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FEDERAL REGISTER

Vol. 84 Thursday,
No. 211 October 31, 2019

Pages 58303–58594

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 103

[CIS No. 2649–19; DHS Docket No. USCIS–2019–0018]

RIN 1615–ZB81

Adjustment to Premium Processing Fee

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS) is increasing the premium processing fee charged by U.S. Citizenship and Immigration Services (USCIS). DHS is increasing the fee to reflect the full amount of inflation from the institution of the premium processing fee in June 2001 through August 2019 according to the Consumer Price Index for All Urban Consumers (CPI–U). The adjustment increases the fee from $1,410 to $1,440.

DATES: This rule is effective on December 2, 2019. Applications postmarked on or after that date must include the new fee.

FOR FURTHER INFORMATION CONTACT: Kika M. Scott, Chief Financial Officer, U.S. Citizenship and Immigration Services, U.S. Department of Homeland Security, 20 Massachusetts Avenue NW, Washington, DC 20529–2130; or by phone at (202) 272–8377 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR—Code of Federal Regulations
CPI—Consumer Price Index
CPI–U—Consumer Price Index for All Urban Consumers
DHS—Department of Homeland Security
Form I–129—Petition for a Nonimmigrant Worker
Form I–140—Immigrant Petition for Alien Worker
INA—Immigration and Nationality Act
USCIS—U.S. Citizenship and Immigration Services

I. Background and Authority

The Immigration and Nationality Act (INA) permits certain employment-based immigration benefit applicants and petitioners to request, for an additional fee, premium processing. The applicable statute authorizes the Secretary of Homeland Security (Secretary) to charge and collect a premium processing fee for employment-based petitions and applications. The fee must be used to provide certain premium-processing services to business petitioners and to make infrastructure improvements in the adjudications and customer service processes. By statute, the fee, initially set at $1,000, must be paid in addition to any normal petition/application fee that may be applicable. The statute provides that the Secretary may adjust this fee according to the Consumer Price Index (CPI). *See* INA section 286(u), 8 U.S.C. 1356(u); Public Law 106–553, App. B, tit. I, sec. 112, 114 Stat. 2762, 2762A–68 (Dec. 21, 2000).

Premium processing allows filers to request 15-day processing of certain employment-based immigration benefit requests if they pay an extra amount. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e). The premium processing fee is paid in addition to the base filing fee and any other applicable fees. *See* 8 CFR 103.7(b)(1)(i)(SS)(*1*). It cannot be waived. *See* 8 CFR 103.7(b)(1)(i)(SS)(*3*). USCIS uses premium processing fee revenue to improve its adjudications and customer service processes, fund the cost of providing premium services, and modernize its information technology systems.

Premium processing is currently authorized for certain petitioners filing a Form I–129, Petition for a Nonimmigrant Worker, or a Form I–140, Immigrant Petition for Alien Worker, and seeking certain employment-based classifications. *See* 8 CFR 103.7(b)(1)(i)(SS) and (e).[1] DHS first adjusted the premium processing fee to $1,225 in its 2010 USCIS fee rule. *See USCIS Fee Schedule; Final Rule,* 75 FR 58961, 58978, 58988 (Sept. 24, 2010); 8 CFR 103.7(b)(1)(i)(RR) (effective Nov. 23, 2010, codified as amended at 8 CFR 103.7(b)(1)(i)(SS), 81 FR 73292, 73331 (Oct. 24, 2016)). DHS last adjusted the premium processing fee to $1,410 in October 2018. *See Adjustment to Premium Processing Fee; Final Rule,* 83 FR 44449 (Aug. 31, 2018); 8 CFR 103.7(b)(1)(i)(SS) (effective Oct. 1, 2018).

II. Basis for Adjustment

Consistent with INA section 286(u), 8 U.S.C. 1356(u), DHS has calculated the percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) to measure inflation. DHS used the CPI–U as of April 2018 as the end point for the period of inflation to establish the current premium processing fee. *See* 83 FR 44449. For this adjustment, DHS calculated the total amount of inflation from June 2001, when the premium processing fee was first implemented, through August 2019.[2] In June 2001 the CPI–U was 178.0, and in August 2019 it was 256.558.[3] Therefore, between June 2001 and August 2019, the CPI–U increased by 44.13 percent.[4] When this percentage increase is applied to the June 2001 premium processing fee of $1,000, the adjusted premium processing fee is $1,441.34 ($1,440 when rounded to the nearest $5 increment). Thus, under INA section 286(u), 8 U.S.C. 1356(u), the USCIS premium processing fee will be $1,440. *See* new 8 CFR 103.7(b)(1)(i)(SS).

USCIS intends to use the funds generated by the fee increase to provide certain premium processing services to business customers and to make infrastructure improvements in the adjudications and customer service processes. In recent years, premium

[1] *See also* USCIS, How Do I Use the Premium Processing Service, *https://www.uscis.gov/forms/how-do-i-use-premium-processing-service* (last reviewed/updated June 20, 2019, last visited Aug. 14, 2019).

