judiciary Committee, S. Rep. No. 81–1515, at 349 (1950).

In setting the standard as receipt of public benefits for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits) the Department recognizes that States have developed widely varying approaches to the imposition of time limits for the receipt of public benefits. On the Federal level, PRWORA established a 60-month time limit on the receipt of federally funded Temporary Assistance for Needy Families (TANF) program benefits. *See* 42 U.S.C. 608(a)(7) and 45 CFR 264.1. Some states have adopted shorter lifetime limits on benefit receipt; in 2017, fourteen States had lifetime limits of less than 60 months and nine states had intermittent time limits. *See* Heffernan, Christine, Benjamin Goehring, Ian Hecker, Linda Giannarelli, and Sarah Minton (2018). Welfare Rules Databook: State TANF Policies as of July 2017, OPRE Report 2018- 109, Washington, DC: Office of Planning, Research, and Evaluation, Administration for Children and Families, U.S. Department of Health and Human Services *https://wrd.urban.org/wrd/data/databooks/2017%20Welfare%20Rules%20Databook%20(final%2010%2031%2018).pdf* (last visited Sept. 13, 2019).

The Department's position is that an individual who receives public benefits for more than 12 months, in the aggregate, during a 36-month period is

neither self-sufficient nor on the road to achieving self-sufficiency, and may appropriately be considered a public charge. The Department's implementation deems receipt of public benefits for such a duration as exceeding what could reasonably be defined as a nominal level of support that merely supplements an alien's independent ability to meet his or her basic living needs. This new definition aligns with the new DHS rule.

3. Public Benefit

In general: As described above, the Department's prior guidance interpreted the public charge ground of ineligibility to include only public cash assistance for income maintenance and institutionalization for long-term care at U.S. Government expense. Guidance on public cash assistance for income maintenance was further clarified to include supplemental security income (SSI); TANF cash assistance, but not supplemental cash benefits or any non-cash benefits provided under TANF; and state and local cash assistance programs that provide for income maintenance (often referenced as ''state general assistance''). This previous guidance explicitly excluded other benefits including non-cash benefits such as the SNAP, Medicaid, housing vouchers and other housing subsidies, and other programs. The Department adopted this interpretation based on an INS interpretation of the public charge inadmissibility, as explained in the INS Notice, *Field Guidance on Deportability and Inadmissibility on Public Charge* Grounds, 64 FR 28689 (May 26, 1999).

The new rule broadens the Department's interpretation of ''public benefit'' for purposes of applying the public charge ground of ineligibility to include public cash assistance for income maintenance, SNAP, most forms of Medicaid, Section 8 Housing Assistance under the Housing Choice Voucher (HCV) Program, Section 8 Project-Based Rental Assistance, and certain other forms of subsidized housing.

The Department believes this interpretation of public benefit is consistent with INA section 212(a)(4), 8 U.S.C. 1182(a)(4). The sparse statutory language and legislative history allows for a wide range of interpretations, including both the Department's previous more limited definition of public benefit focused on cash assistance and this broader definition.

The definition of ''public benefit'' in this interim final rule is also consistent with PRWORA. That statute includes broad definitions of ''federal public benefit'' and ''state or local public benefit'' that extend significantly beyond the Department's prior guidance in the public charge context. While PRWORA allows some aliens to receive certain benefits covered under its expansive definitions, Congress did not exclude the lawful receipt of such benefits from consideration for purposes of INA section 212(a)(4), 8 U.S.C. 1182(a)(4). Further, the Department's definition of ''public benefit'' is consistent with the Congressional goals articulated in PRWORA, specifically that aliens subject to the public charge visa ineligibility should ''not depend on public resources to meet their needs, but rather rely on their own capabilities and the resources of their families, their sponsors, and private organizations.'' See 8 U.S.C. 1601(2)(A). The Department chose to include the specific non-cash benefits covered under the definition of ''public benefit'' because these benefits assist recipients in meeting basic living requirements, namely food, housing, and medical care. The receipt of any of the listed benefits indicates that the recipient, rather than being self-sufficient, needs the government's assistance to meet basic living requirements.

Since 1999, the Department, when applying the public charge ineligibility ground, has considered only whether an alien is likely to become primarily dependent for subsistence on the U.S. Government, which includes Federal, state, or local governments, by resorting to income maintenance and institutionalization for long-term care at government expense. However, current FAM guidance says:

> There are many forms of public assistance that an applicant may have accepted in the past, or that you may reasonably believe an applicant might receive after admission to the United States, that are of a non-cash and/or supplemental nature and should not be considered to be benefits when examining the applicant under INA 212(a)(4), and may only be considered as part of the totality of the applicant's circumstances in determining whether an applicant is likely to become a public charge.

Under the interim final rule, the Department will only treat receipt of the specified forms of public assistance on or after 12:00 a.m., October 15, 2019 as a ''public benefit'' for the purposes of applying the public charge ground of ineligibility, and will only consider cash assistance for income maintenance and programs supporting institutionalization for long term care in the United States that are not included in the new definition of ''public benefit'' that were received or certified for receipt prior to October 15, 2019. The Department believes that consideration of these forms of assistance represent an appropriately comprehensive and also readily administrable application of the public charge ground of ineligibility. The interim final rule will supersede the current policy, which allows consular officers to consider past receipt of any forms of public assistance, at any time. The Department observes that DHS proposed a similar approach in its NPRM, but, following public comments, opted for the approach reflected in this interim final rule when it finalized its rule. For consistency with the DHS standard, as well as for increased transparency and to provide a clear and helpful limitation on the scope of review for consular officers and visa applicants, the Department is adopting the DHS final rule's approach.

a. Exception for Certain Individuals Enlisted or Serving in the U.S. Armed Forces, Spouse, and Children