[2] DHS uses June 2001 as its baseline because, although section 286(u), 1356(u) was enacted on December 21, 2000, the fee was not put in place until June 2001. 66 FR 29682. This is consistent with previous premium processing fee adjustments. *See* 75 FR 33446, 33477 (June 11, 2010). It also produces the same fee that would have been produced by using the methodology in last year's inflation adjustment. DHS plans to use this methodology moving forward.

[3] The latest CPI–U data is available at *http://data.bls.gov/cgi-bin/surveymost?bls.* Select CPI–U 1982–84=100 (Unadjusted)—CUUR0000SA0 and click the Retrieve data button.

[4] DHS calculated this by subtracting the June 2001 CPI–U (178.0) from the August 2019 CPI–U (256.558), then dividing the result (78.558) by the June 2001 CPI–U (178.0). Calculation: $(256.558 - 178.0)/178.0 = .4413 \times 100 = 44.13$ percent.

processing has been temporarily suspended on employment-based petitions to permit officers working on premium processing cases to process long-pending non-premium filed petitions, as well as to prevent a lapse in employment authorization for beneficiaries of extension petitions resulting from the high volume of incoming petitions and a significant surge in premium processing requests.[5] Since DHS last adjusted the premium processing fee in October 2018, USCIS has used the additional resources from the increased fee plus existing resources, to restart premium processing service for all eligible petitions that had been temporarily suspended.[6] DHS believes that adjusting the fee for inflation will enable USCIS to continue providing the current level of premium processing service without future interruption or suspension; however, the modest fee increase would not eliminate the potential that other changes may be needed to mitigate the risk of processing disruptions.

A request for premium processing postmarked on or after December 2, 2019 must include the new fee. Petitioners must pay the $1,440 fee in addition to and separate from other filing fees. 8 CFR 103.7(b)(1)(i)(SS)(*1*). The premium processing fee may not be waived. 8 CFR 103.7(b)(1)(i)(SS)(*3*).

III. Regulatory Requirements

A. Administrative Procedure Act

DHS is making this fee increase final without notice and comment because it is unnecessary. 5 U.S.C. 553(b)(B). By law, DHS may adjust the premium processing fee for inflation according to the CPI. *See* INA section 286(u), 8 U.S.C. 1356(m). DHS has previously established by regulation that DHS may adjust the fee annually by notice in the **Federal Register.** 8 CFR 103.7(b)(1)(i)(SS)(*2*). No comments were received on the USCIS Fee Schedule; Final Rule regarding USCIS's authority to adjust the premium processing fee for inflation in the future. *See* 75 FR 58961–58991. The sole exercise of discretion here relates to the determination whether, as a matter of internal agency management, DHS and USCIS need additional premium processing fee revenue to provide at least the same level of premium services and to make infrastructure improvements for adjudication processes and customer service as authorized by INA 286(u), 8 U.S.C. 1356(u); which months to use for purposes of the adjustment; and whether, as a procedural matter, payment of such increased fee will be a precondition for receiving the premium processing service. Therefore, further delay of this regulation change to solicit public comments is unnecessary.

B. Other Regulatory Requirements

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, a final regulatory flexibility analysis is not required. *See* 5 U.S.C. 604(a). In addition, this rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. This action is not subject to the written statement requirements of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Orders 13132 or 13175. This rule also does not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). *See* 40 CFR 1507.3(b)(2)(ii) and 1508.4. This action does not affect the quality of the human environment and fits within Categorical Exclusion number A3(d) in Dir. 023–01 Rev. 01, Appendix A, Table 1, for rules that interpret or amend an existing regulation without changing its environmental effect.

Finally, this action does not require review by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563. As previously discussed, DHS has the authority to adjust the premium processing fee according to the CPI–U. DHS is increasing the premium processing fee by $30 per Form I–907, Request for Premium Processing Service (from a fee of $1,410 to $1,440 per Form I–907). Table 1 shows the total number of premium processing Forms I–907 received by USCIS from fiscal year 2014 to 2018. On average, USCIS received 262,301 Forms I–907 annually during this timeframe.

TABLE 1—TOTAL NUMBER OF PREMIUM PROCESSING (FORM I–907) REQUESTS RECEIVED, FISCAL YEARS 2014–2018

Fiscal year	Total Form I–907 receipts received
2014	218,400
2015	234,576
2016	319,517
2017	231,839
2018	307,173
Average	262,301

DHS estimates an additional annual $7.9 million in revenue to be collected from the increase in premium processing fees due to adjustment of inflation.[7] As discussed earlier, the premium processing fee revenue will be used to make infrastructure improvements for adjudication processes and customer service as well as to fund the cost of providing premium services.

This rule imposes transfer payments between the public and the government. Thus, this action is exempt from Executive Order 13771.

List of Subjects in 8 CFR Part 103

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

For the reasons stated in the preamble, DHS amends part 103 of chapter I of title 8 of the Code of Federal Regulations as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

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

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1101, 1103, 1304, 1356, 1356b, 1372; 31 U.S.C. 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2; Pub. L. 112–54, 125 Stat 550.

§ 103.7 [Amended]

■ 2. Section 103.7 is amended in paragraph (b)(1)(i)(SS) introductory text

[5] *See* USCIS Will Temporarily Suspend Premium Processing for All H–1B Petitions, *https://www.uscis.gov/archive/uscis-will-temporarily-suspend-premium-processing-all-h-1b-petitions* (last reviewed/updated: 03/03/2017); USCIS Will Temporarily Suspend Premium Processing for Fiscal Year 2019 H–1B Cap Petitions, *https://www.uscis.gov/news/alerts/uscis-will-temporarily-suspend-premium-processing-fiscal-year-2019-h-1b-cap-petitions* (last reviewed/updated: 03/20/2018); USCIS Extends and Expands Suspension of Premium Processing for H–1B Petitions to Reduce Delays, *https://www.uscis.gov/news/uscis-extends-and-expands-suspension-premium-processing-h-1b-petitions-reduce-delays* (last reviewed/updated: 08/28/2018).

[6] *See* USCIS Resumes Premium Processing for All H–1B Petitions, *https://www.uscis.gov/news/alerts/uscis-resumes-premium-processing-all-h-1b-petitions* (last reviewed/updated: 03/11/2019). Premium processing has not been suspended for any product line since this announcement.

[7] Additional revenue collected = 262,301 average number of premium processing Forms I–907 received * $30 increase in premium processing fees = $7,869,030.

by removing ''$1,410'' and adding in its place ''$1,440''.

Kevin K. McAleenan,

Acting Secretary.

[FR Doc. 2019–23778 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–97–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3313–AF00

Public Unit and Nonmember Shares

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending the NCUA's public unit and nonmember share rule to allow federal credit unions (FCU) to receive public unit and nonmember shares up to 50 percent of the credit union's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares. This final rule also makes a conforming change to the NCUA's regulations that apply the public unit and nonmember share limit to all federally insured credit unions (FICUs). The final rule follows publication of a May 30, 2019, proposed rule and takes into consideration the public comments received on the proposed rule.

DATES: This final rule is effective January 29, 2020.

FOR FURTHER INFORMATION CONTACT: Ariel Pereira, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314, or by telephone at (703) 548–2778.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. This Final Rule; Changes to Proposed Rule
III. Legal Authority
IV. Discussion of Public Comments Received on Proposed Rule
V. Regulatory Procedures

I. Introduction

A. Background

Section 107(6) of the Federal Credit Union Act (FCU Act) provides that an FCU may receive payment on shares from its members (including public units that are members) and from other credit unions.[1] Section 107(6) also permits an FCU to receive payments on shares from nonmembers under certain circumstances, including payment on shares from nonmember public units and their political subdivisions.[2] The term ''public unit'' generally refers to ''the United States, any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Panama Canal Zone, any territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in section 3(c) of the Indian Financing Act of 1974.''[3]

Moreover, an FCU that predominantly serves low-income members may receive payment on shares from any source regardless of membership.[4] Section 701.34 of the NCUA's regulations defines a ''low-income member'' as, among other things, a member ''whose family income is 80 [percent] or less than the median family income for the metropolitan area where [the member] live[s] or [the] national metropolitan area, whichever is greater.''[5] Alternatively, a ''low-income member'' is a member ''who earn[s] 80 [percent] or less than the total median earnings for individuals for the metropolitan area where [the member] live[s] or [the] national metropolitan area, whichever is greater.''[6]

Section 701.32 of the NCUA's regulations limits the total amount of nonmember shares that an FCU may receive up to 20 percent of the credit union's total shares, or $3 million, whichever is greater, unless the shares are U.S. Treasury accounts or matching funds accounts required by the NCUA's Community Development Revolving Loan Fund Program.[7] This limit also applies to public unit shares regardless of whether the public unit is a member of the credit union.

B. Regulatory Reform Agenda

Consistent with the spirit of Executive Order 13777, entitled ''Enforcing the Regulatory Reform Agenda,''[8] the Board established a Regulatory Reform Task Force (Task Force) to identify NCUA regulations that the agency should repeal, replace, or modify. The Task Force reviewed the NCUA regulations and submitted its first report to the Board in June 2017. In August 2017, the Board published the substance of the Task Force's first report in the **Federal Register** for public comment.[9] After the close of the public comment period, the Board published the Task Force's second and final report in the **Federal Register** in December 2018.[10]

The Task Force's final report recommended that the Board increase the public unit and nonmember share limit in § 701.32 of the NCUA's regulations.[11] Specifically, the Task Force recommended raising the nonmember deposit limit from 20 percent to 50 percent. The Task Force stated that public unit and nonmember shares are the functional equivalent of borrowings. The change will parallel the ability of FCUs, as authorized under section 107(9) of the FCU Act,[12] to borrow from any source up to 50 percent of the credit union's paid-in and unimpaired capital and surplus subject to such rules and regulations as the Board may prescribe.[13] However, this limitation does not apply to discounts or sales of eligible obligations to any federal intermediate credit bank or loans from the Central Liquidity Facility.[14]

C. NCUA's May 30, 2019, Proposed Rule

On May 30, 2019, the NCUA published a proposed rule to implement the Task Force's recommendation.[15] Specifically, the Board proposed to amend § 701.32 of the NCUA's regulations to allow an FCU to receive public unit and nonmember shares up to 50 percent of the credit union's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares. The Board also proposed making conforming amendments to § 741.204, which applies to all FICUs, to reflect the changes to § 701.32. (Hereinafter, this preamble will refer to FICUs when discussing the applicability of the proposed and final rules, except where the discussion specifically applies to FCUs or federally insured, state-chartered credit unions (FISCUs)).