Under the interim final rule, consular officers will not consider receipt of public benefits by those enlisted in the U.S. Armed Forces, or serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, and their families, when assessing whether such individuals are likely to become a public charge. The United States Government is profoundly grateful for the unparalleled sacrifices of the members of our armed services and their families. The Department recognizes that some service members, during their service, or their family members, qualify for and receive public benefits in addition to the salary and benefits provided by the U.S. government. Their sacrifices, including risking life and limb, are so vital to the public's safety and security that the Department finds this exception warranted. The Department understands that many of the individuals who enlist in the military are early in their careers, and therefore, consistent with statutory pay authorities, earn relatively low salaries that are supplemented by certain other allowances and tax advantages provided by the U.S. government. *See Inadmissibility on Public Charge Grounds, 84 FR 41371;* see also *Final Rule, Inadmissibility on Public Charge Grounds; Correction,* 84 FR 52357 (Oct. 10, 2019). This approach is consistent with the DHS rule. For these reasons, the Department's interim final rule excludes consideration of the receipt of any public benefits by active duty service members and their spouses and children.

b. Exception for Aliens Present in the United States in an Immigration Category Exempt from the Public Charge Ground

For the purpose of immigration benefit adjudication, DHS does not consider public benefits received by an alien during periods in which the alien was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility or for which the alien received a waiver of public charge inadmissibility. 8 CFR 212.21(b)(8). Likewise, for the purpose of adjudicating visa applications, consular officers will not consider public benefits an alien received during any periods in which the alien was present in the United States in an immigration category that is exempt from the public charge ground of visa ineligibility, or if the alien was the recipient of a waiver of the public charge ground of ineligibility.

c. Exception for Foreign-Born Children of U.S. Citizens

In some cases, the children of U.S. citizens will acquire citizenship upon finalization of their adoption in the United States, under section 320 of the INA, 8 U.S.C. 1431, or the children will naturalize upon taking the Oath of Allegiance (or having it waived) under section 322 of the INA, 8 U.S.C. 1433. In other cases, the children of U.S. citizens will acquire citizenship upon taking up residence in the United States in the legal and physical custody of their U.S. citizen parent pursuant to a lawful admission. The definition of ''public benefits'' does not include any benefits that were or will be received by aliens described in this paragraph.

Children of U.S. citizens eligible for automatic acquisition of citizenship under section 320 of the INA, 8 U.S.C. 1431, are exempt from the affidavit of support requirement. See *Child Citizenship Act,* Public Law 106–395, 114 Stat. 1631 (Oct. 30, 2000); 8 CFR 213a.2(a)(2)(ii)(E). Therefore, consular officers will not require any affidavit of support forms from sponsors of visa applicants who will benefit from section 320 of the INA, 8 U.S.C. 1431.

Children of U.S. citizens, including those adopted abroad, typically receive one of several types of immigrant visas as listed below and are lawfully admitted to the United States for permanent residence. Such children may become U.S. citizens (1) automatically, (2) following their admission to the United States and upon the finalization of their adoption, or (3) upon meeting other eligibility criteria. International adoptions vary depending on the laws of the country of origin, the laws of the U.S. State of residence, and multiple other factors. In the majority of cases, adoptions are finalized in the country of origin before the child enters the United States and the child automatically acquires U.S. citizenship upon admission to the United States. Children whose adoptions are not finalized until after their admission or who were subject to custody orders permitting immigration to and adoption in the United States do not automatically acquire citizenship after admission. They may acquire citizenship, however, upon completing an adoption in the United States or having the foreign adoption recognized by the State where they are permanently residing, after which they would be eligible to naturalize. See *U.S. Dep't of State, 2018 Annual Report on Intercountry Adoptions,* available at *https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-publications.html.*

The following categories of children acquire citizenship upon lawful admission for permanent residence and beginning to reside in the legal and physical custody of their U.S. citizen parent(s):

- IR–2/IR–7 (Child of a U.S. citizen)—requires an approval of a Form I–130 (Petition for Alien Relative). These children, excluding stepchildren who have not been adopted by the U.S. citizen parent, are generally lawfully admitted for permanent residence or their status is adjusted to that of lawful permanent resident. The child must then file a Form N–600 (Application for Certificate of Citizenship) to receive the Certificate of Citizenship. The Certificate generally uses the date the child was lawfully admitted for permanent residence.

- IR–3/IR–8 (Orphan adopted abroad by a U.S. citizen)—requires an approval of the Form I–600 (Petition to Classify Orphan as an Immediate Relative). These children are generally admitted for permanent residence, and USCIS will send a Certificate of Citizenship to the child without a Form N–600 being filed or adjudicated.

- IH–3 (Hague Convention orphan adopted abroad by a U.S. citizen)—requires an approval of the Form I–800 (Petition to Classify Convention Adoptee as an Immediate Relative). These children are generally admitted for permanent residence and USCIS will send a Certificate of Citizenship to the child without a Form N–600 being filed or adjudicated.

The following categories of children are lawfully admitted for permanent residence for finalization of adoption:

- IR–4/IR–9 (Orphan to be adopted by a U.S. citizen). Generally, the parent(s) must complete the adoption in the United States. However, the child will also be admitted as an IR–4 if the foreign adoption was obtained without either parent having seen the child during the adoption proceedings, or when the parent(s) must establish that they have either ''readopted'' the child or obtained recognition of the foreign adoption in the State of residence (this requirement can be waived if there is a statute or precedent decision that clearly shows that the foreign adoption is recognized in the State of residence). See 8 CFR 320.1.
- IH–4 (Hague Convention Adoptee to be adopted by a U.S. citizen). These children are lawfully admitted for permanent residence and the parent(s) must complete the adoption in the United States. INA section 101(b)(1), 8 U.S.C. 1101(b).