The change in standard from ''total shares'' to ''paid-in and unimpaired capital and surplus less any public unit and nonmember shares'' is not only consistent with the treatment of borrowings under the FCU Act, but is also intended to provide FICUs with greater ability to accept public unit and nonmember deposits because undivided earnings are included in the measurement of a FICU's paid-in and

[1] 12 U.S.C. 1757(6).

[2] *Id.*

[3] 12 CFR 745.1(c).

[4] *Supra* note 1.

[5] 12 CFR 701.34(a)(2).

[6] *Id.*

[7] 12 CFR 701.32(b), (c).

[8] Executive Order 1377 was issued on February 24, 2017, and subsequently published in the **Federal Register** on March 1, 2017 (82 FR 12285).

[9] 82 FR 39702 (August 22, 2017).

[10] 83 FR 65926 (December 21, 2018).

[11] *Id.* at 65940.

[12] 12 U.S.C. 1757(9).

[13] The term ''paid-in and unimpaired capital and surplus'' means shares and undivided earnings, plus net income or minus net loss. *See* 12 CFR 741.2.

[14] *Supra* note 13. For rules governing loans from the Central Liquidity Facility, *see* 12 CFR part 725.

[15] 84 FR 35525.

unimpaired capital and surplus, thus increasing the base. The proposed rule subtracts public unit and nonmember shares from unimpaired capital and surplus for purposes of this 50 percent limit.[16] This restriction is intended to provide a meaningful limit on the ability of an FICU to increase its leverage indefinitely, which could pose a clear risk to FICUs and the National Credit Union Share Insurance Fund (NCUSIF).

The proposed rule does not allow a waiver process for a FICU to exceed the 50 percent limit as a matter of safety and soundness. The proposed rule also requires a FICU to develop and maintain a written plan if its public unit and nonmember shares, taken together with borrowings, exceed 70 percent of paid-in and unimpaired capital and surplus. This approach was designed to provide a FICU with flexibility to adopt a diverse funding structure without the regulatory burden of developing a plan regarding the intended use of those funds unless the credit union borrows a significant amount of funds or accepts a significant number of public unit and nonmember shares.

The proposed rule provided for a 60-day comment period, which closed on July 29, 2019.

II. This Final Rule; Change to Proposed Rule

This final rule follows publication of the May 30, 2019, proposed rule and takes into consideration the public comments received on the proposed rule. The NCUA received 17 public comments on the proposal. Comments were received from: (1) Individual FICUs; (2) national, state, and regional organizations representing FICUs; and (3) national banking trade organizations.

Based on its review of the comments, and as further discussed in Section IV of this preamble, the Board has revised the proposal by retaining the alternative limit of $3 million. Specifically, the final rule provides that a FICU may receive public unit and nonmember shares in an amount up to 50 percent of the credit union's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares, or $3 million, whichever is greater.

III. Legal Authority

The Board is issuing this final rule pursuant to its authority under the FCU Act. Under the FCU Act, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.[17] The FCU Act grants the NCUA a broad mandate to issue regulations governing both FCUs and all FICUs. Section 120 of the FCU Act is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCU Act.[18] Section 207 of the FCU Act is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.[19] Section 209 of the FCU Act is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.[20] In addition, Section 107 of the FCU Act specifically recognizes that the Board may prescribe limitations governing shares accepted by FCUs.[21] Accordingly, the FCU Act grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

IV. Discussion of the Public Comments Received on the Proposed Rule

A. The Public Comments, Generally

The comments from FICUs and their representative organizations generally supported the proposed rule. In particular, the FICUs supported the revised aggregate limit. Several of the commenters explicitly agreed with the statement in the proposed rule's preamble that public unit and nonmember shares are the functional equivalent of, and no more volatile than, borrowings and, therefore, warrant a higher level of authority than what the current regulation allows. In general, the commenters wrote that the proposal would provide a greater balance between nonmember funding sources and borrowings, and better enable FICUs to seek more reasonably priced funding options.

Several of these commenters also offered suggested changes to the proposed rule. In particular, the commenters expressed concerns about the proposed elimination of the $3 million alternative limit, especially the effects on newly chartered FICUs and low-income credit unions (LICUs).

In contrast to the support expressed by the FICUs, the comments received from the banking trade organizations strongly objected to the proposed rule. These commenters wrote that the proposal would undermine the historical mission of FICUs, increase risk to the NCUSIF, and have negative economic impacts.