Furthermore, children of U.S. citizens, who are residing outside of the United States and are eligible to naturalize under section 322 of the INA, 8 U.S.C. 1433, must apply for an immigrant or nonimmigrant visa to enter the United States before they naturalize. These children are generally issued a B–2 nonimmigrant visa in order to complete the process for naturalization through an interview and take the Oath of Allegiance under section 322 of the INA, 8 U.S.C. 1433. Congress has enacted numerous laws over the last two decades to ensure that foreign-born children of U.S. citizens are not subject to adverse immigration consequences in the United States on account of their foreign birth. Most notably, the Child Citizenship Act of 2000 provides that children, including adopted children, of U.S. citizen parents automatically acquire U.S. citizenship if certain conditions are met. See *Dep't of State, FAQ: Child Citizenship Act of 2000, available at https://travel.state.gov/content/travel/en/Intercountry-Adoption/adopt_ref/adoption-FAQs/child-citizenship-act-of-2000.html* (last visited July 30, 2019). See also 8 CFR part 320. The same year, Congress passed the Intercountry Adoption Act of 2000 (IAA), 42 U.S.C. 14901–14954, to implement the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which established international standards of practices for intercountry adoptions. The United States signed the Convention in 1994, and the Convention entered into force for the United States

on April 1, 2008. *Deposit of Instrument of Ratification by the United States of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption,* 72 FR 71730 (Dec. 18, 2007). The full text of the Convention is available at *https://www.hcch.net/en/instruments/conventions/full-text/?cid=69* (last visited July 30, 2019). The IAA protects the rights of children, birth families, and adoptive parents, and improves the Government's ability to assist U.S. citizens seeking to adopt children from abroad. IAA section 2, 42 U.S.C. 14901(a). See also *Hague Convention on Intercountry Adoption; Intercountry Adoption Act of 2000; Accreditation of Agencies; Approval of Persons,* 71 FR 8064 (Feb. 15, 2006).

Many U.S. citizens seek to adopt children with disabilities or serious medical conditions, and a significant proportion of children adopted abroad by U.S. citizens have special medical needs. U.S. citizens seeking to adopt foreign-born children abroad generally must undergo a rigorous home study that includes a detailed assessment of finances, emotional, mental, and physical health, and other factors to determine their eligibility and suitability as prospective adoptive parents. See 8 CFR 204.3(e), 204.311(g)(3). Accordingly, such parents generally will have sufficient financial resources to provide for the child. See 8 CFR 204.311(h) (financial considerations); see also USCIS, Home Study Information, available at *https://www.uscis.gov/adoption/home-study-information* (last visited July 30, 2019).

Nevertheless, many U.S. citizens who have adopted or are in the process of adopting foreign-born children with special medical needs may seek Medicaid for their children. See Public Law 97–248, 96 Stat. 324. Medicaid programs vary by State, and may be based on the child's disability alone rather than financial means of the parents, or have higher income eligibility thresholds. As enrollment in Medicaid programs by children who are under 21 years of age will not be considered a ''public benefit'' for the purposes of this interim final rule, and because the adoptive parents have been found to have sufficient resources to meet the needs of their adoptive child, these visa applicants will not be considered likely to become public charges. Specifically, Congress has already imposed a requirement on adoptees under INA sections 101(b)(1)(F) or (G), 8 U.S.C. 1101(b)(1)(F) or (G), that requires their parents to demonstrate to the government that ''proper care will be furnished the child if admitted to the United States.'' Federal regulations already require submission of a home study in cases involving the proposed adoption of children with special needs. The home studies in those cases must assess the adoptive parents' ''preparation, willingness, and ability'' to provide proper care for such children. 8 CFR 204.3(e)(4) and 204.311(p). The Department believes that Congress, by imposing a parental suitability determination that must be satisfied before an immigrant petition may be approved or a visa may be granted, has frontloaded aspects of the public charge determination for certain adoptive children and conveyed a preference that concerns directly related to public charge for adoptive families be assessed at early stages of the immigration process, rather than waiting until the time of the visa application at the very end of the process. Additionally, excluding consideration of the receipt of public benefits by such children is consistent with Congress' strong interest in supporting U.S. citizens seeking to adopt and welcome foreign-born children into their families, as reflected in the IAA section 2, 42 U.S.C. 14901(a). *See also* 146 Cong. Rec. S8938–01, S8938 (daily ed. Sept. 21, 2000) (statement by Sen. Landrieu) (''I have said it before and I believe it rings true here, adoption brings people, whether they are Republican, Democrat, conservative, liberal, American, Russian or Chinese, together. United by the belief that all children deserve to grow in the love of a permanent family. Adoption breaks down barriers and helps build families.''). *See also* Public Law 106–139, 113 Stat. 1696 (1999) (amending the definition of ''child'' in section 101(b)(1)(E) of the INA, 8 U.S.C. 1101(b)(1)(E), a change that allowed children adopted abroad to maintain their familial relationship with their natural siblings, making it easier for siblings to be adopted together).

Furthermore, because these children are being brought to the United States by their U.S. citizen parents (including adoptive parents) and will generally become U.S. citizens upon or after admission, and because the adoptive families have been found to have the resources to care for them, such an interpretation is not at odds with Congress' concerns in enacting PRWORA, or as reflected in concurrent immigration legislation restating the public charge ground of visa ineligibility noting that aliens should rely on their own capabilities and the resources of their families, their sponsors, and private organizations; and that the availability of public benefits should not constitute an incentive for immigration to the United States. 8 U.S.C. 1601.

This provision also aligns with the DHS final rule. Accordingly, the interim final rule excludes receipt of benefits by foreign-born children of United States citizens from its interpretation of ''public benefits,'' as explained in Section I, above.

4. Alien's Household

The federal poverty guidelines do not define how to determine household size, and different agencies and programs have different requirements. See *Annual Update of the HHS Poverty Guidelines,* 84 FR 1167 (Feb. 1, 2019). Public benefit-granting agencies generally consider an applicant's income for purposes of public benefit eligibility and either use the household size or family size to determine the income threshold needed to qualify for a public benefit. Each federal program administrator or State determines the general eligibility requirements needed to qualify for the public benefits and how to determine whose income is included for purposes of determining income based eligibility thresholds. For example, SNAP uses the term ''household'' to include ''individuals who live together and customarily purchase food and prepare meals together for home consumption.'' 7 U.S.C. 2012(m)(1). The Department did not incorporate the SNAP definition because an alien may have significant financial obligations to children who do not reside in the same residence. Instead, the standard in the interim final rule takes into account individuals for whom the alien or the alien's parent(s) or legal guardian(s) or other individual is providing at least 50 percent of financial support because such expenditure would have significant bearing on whether the alien has sufficient assets, resources, and financial status in the context of a public charge determination.

The U.S. Department of Housing and Urban Development (HUD) uses the term ''families,'' which includes:

> [F]amilies with children and, in the cases of elderly families, near-elderly families, and disabled families, means families whose heads (or their spouses), or whose sole members, are elderly, near-elderly, or persons with disabilities, respectively. The term includes, in the cases of elderly families, near-elderly families, and disabled families, 2 or more elderly persons, near-elderly persons, or persons with disabilities living together, and 1 or more such persons living with 1 or more persons determined under the public housing agency plan to be essential to their care or well-being.

42 U.S.C. 1437a(b)(3). The U.S. Housing Act of 1937 (the 1937 Act), 42 U.S.C. 1437 to 1437zz–10, requires that dwelling units assisted under it must be rented only to families who are low-income at the time of their initial occupancy. Section 3 of the 1937 Act also defines income, with respect to a family, as:

> [I]ncome received from all sources by each member of the household who is 18 years of age or older or is the head of household or spouse of the head of the household, plus unearned income by or on behalf of each dependent who is less than 18 years of age, as determined in accordance with the criteria prescribed by the Secretary [of Housing and Urban Development], in consultation with the Secretary of Agriculture [. . .].

42 U.S.C. 1437a(b)(4), as amended by the Housing Opportunity Through Modernization Act of 2016, Public Law 114–201, section 102, 130 Stat. 782, 787 (2016). Beyond the statutory framework defining families, and as provided by the 1937 Act, HUD allows public housing agencies the discretion to determine particularities related to family composition, as determined under each public housing agency's plan.

''Alien's household,'' under paragraph (e) of the interim final rule, encompasses many of the individuals identified in various HUD definitions of ''family,'' including spouses and children as defined under the INA. The definition of child in INA section 101(b), 8 U.S.C. 1101(b), generally includes unmarried persons under 21 years of age who are born in or out of wedlock, stepchildren, legitimated children, adopted children if adopted under the age of 16 or the age of 18 if natural siblings of another adopted child. In addition, the Department's interpretation focuses on both individuals who the alien anticipates will live in the alien's home or physically reside with the alien in the United States, as well as individuals not living in the alien's home but for whom the alien and/or the alien's parent(s)/legal guardian(s) is providing or is required to provide at least 50 percent of financial support, whether in the United States or abroad.

The IRS defines ''dependent'' to include a qualifying child or a qualifying relative. See 26 U.S.C. 152; see also *IRS Publication 501* (Jan 2, 2018), available at *https://www.irs.gov/pub/irs-pdf/p501.pdf.* These tests generally include some type of relationship to the person filing (including step and foster children and their children) whether or not the dependent is living with the person filing and the amount of support being provided by the person filing (over 50 percent). *IRS Publication 501* (Jan 2, 2018), available at *https://www.irs.gov/pub/irs-pdf/p501.pdf.* In general, the dependent must also be a U.S. citizen or lawful permanent resident in order to qualify as a dependent for tax purposes. *Id.*

The IRS definition of ''dependent'' would generally exclude nonresident aliens. However § 40.41(d) does not. This will result in a larger number of people being included than if the Department tracked the IRS's definition of ''dependent'' in order to more accurately capture the alien's actual financial obligations. As used in paragraph (d), ''alien's household'' also considers those individuals who are supported by the alien and are themselves aliens, or those who may be contributing to the alien's income, in order to determine whether the alien's financial resources are sufficient to support the alien and other members of the alien's household. For example, if an alien resides with a younger sibling who is attending school and the alien provides 50 percent or more financial support for the younger sibling, that sibling is a part of the alien's household, even though the younger sibling may be earning some wages from a part-time job. Those part-time wages would be counted toward the requisite income threshold. Similarly, if the alien has an older sibling who is providing 50 percent or more of financial support to the alien but not residing with the alien, that older sibling would also be included in the alien's household and his/her income counted toward the requisite income threshold along with any income earned by the alien.

As used in § 40.41(d), ''alien's household'' adopts the IRS standard of the amount of support being provided to the individual (50 percent) as the standard for deeming an individual part of the household in the public charge determination. See *Internal Revenue Serv., Dependency Exemptions,* available at *https://apps.irs.gov/app/vita/content/globalmedia/4491_dependency_exemptions.pdf* (last visited Jul. 30, 2019); see also Internal Revenue Serv., *Table 2: Dependency Exemption for Qualifying Relative,* available at *https://apps.irs.gov/app/vita/content/globalmedia/table_2_dependency_exemption_relative_4012.pdf* (last visited Jul. 30, 2019). The Department believes that the ''at least 50 percent of financial support'' standard used by the IRS is reasonable to apply to the determination of who is a member of an alien's household, without regard to whether these individuals physically reside in the alien's home. This would include those individuals the alien may not have a legal responsibility to support but may nonetheless be supporting. For example, this could include a parent, sibling, or a grandparent living with the alien, or an adult child, sibling, or any other adult who the alien may be supporting or required to support or who contributes to the alien's financial support.

5. Receipt of Public Benefits

The interim final rule clarifies that receipt of public benefits occurs when a public benefit-granting agency provides a public benefit, as defined in § 40.41(c), to the visa applicant as a beneficiary, whether in the form of cash, voucher, services, or insurance coverage. The Department clarifies that application or certification for a public benefit does not constitute receipt of public benefits, but it may be considered as a factor suggesting likelihood of future receipt. Likewise, certification for future receipt of a public benefit does not constitute receipt of public benefits, although it may suggest a likelihood of future receipt. An alien's receipt of, application for, or certification for, public benefits solely on behalf of another individual does not constitute receipt of, application for, or certification for, such alien. This standard will help consular officers implement the new ''public charge'' definition at § 40.41(b) as an alien who receives one or more public benefits, as defined in paragraph (c) of § 40.41, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits). It also clarifies that consular officers must evaluate whether the alien is likely to receive one or more public benefits, the impact of certification for future receipt of public benefits, and that the relevant consideration is the alien's receipt of public benefits, not application or certification solely on behalf of another person.