B. Discussion of FICU Comments on Specific Provisions of the Proposed Rule

1. Minor effect on most FICUs. One of the commenters, while writing in overall support of the rule, indicated the proposal would have minimal effect on most FICUs. Based on its review of March 2019, Call Report data, the commenter wrote that the proposal would not increase the overall funding capacity (*i.e.,* aggregate nonmember/public unit deposits and borrowings) for 51 percent of FICUs. The commenter believes the proposal will be most beneficial to small FICUs and LICUs because they tend to have the higher net worth ratios necessary to take full advantage of the proposed limit. The Board continues to believe that the proposal will provide all FICUs, and in particular small credit unions, with greater flexibility in their sources of funding.

The commenter also wrote that the majority of FICUs rely on member shares for the ''overwhelming majority'' of their funds, and that this is unlikely to change. Another commenter, however, wrote that the current reluctance of some FICUs to use nonmember funding could be explained by the fact that these credit unions, as a liquidity risk management tool, have historically been reluctant to exhaust the availability of nonmember funds. The increase in the aggregate limit will provide these FICUs with additional flexibility in managing their liquidity needs and encourage them to seek more reasonably priced funding options. Further, this commenter noted other incentives for FICUs to increase their use of nonmember funds. According to the commenter, in recent years FICUs that have employed nonmember deposits have tended to be more active lenders and, therefore, achieved higher earnings on average than their peers.

2. $3 million alternative limit. The NCUA specifically sought comment on the proposed elimination of the alternative limit of $3 million. As noted, the current regulation limits FICUs to accepting public unit and nonmember shares up to 20 percent of total shares, or $3 million, whichever is greater. The Board thought that the proposed regulatory limit of 50 percent of the FICU's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares was appropriate and that an alternative $3 million limit would no longer be necessary. However, the Board also noted in the preamble to the proposed

[16] In mathematical terms, the limitation is calculated as total public unit and nonmember shares/paid-in and unimpaired capital and surplus − total public unit and nonmember shares = maximum of 50%.

[17] 12 U.S.C. 1752–1775.

[18] 12 U.S.C. 1766(a).

[19] 12 U.S.C. 1787(b)(1).

[20] 12 U.S.C. 1789(a)(11).

[21] 12 U.S.C. 1757(6).

rule that some small credit unions, particularly LICUs that rely on large volumes of nonmember shares as a necessary source of funding or newly chartered credit unions, might be adversely impacted by the elimination of the $3 million dollar limit. Consequently, the Board noted that it was actively considering retaining the alternative $3 million limit and specifically sought comments on whether to retain it or provide a special exemption for small LICUs.

The majority of the comments on this issue supported retaining some form of the alternative limit. At a minimum, these commenters urged the Board to either ''grandfather'' FICUs that currently use the limit or establish an exemption for newly chartered FICUs and LICUs. A minority of commenters supported the elimination of the alternative limit; however, several of them also suggested that the NCUA monitor the change for adverse consequences. These commenters recommended that the Board use the review to consider re-instituting the alternative limit.

One of the commenters also urged that the alternative limit be increased to at least $5 million. The commenter wrote that the NCUA, in its 2011–2012 rulemaking raising the limit to $3 million, had benchmarked the amount on a hypothetical FCU with $7.5 million in total shares.[22] According to the commenter, the increase to $5 million is necessary to maintain parity for a similarly situated FCU in 2019 (*i.e.,* the 36th percentile of credit unions ranked by share value).

The Board has decided to revise its proposal given the broad support from the commenters for keeping the alternative limit. Specifically, the final rule retains the current alternative limit of $3 million. Upon further consideration, the Board agrees that the elimination of the limit could negatively impact some small credit unions, particularly those that are newly chartered and have not had the time to become adequately capitalized, which may rely on nonmember funding. The final rule, therefore, provides that a FICU may receive public unit and nonmember shares in an amount up to 50 percent of the FICU's net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares, or $3 million, whichever is greater.

3. Waivers from the appropriate regional director. The proposed rule would eliminate the procedures for obtaining a waiver from the appropriate regional director. The majority of commenters on this provision supported the removal of the waiver procedures. The commenters opposed to the change wrote that a regulatory waiver might be necessary to address fact-specific situations that merit a higher limit without increasing risk to the NCUSIF.

The Board has not revised the proposal in response to these comments. Although the Board seeks to provide FICUs with greater flexibility, it also continues to believe that the removal of the waiver procedures is prudent given the increased regulatory limit. The NCUA does not envision situations arising like the hypothetical posed by the commenter that would merit a higher aggregate limit without consequently increasing the risk to the NCUSIF. Allowing a FICU to exceed this limit could lead to safety and soundness concerns and unnecessary risk for the NCUSIF.

The Board also notes that currently effective waivers granted pursuant to the existing regulations are superseded by the final rule. These waivers are no longer necessary given the higher aggregate limit established by the rule. Accordingly, any such waivers will be considered expired upon the effective date of this final rule.