6. Deletion of Posting of Bond

The Department removed the provision in former 22 CFR 40.41(d), which said that a consular officer may issue a visa to an alien who is within the purview of INA 212(a)(4), 8 U.S.C. 1182(a)(4), upon receipt of notice from DHS of the giving of a bond, and provided the consular officer is satisfied that the giving of such bond removes the likelihood that the alien will become a public charge. The Department is removing this provision because it reflects an obsolete process.

7. Deletion of Use of the Federal Poverty Line Where INA 213A Not Applicable

The Department removed the discussion in former 22 CFR 40.41(f), which stated that an immigrant visa applicant, not subject to the requirements of INA 213A, 8 U.S.C. 1183a, and relying solely on personal income to establish eligibility under INA 212(a)(4), 8 U.S.C. 1182(a)(4), who does not demonstrate an annual income above the Federal poverty line, as defined in INA 213A(h), 8 U.S.C. 1183a(h), and who is without other adequate financial resources, shall be presumed ineligible under INA 212(a)(4), 8 U.S.C. 1182(a)(4). The new language in sections (a) through (g) provide the framework consular officers will use to assess the public charge visa ineligibility, including for immigrant visa applicants who are subject to the public charge ground of ineligibility, but not the Affidavit of Support requirement. Instead of retaining a second framework for one subset of individuals subject to the public charge ground, the Department will apply this standard uniformly.

8. Deletion of Joint Sponsor

The Department removed the discussion in former 22 CFR 40.41(g), which stated that submission of one or more additional affidavits of support by a joint sponsor is required if the relative sponsor's income and assets and the immigrant's assets do not meet the Federal poverty requirements. This language has been deleted as it merely restates statutory requirements of INA 213A, 8 U.S.C. 1183a, and as such is not necessary in the 22 CFR 40.41.

Regulatory Findings

Administrative Procedure Act

The Department has concluded that the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3) apply to this rule, as the delay associated with notice and comment rulemaking would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B); 5 U.S.C. 553(d)(3). Those exceptions relieve agencies of the notice-and-comment requirement in emergency situations, or in circumstances where ''the delay created by the notice and comment requirements would result in serious damage to important interests.'' *Woods Psychiatric Inst.* v. *United States,* 20 Cl. Ct. 324, 333 (1990), aff'd, 925 F.2d 1454 (Fed. Cir. 1991); *see also United States* v. *Dean,* 604 F.3d 1275, 1279 (11th Cir. 2010); *Nat'l Fed'n of Federal Emps.* v. *Nat'l Treasury Emps. Union,* 671 F.2d 607, 611 (D.C. Cir. 1982).

Notice and comment on this rule, along with a 30-day delay in its effective date, would be impracticable and contrary to the public interest. On August 14, 2019, DHS published a final rule on inadmissibility on public charge grounds of inadmissibility. 84 FR 41292. That rule, which will be effective October 15, 2019, changes how DHS interprets the public charge ground of inadmissibility, section 212(a)(4) of the INA, 8 U.S.C. 1182(a)(4). Coordination of Department and DHS implementation of the public charge inadmissibility ground is critical to the Department's interest in preventing inconsistent adjudication standards and different outcomes between determinations of visa eligibility and determinations of admissibility at a port of entry. If implementation of the rule is delayed pending completion of notice and comment, consular officers would apply public charge-related ineligibility standards differing from those applied by DHS and, consequently, might issue visas to applicants who would later arrive at a port of entry and be found inadmissible by U.S. Customs and Border Protection under the new DHS public charge standards, based on the same information that was presented to the adjudicating consular officer. This inconsistency between the two agencies' adjudications would create a public harm and would significantly disrupt the Department's interest in issuing visas only to individuals who appear to qualify for admission to the United States. The Department has determined that the need to minimize the occurrence of situations in which visa holders arrive at a port of entry and are found inadmissible under the new DHS public charge standards supports a finding of good cause under 5 U.S.C. 553.

Regulatory Flexibility Act/Executive Order 13272: Small Business

Because this interim final rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553, it is exempt from the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, consistent with the Regulatory Flexibility Act, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities because this rule only regulates individual visa applicants and does not regulate any small entities or businesses.

Small Business Regulatory Enforcement Fairness Act of 1996

The Office of Information and Regulatory Affairs has determined that this is not a major rule as defined by 5 U.S.C. 804.

Executive Orders 12866, 13563, and 13771

The new public charge standards will impose additional costs on many individuals, by requiring applicants to provide detailed information about their age, health, family status, finances, and education and skills. These costs are analyzed in the notice required under the Paperwork Reduction Act of a new form, the DS–5540, Public Charge Questionnaire, which certain categories of applicants will be required to complete to help inform the consular officer's public charge assessment. The Department is separately seeking OMB approval of a new information collection (form) for this purpose. The Department estimates 12,736,034 visa applicants per year will be affected by this interim final rule based on the average number of visa applicants subject to the public charge ineligibility ground for the years 2017 and 2018. Specifically, in 2017, 624,317 immigrant visa applications were subject to the public charge ineligibility ground. The number was 630,340 in 2018. In 2017, 12,356,864 nonimmigrant visa applications were in categories subject to the public charge ineligibility, and 11,860,545 in 2018. While the Department estimates 12,736,034 visa applicants will be affected by this interim final rule per year, the Department estimates that only 450,000 applicants per year will be asked to submit this information; given that the majority of nonimmigrant visa applicants would not overcome 214(b) if they were also deemed likely to be a public charge and thus would be refused as such. The average burden per response is estimated to be 60 minutes. The Department estimates that the annual hour burden to visa applicants posed by the additional questions is 450,000 hours (450,000 applicants × 60 minutes). The weighted wage hour cost burden for this collection is $15,737,400 based on the calculation of $24.98 [1] (average hourly wage) × 1.4 (weighted wage multiplier) × 450,000 hours.

The Department believes the benefits of rigorously applying the public charge ineligibility ground, informed by relevant information that can only be provided by applicants, outweighs the costs associated with the new rule. Visa applicants and their representatives will already need to adjust to the new DHS

[1] Source: Data from the U.S. Bureau of Labor Statistics' May 2018 National Occupational Employment and Wage Estimates for all occupations (*http://www.bls.gov/*oes). Retrieved September 10, 2019.

public charge inadmissibility standard, so the information requested for the purpose of enforcing the Department's new rule substantially overlaps with the information requested by DHS when the applicant applies for admission or other immigration-related benefits in the United States. Most importantly, this interpretation seeks to mitigate against the possibility that consular officers would issue a visa to an individual who DHS would find inadmissible and deny U.S. entry, based on the same facts. This benefits applicants by preventing the investment of time and expenditure of personal funds on travel to the United States in the event that DHS ultimately finds them inadmissible.

This rule is an E.O. 13771 regulatory action.

Executive Orders 12372 and 13132: Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. The Department does not expect that this interim final rule will impose substantial direct compliance costs on State and local governments, or preempt State law. The rule will not have federalism implications warranting the application of Executive Orders 12372 and 13132.

Executive Order 12988: Civil Justice Reform

The Department has reviewed the regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department has determined that this rulemaking will not have a substantial direct effect on one or more Indian tribes, will not impose substantial direct compliance costs on Indian tribal governments, 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, and will not pre-empt tribal law. Accordingly, the requirements of Section 5 of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule imposes a new information collection requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. Chapter 35. The Department is separately seeking OMB approval of a new form, which certain applicants will be required to complete to assist with the consular officer's public charge assessment.

List of Subjects in 22 CFR Part 40

Administrative practice and procedure, foreign relations, passports and visas, aliens.

For the reasons stated in the preamble, the Department amends 22 CFR part 40 as follows:

PART 40—REGULATIONS PERTAINING TO BOTH NONIMMIGRANTS AND IMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED

■ 1. The authority citation for part 40 is revised to read as follows:

Authority: 8 U.S.C. 1104, 1182, 1183a, 1641

■ 2. Section 40.41 is revised to read as follows:

§ 40.41 Public charge.

(a) *Basis for determination of ineligibility.* Any determination that an alien is ineligible under INA 212(a)(4) must be predicated upon circumstances indicating that, taking into account any Affidavit of Support under section 213A of the INA that may have been filed on the alien's behalf, the alien is likely at any time to become a public charge after admission, or, if applicable, that the alien has failed to submit a sufficient Affidavit of Support Under Section 213A of the INA as set forth in either INA 212(a)(4)(C) or 212(a)(4)(D). Consular officers will consider whether any identified third party is willing and able to financially support the alien while the alien is in the United States. When considering the likelihood of an alien becoming a public charge at any time through receipt of public benefits, as defined in paragraph (c) of this section, consular officers will use a more likely than not standard and take into account the totality of the alien's circumstances at the time of visa application, including at a minimum: The alien's age; health; family status; assets, resources, and financial status; and education and skills. No one enumerated factor alone, apart from the lack of a sufficient Affidavit of Support under section 213A of the Act where required, will make the alien more likely than not to become a public charge. For immigration classifications exempt from the public charge ground of ineligibility, see 8 CFR 212.23(a).

(1) *The alien's age.* Consular officers will consider whether the alien's age makes the alien more likely than not to become a public charge in the totality of the circumstances, such as by impacting the alien's ability to work. Consular officers will consider an alien's age between 18 and early retirement age as defined in 42 U.S.C. 416(l)(2) as a positive factor. Age is a negative factor for aliens who are under the age of 18. However, consular officers may consider other factors, such as the support provided to a minor child by a parent, legal guardian, or other source, that in the totality of the circumstances may offset the alien's age as a negative factor. An alien's age above early retirement age is a negative factor in the totality of the circumstances, if the consular officer believes it adversely affects the alien's ability to obtain or perform work, or may increase the potential for healthcare related costs that would be borne by the public.

(2) *The alien's health.* Consular officers will consider whether the alien's health is a positive or negative factor in the totality of the circumstances, including whether the alien, has been diagnosed with a medical condition that is likely to require extensive medical care or institutionalization, or that will interfere with the alien's ability to provide and care for himself or herself, to attend school, or to work, if authorized. Consular officers will consider the report of a medical examination performed by the panel physician where such examination is required, including any medical conditions noted by the panel physician. An individual with a Class B medical condition, including Class B forms of communicable diseases of public health significance, as defined in 42 CFR part 34, is not alone a determinative factor for public charge purposes. The medical condition will be taken into consideration with all factors under the totality of circumstances. In assessing the effect of the alien's health on a public charge ineligibility determination, the consular officer will consider evidence of health insurance or the ability to pay for reasonably foreseeable medical expenses in the United States a positive factor in the totality of the circumstances.

(3) *The alien's family status.* When considering an alien's family status, consular officers will consider the size of the alien's household, as defined in paragraph (e) of this section, and whether the alien's household size is a positive or negative factor in the totality of the circumstances.

(4) *The alien's assets, resources, and financial status*—(i) *In general.* Consular

officers will consider, among other relevant factors, the following aspects of an alien's assets, resources, and financial status:

(A) If the alien's annual gross income for the alien's household size is at least 125 percent of the most recent Federal Poverty Guidelines based on the alien's household size (or 100 percent for an alien on active duty, other than training, in the Armed Forces), consular officers will consider the alien's income a positive factor;

(B) If the alien's annual household gross income is less than 125 percent of the most recent Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) based on the alien's household size, consular officers will consider a total value of the household assets and resources that is at least five times the difference between the alien's household gross income and 125 percent of the Federal Poverty Guidelines for the alien's household size as a positive factor. However, if the alien is the spouse or child of a U.S. citizen, assets totaling three times the difference between the alien's household gross income and 125 percent of the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor. If the alien is a child who will be adopted in the United States and who will likely receive citizenship under section 320 of the INA, then assets equivalent to or greater than the difference between the alien's household gross income and 125 percent the Federal Poverty Guidelines (100 percent for those on active duty, other than training, in the Armed Forces) for the alien's household size is a positive factor.