4. Plan Regarding Use of Funds. Under the proposed rule, a FICU would be required to develop a plan regarding the intended use of any borrowings, public unit, or nonmember shares that, taken together, exceed 70 percent of the FICU's paid-in and unimpaired capital and surplus. The majority of the commenters writing on this issue supported the plan requirement, with only a single commenter disagreeing. The commenter opposing the plan requirement wrote that any risk associated with such a high level of borrowing should more appropriately be addressed in the contract between the lender and the FICU.

This final rule adopts the proposed plan requirements without change. The Board believes that requiring a plan for material levels of external funding sources is prudent due diligence. The Board expects FICUs that accept elevated levels of public unit and nonmember shares and borrowings to document how the credit union will use those funds consistent with prudent risk management principles. As the Board explained in the proposed rule, FICUs will not need to submit these plans for approval before accepting funds that in total would exceed 70 percent of paid-in and unimpaired capital and surplus. Instead, they must simply maintain the plan and make it available to NCUA examiners.

Even though the Board expects that most FICUs will not need to develop a specific plan regarding the use of external funds, a FICU should continue to manage its balance sheet in a prudent manner. The NCUA will continue to review a FICU's business model and liquidity management to ensure the FICU is operating in a safe and sound manner. Unsafe or unsound funding sources or utilization of funds in an unsafe and unsound manner may affect a credit union's CAMEL[23] and risk ratings and could result in supervisory action.

One commenter urged the NCUA to not establish new or more complex supervisory procedures for review of the plans. At the same time, however, the commenter also suggested that the NCUA communicate its expectations for such plans in advance of examinations to ensure consistent review. Given the changes to the regulation and the higher level of combined non-member funding allowed before a plan is required, the NCUA will be updating the related examination procedures and supervisory expectations accordingly. This information will be incorporated into the Examiner's Guide, which is posted on the NCUA's website. As always, the NCUA will continue to emphasize the importance of timely, ongoing and open communications between examiners and credit union management and officials.

5. Applicability to FISCUs. One commenter wrote that the incorporation of regulations by reference in part 741 and the repeated use of the term ''federal credit union'' within regulations applicable to FISCUs is confusing and creates regulatory burden. The commenter suggested that the NCUA incorporate the limits for public unit and nonmember shares applicable to FISCUs, in their entirety, within part 741.

At this time, the Board is not prepared to adopt the change suggested by the commenter. The Board, however, has taken the suggestion under advisement for future rulemakings and has elaborated in this preamble on how the rule applies to FISCUs.

[22] The proposed rule to raise the alternative limit to $3 million was published on December 28, 2011 (76 FR 81 421). The subsequent final rule was published on May 31, 2012 (77 FR 31981).

[23] CAMEL is an internal rating system used for evaluating the soundness of credit unions on a uniform basis and for identifying those institutions requiring special supervisory attention or concern. The name CAMEL is an acronym derived from the first letter of each of the five critical elements of the credit union's operations: (1) Capital Adequacy, (2) Asset Quality, (3) Management, (4) Earnings, and (5) Liquidity/Asset-Liability Management.

C. Discussion of Comments From the Banking Trade Organizations

The two comments from the banking trade organizations were strongly opposed to the proposal. Both commenters wrote that the proposed rule would undermine the cooperative character of FICUs and make them beholden to nonmember institutions. The commenters also saw little reason for the change, writing that concerns regarding fraud have arguably only grown since the NCUA originally promulgated the limit to address this problem. One of the banking trade organizations also asserted that the broad application of the ''low-income'' designation, which allows FICUs to secure nonmember deposits from any source, amplifies the safety and soundness concerns of the proposal. This commenter also raised potential impacts on the broader economy, writing that the peak of the economic cycle is the wrong time to increase leverage and fuel growth in expensive funding sources. Further, the commenter asserted that providing a new funding source for tax-free lending would decrease lendable funds at taxpaying financial institutions. The commenter wrote that this reallocation of deposits would reduce tax receipts to municipalities, thus reducing available government revenue to support necessary government programs.

The Board disagrees with the assertions made by the banking trade organizations, and has not revised the proposal in response to these comments. Contrary to the statements made by the commenters that the proposal will undermine the purpose of credit unions, Congress explicitly recognized that nonmember shares could be a valuable source of funding for FICUs. As noted above, the FCU Act, which establishes the federal credit union system, authorizes FICUs to receive payment on shares from nonmembers, ''within limitations prescribed by the Board.'' [24] The final rule will amend the nonmember share regulations to better reflect congressional intent. Specifically, the final rule updates the regulations to recognize the significant changes the credit union industry has undergone in the 31 years since this limit was adopted, including credit unions' growing need for diversified sources of funding to serve their members.