(ii) *Factors to consider.* When considering an alien's assets, resources, and financial status, consular officers must consider assets, resources, and financial status including:

(A) The alien's household annual gross income;

(B) The alien's cash assets and resources;

(C) Non-cash assets and resources that can be converted into cash within twelve months of the visa application;

(D) The alien's financial liabilities;

(E) Whether the alien has applied for, been certified to receive, been approved to receive, or received one or more public benefits, as defined in paragraph (c) of this section on or after October 15, 2019, or whether the alien has disenrolled or requested to be disenrolled from such public benefits.

(F) Whether the alien has received an immigration benefit fee waiver from DHS on or after October 15, 2019, unless the fee waiver was applied for or granted as part of an application for which a public charge inadmissibility under section 212(a)(4) of the Act was not required; and

(G) Whether the alien has private health insurance or other financial resources sufficient to cover reasonably foreseeable costs related to a medical condition in the United States.

(iii) *Income from illegal activities or sources.* Consular officers may not consider any income from illegal activities or sources, such as proceeds from illegal gambling or drug sales, or income from any public benefit listed in paragraph (c) of this section.

(5) *The alien's education and skills.* When considering an alien's education and skills, consular officers will consider both positive and negative factors associated with whether the alien has adequate education and skills to either obtain or maintain lawful employment with an income sufficient to avoid being likely to become a public charge. In assessing whether the alien's level of education and skills makes the alien likely to become a public charge, the consular officer must consider, among other factors, the alien's history of employment, educational level (high school diploma, or its equivalent, or higher educational degree), any occupational skills, certifications or licenses, and English language proficiency or proficiency in languages in addition to English. Consular officers will take into positive consideration an alien who is a primary caregiver 18 years of age or older who has significant responsibility for actively caring for and managing the well-being of a minor, elderly, ill, or disabled person residing in the alien's household, such that the alien lacks an employment history or current employment, or is not employed full time. Only one alien within a household can be considered a primary caregiver of the same individual within the household.

(6) *Prospective visa classification.* When considering the likelihood at any time of an alien becoming a public charge, consular officers will consider the visa classification sought.

(7) *Affidavit of Support Under Section 213A of the Act.* Any alien seeking an immigrant visa under INA 201(b)(2), 203(a), or 203(b), based upon a petition filed by a relative of the alien (or in the case of a petition filed under INA 203(b) by an entity in which a relative has a significant ownership interest), shall be required to present to the consular officer an Affidavit of Support Under Section 213A of the INA on a form that complies with terms and conditions established by the Secretary of Homeland Security. A properly filed, non-fraudulent, sufficient Affidavit of Support Under Section 213A of the INA, in those cases where it is required, is a positive factor in the totality of the circumstances if the sponsor is likely to actually provide the alien with the statutorily-required amount of financial support and other related considerations.

(8) *Heavily weighted factors.* The factors below will weigh heavily in an ineligibility determination based on public charge.

(i) *Heavily weighted negative factors.* The following factors will weigh heavily in favor of a finding that an alien is likely at any time in the future to become a public charge:

(A) The alien is not a full-time student and is authorized to work in his or her country of residence or the United States, as appropriate, but is unable to satisfy the consular officer that he or she is currently employed, has recent employment history, or a reasonable prospect of future employment;

(B) The alien has received or has been certified or approved to receive one or more public benefits, as defined in paragraph (c) of this section, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits), beginning no earlier than October 15, 2019, or for more than 12 months in the aggregate within the 36 month period prior to the adjudication of the alien's visa application, whichever is later.

(C)(*1*) The alien has been diagnosed with a medical condition that is likely to require extensive medical treatment or institutionalization or that will interfere with the alien's ability to provide for himself or herself, attend school, or work; and

(*2*) The alien has no health insurance for use in the United States and has neither the prospect of obtaining private health insurance for use in the United States, nor the financial resources to pay for reasonably foreseeable medical costs related to such medical condition;

(D) The alien was previously found inadmissible or deportable on public charge grounds by an Immigration Judge or the Board of Immigration Appeals.

(ii) *Heavily weighted positive factors.* The following factors will weigh heavily in favor of a finding that an alien is not likely at any time to become a public charge:

(A) The alien's household has income, assets, resources, or support of at least

250 percent of the Federal Poverty Guidelines for the alien's household size. Consular officers may not consider any income from illegal activities, *e.g.,* proceeds from illegal gambling or drug sales, or any income derived from any public benefit as defined in paragraph (c) of this section;

(B) The alien is authorized to work and is currently employed with an annual income of at least 250 percent of the Federal Poverty Guidelines for the alien's household size. Consular officers may not consider any income from illegal activities, *e.g.,* proceeds from illegal gambling or drug sales;

(C) The alien has private health insurance (other than health insurance obtained with premium tax credits under the Affordable Care Act) for use in the United States covering the expected period of admission.

(9) *Treatment of benefits received before October 15, 2019.* When considering whether an alien is more likely than not to become a public charge under this section, consular officers will consider, as a negative factor, but not as a heavily weighted negative factor as described in paragraph (a)(8) of this section, any amount of cash assistance for income maintenance, including Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF), State and local cash assistance programs that provide benefits for income maintenance (often called ''General Assistance'' programs), and programs (including Medicaid) supporting aliens who are institutionalized for long-term care, received, or certified for receipt, before October 15, 2019.

(b) *Public charge.* Public charge means, for the purpose of INA 212(a)(4)(A) and (B), an alien who receives one or more public benefits, as defined in paragraph (c) of this section, for more than 12 months in the aggregate within any 36-month period (such that, for instance, receipt of two benefits in one month counts as two months' worth of benefits).