The banking trade organizations also expressed concerns regarding fraud and safety and soundness. Unfortunately, as the 2008 housing crisis demonstrated, these are potential issues for the financial services sector as a whole. The Board remains committed to addressing market risks and to ensuring FICU compliance with applicable laws and regulations. The final rule adopts a balanced approach that provides FICUs with greater flexibility to determine an appropriate funding structure to support ongoing credit union operations in a financially sound and prudent manner. The commenters also raised potential impacts on the national and local economies but did not provide any data on which to assess these concerns. The Board believes that, by enabling FICUs to better serve the needs of their communities, any impact of the rule on the broader economy will be positive. However, the Board, as it does for all its regulations, will monitor the effects of this final rule and make necessary policy adjustments as the circumstances warrant.

While this final rule will provide individual credit unions with additional flexibility regarding funding options, it will not materially increase the aggregate level of public unit and nonmember shares and borrowings the credit union system can collectively utilize. Credit unions could grow by 56 percent in aggregate if they all utilized the full authority under current regulation and net worth constraints.[25] With this final rule, credit unions could grow by 65 percent in aggregate. Thus, this final rule only provides a modest amount of additional balance sheet leverage in total. Additionally, credit unions currently have about $69 billion in outstanding public unit, nonmember shares, and borrowings representing only 4 percent of total assets.[26]

V. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act [27] requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under $100 million in assets).[28] This rule will provide FICUs with additional flexibility to accept public unit and nonmember shares. Accordingly, the Board believes that the rule will not have a significant economic impact on a substantial number of small credit unions. Therefore, a regulatory flexibility analysis is not required.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency from the public before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current, valid OMB control number. In accordance with the PRA, the information collection requirements included in this final rule has been submitted to OMB for approval under control number 3133–0114.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.[29] The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The final rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The Board has therefore determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) [30] generally provides for congressional review of agency rules. A reporting requirement is triggered in instances where the NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act.[31] An agency rule, in addition to being subject

[24] *Supra* note 1. State law governs the authority for FISCUs to accept nonmember shares.

[25] These percentages take into account a practical limit on the amount of funding credit unions can obtain before their net worth ratio would decline below 7 percent—the level necessary to be well capitalized for prompt corrective action purposes. *See* 12 CFR part 702.

[26] The total amount of public unit and nonmember shares is $16 billion or 1 percent of total assets and the total amount of borrowings is $53 billion or 3 percent of total assets.

[27] 5 U.S.C. 601 *et seq.*

[28] 5 U.S.C. 603(a).

[29] 64 FR 43255 (Aug. 4, 1999).

[30] Public Law 104–121.

[31] 5 U.S.C. 551.

to congressional oversight, may also be subject to a delayed effective date if the rule is a ''major rule.'' The NCUA does not believe this rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. As required by SBREFA, the NCUA has submitted this final rule to the Office of Management and Budget (OMB) for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. The OMB determined that the rule is not major. The NCUA also will file appropriate reports with Congress and the Government Accountability Office so this rule may be reviewed.

List of Subjects

12 CFR Part 701

Credit unions, Public units, Nonmember accounts.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on October 24, 2019.

Gerard Poliquin,

Secretary of the Board.

For the reasons stated above, NCUA amends 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 2. In § 701.32, revise paragraph (b) to read as follows:

§ 701.32 Payment on shares by public units and nonmembers.

* * * * *

(b) *Limitations*—(1) *Aggregate limit on public unit and nonmember shares.* Except as permitted under paragraph (c) of this section, a federal credit union may not receive public unit and nonmember shares in excess of the greater of:

(i) 50 percent of the net amount of paid-in and unimpaired capital and surplus less any public unit and nonmember shares, as measured at the time of acceptance of each public unit or nonmember share (*i.e.,*

$$\frac{\textit{Total public unit and nonmember shares}}{\textit{Paid-in and unimpaired capital and surplus} - \textit{Total public unit and nonmember shares}} = \textit{Maximum of 50\%}$$

); or

(ii) $3 million.

(2) *Required due diligence.* Before receiving public unit or nonmember shares that, taken together with any borrowings, exceed 70 percent of paid-in and unimpaired capital and surplus, the board of directors must adopt a specific written plan concerning the intended use of these funds that is consistent with prudent risk management principles.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

■ 4. In § 741.204, revise paragraph (a) to read as follows:

§ 741.204 Maximum public unit and nonmember accounts, and low-income designation.

* * * * *

(a) Adhere to the requirements of § 701.32 of this chapter regarding public unit and nonmember accounts, provided it has the authority to accept such accounts.

* * * * *

[FR Doc. 2019–23679 Filed 10–30–19; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0541; Special Conditions No. 25–758–SC]

Special Conditions: The Boeing Company Model 777 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 777 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an inertia locking device (ILD) installed in passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective December 2, 2019.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin and Airframe Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2013, Boeing applied for Type Certificate No. T00001SE for Model 777 series airplanes. On September 19, 2018, Boeing applied for a change to Type Certificate No. T00001SE for seats with inertia locking devices in Model 777 series airplanes. The Model 777 series airplane is a twin-engine, transport-category airplane with a maximum takeoff weight of 775,000 pounds and seating for 495 passengers.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. T00001SE, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 777 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

Boeing Model 777 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices.