(c) *Public benefit.* (1) Public benefit means any of the following forms of assistance received on or after October 15, 2019:

(i) Any Federal, State, local, or tribal cash assistance for income maintenance (other than tax credits), including:

(A) Supplemental Security Income (SSI), 42 U.S.C. 1381 *et seq.;*

(B) Temporary Assistance for Needy Families (TANF), 42 U.S.C. 601 *et seq.;*

(C) Federal, State or local cash benefit programs for income maintenance (often called ''General Assistance'' in the State context, but which also exist under other names); and

(ii) Supplemental Nutrition Assistance Program (SNAP), 7 U.S.C. 2011 *et seq.;*

(iii) Housing Choice Voucher Program, as authorized under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(iv) Project-Based Rental Assistance (including Moderate Rehabilitation) authorized under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f);

(v) Medicaid under 42 U.S.C. 1396 *et seq.,* except for:

(A) Benefits received for an emergency medical condition as described in section 1903(v)(2)–(3) of Title XIX of the Social Security Act, 42 U.S.C. 1396b(v)(2)–(3), 42 CFR 440.255(c);

(B) Services or benefits funded by Medicaid but provided under the Individuals with Disabilities Education Act (IDEA) 20 U.S.C. 1400 *et seq.;*

(C) School-based services or benefits provided to individuals who are at or below the oldest age eligible for secondary education as determined under State or local law; and

(D) Benefits received by an alien under 21 years of age, or a woman during pregnancy (and during the 60-day period beginning on the last day of the pregnancy).

(vi) Public Housing under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g).

(2) Public benefit, as defined in this section, does not include any form of assistance listed in paragraphs (c)(1)(i) through (vi) of this section received by an alien who at the time of receipt of the public benefit, or at the time of visa application or visa adjudication, is or was:

(i) Enlisted in the U.S. Armed Forces under the authority of 10 U.S.C. 504(b)(1)(B) or 10 U.S.C. 504(b)(2), or

(ii) Serving in active duty or in the Ready Reserve component of the U.S. Armed Forces, or

(iii) Is the spouse or child as defined in INA101(b), of an individual described in paragraph (c)(2)(i) or (ii) of this section, or of a citizen of the United States described in paragraph (c)(2)(i) or (ii).

(3) Public benefit, as defined in this section, does not include any form of assistance listed in paragraphs (c)(1)(i) through (vi) of this section received by an alien during periods in which the alien was present in the United States in an immigration category that is exempt from the public charge ground of inadmissibility, as set forth in 8 CFR 212.23(a), or for which the alien received a waiver of public charge inadmissibility from DHS. Public benefit does not include health services for immunizations and for testing and treatment of communicable diseases, including communicable diseases of public health significance as defined in 42 CFR part 34.

(4) Public benefit, as defined in this section, does not include any form of assistance listed in paragraphs (c)(1)(i) through (vi) of this section that were or will be received by:

(i) Children of U.S. citizens whose lawful admission as permanent residents and subsequent residence in the legal and physical custody of their U.S. citizen parent will result automatically in the child's acquisition of citizenship;

(ii) Children of U.S. citizens whose lawful admission as permanent residents will result automatically in the child's acquisition of citizenship upon finalization of adoption; or

(iii) Children of U.S. citizens who are entering the United States for the purpose of attending an interview under INA 322 in accordance with 8 CFR part 322.

(d) *Alien's household.* For purposes of public charge ineligibility determinations under INA 212(a)(4):

(1) If the alien is 21 years of age or older, or under the age of 21 and married, the alien's household includes:

(i) The alien;

(ii) The alien's spouse, if physically residing or intending to physically reside with the alien in the United States;

(iii) The alien's children, as defined in INA 101(b)(1), if physically residing or intending to physically reside with the alien in the United States;

(iv) The alien's other children, as defined in INA 101(b)(1), not physically residing or not intending to physically reside with the alien for whom the alien provides or is required to provide at least 50 percent of financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

(v) Any other individuals (including a spouse not physically residing or intending to physically reside with the alien) to whom the alien provides, or is required to provide, at least 50 percent of the individual's financial support or who are listed as dependents on the alien's United States federal income tax return; and

(vi) Any individual who provides to the alien at least 50 percent of the alien's financial support, or who lists the alien as a dependent on his or her federal income tax return.

(2) If the alien is a child as defined in INA 101(b)(1), the alien's household includes the following individuals:

(i) The alien;

(ii) The alien's children as defined in INA 101(b)(1), physically residing or intending to physically reside with the alien in the United States;

(iii) The alien's other children as defined in INA 101(b)(1) not physically residing or intending to physically reside with the alien for whom the alien provides or is required to provide at least 50 percent of the children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the alien;

(iv) The alien's parents, legal guardians, or any other individual providing or required to provide at least 50 percent of the alien's financial support to the alien as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided to the alien;

(v) The alien's parents' or legal guardians' other children as defined in INA 101(b)(1), physically residing or intending to physically reside with the alien in the United States;

(vi) The alien's parents' or legal guardians' other children as defined in INA 101(b)(1), not physically residing or intending to physically reside with the alien for whom the parent or legal guardian provides or is required to provide at least 50 percent of the other children's financial support, as evidenced by a child support order or agreement, a custody order or agreement, or any other order or agreement specifying the amount of financial support to be provided by the parents or legal guardians; and

(vii) Any other individual to whom the alien's parents or legal guardians provide, or are required to provide at least 50 percent of each individual's financial support, or who is listed as a dependent on the parent's or legal guardian's federal income tax return.

(e) *Receipt of public benefit.* Receipt of public benefit occurs when a public benefit-granting agency provides a public benefit, as defined in paragraph (c) of this section, to the alien as a beneficiary, whether in the form of cash, voucher, services, or insurance coverage. Application or certification for a public benefit does not constitute receipt of public benefit, but it may be considered as a factor suggesting likelihood of future receipt. An alien's receipt of, application for, or certification for public benefit solely on behalf of another individual does not constitute receipt of, application for, or certification for such alien.

(f) *Prearranged employment.* An immigrant visa applicant relying on an offer of prearranged employment to establish eligibility under INA 212(a)(4), other than an offer of employment certified by the Department of Labor pursuant to INA 212(a)(5)(A), must provide written confirmation of the relevant information sworn and subscribed to before a notary public by the employer or an authorized employee or agent of the employer. The signer's printed name and position or other relationship with the employer must accompany the signature.

Carl C. Risch,

Assistant Secretary for Consular Affairs, Department of State.

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