Discussion

Boeing will install, in Model 777 series airplanes, Thompson Aero Seating Ltd. passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing loading conditions specified in 14 CFR 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event) to lock the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency landing event. Each seat place incorporates two ILDs, one on either side of the seat pan. Only one ILD is required to hold an occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing, and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but nominally predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. However, a seat using ILD technology may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury output being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the ILD deployment setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until $1.33t_1$ is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Conditions 1 through 5 address ensuring that the ILD activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–12–SC for Boeing Model 777 series airplanes, which was published in the **Federal Register** on August 9, 2019 (84 FR 39235). The FAA received responses from one commenter.

Boeing states that, as written, because t_1 is an arbitrary point in the shock pulse, the relevance of $1.33t_1$ is unclear, and believes this is a typographical error. Boeing further states that the 0.5g deviation below the ideal pulse for the evaluation and testing of less-severe pulses was proposed for airbags where the airbag activates a lower pulses (9g or less). The ILD activates at a higher pulse (14.5g), closer to the pulse specified in the airworthiness requirements. Boeing states that, in this case, a 2g deviation below this ideal pulse is more appropriate and would be acceptable for ensuring the pulse meets the pulse-shape requirement.

The FAA determined that the ideal pulse discussion in the proposed special conditions is consistent with FAA's previous guidance on this issue. The FAA's intent in the Discussion section is to model the less-severe or reduced-pulse test conditions after the ideal pulse defined in AC 25.562–1B, figure 3.1, where t_1 is defined as the rise time. The recommendation to not deviate from the ideal pulse by more than 0.5g until $1.33t_1$ is intended to ensure an appropriate pulse shape is achieved for such reduced-pulse tests. This is not a typographical error and is consistent with previous policy provided for conducting reduced-pulse tests for seats with airbag systems. This recommendation remains true regardless of the activation setting for the feature under consideration, provided that the activation setting is less than the minimum pulse defined in AC 25.562–1B, figure 3.1, *e.g.,* 16g for a forward test. A 2g deviation from the ideal pulse is discussed in appendix 1 of AC 25.562–1B, and is relevant only when evaluating an actual pulse to the ideal pulse under normal (non-reduced) conditions. Because the Discussion section of this special conditions document is intended to convey an acceptable means for conducting reduced-pulse tests, and is not a regulatory requirement, the content of the Discussion section remains as proposed. However, the FAA recognizes that other means to conduct reduced-pulse tests may be proposed, provided that the applicant can show that the test conditions are scaled appropriately.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only one novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating an inertia locking device (ILD) must meet the following:

1. *Level of Protection Provided by ILD*—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. *Protection Provided Below and Above the ILD Actuation Condition*—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. *Protection Over a Range of Crash Pulse Vectors*—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. *Protection During Secondary Impacts*—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. *Protection of Occupants other than 50th Percentile*—Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown.

6. *Inadvertent Operation*—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. *Installation Protection*—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. *Reliability*—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging/drying of lubricants, and corrosion.

9. *Maintenance and Functional Checks*—The design, installation, and operation of the ILD must be such that it is possible to functionally check the device in place. Additionally, a functional-check method and a maintenance-check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. *Release Function*—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Des Moines, Washington, on October 25, 2019.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–23741 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0540; Special Conditions No. 25–757–SC]

Special Conditions: The Boeing Company Model 737 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for The Boeing Company (Boeing) Model 737 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is an inertia locking device (ILD) installed in passenger seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective December 2, 2019.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin and Airframe Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *shannon.lennon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 27, 2012, Boeing applied for Type Certificate No. A16WE for Model 737–8 airplanes. On September 19, 2018, Boeing applied for a change to Type Certificate No. A16WE for seats with inertia locking devices in Model 737 series airplanes. The Model 737 series airplane is a twin-engine, transport-category airplane with a maximum takeoff weight of 194,700 pounds and seating for 220 passengers.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Boeing must show that the Model 737 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A16WE, or the applicable regulations in

effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for Boeing Model 737 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, Boeing Model 737 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

Boeing Model 737 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices.

Discussion

Boeing will install, in Model 737 series airplanes, Thompson Aero Seating Ltd. passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing loading conditions specified in 14 CFR 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event) to lock the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency landing event. Each seat place incorporates two ILDs, one on either side of the seat pan. Only one ILD is required to hold an occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing, and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but nominally predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. However, a seat using ILD technology may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury output being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the ILD deployment setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until $1.33t_1$ is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Conditions 1 through 5 address ensuring that the ILD activates when intended, to provide the necessary protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

The special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

The FAA issued Notice of Proposed Special Conditions No. 25–19–11–SC for the Boeing Model 737 series airplanes, which was published in the **Federal Register** on August 9, 2019 (84 FR 39237). The FAA received responses from one commenter.

Boeing states that, as written, because t_1 is an arbitrary point in the shock pulse, the relevance of $1.33t_1$ is unclear, and believes this is a typographical error. Boeing further states that the 0.5g deviation below the ideal pulse for the evaluation and testing of less-severe pulses was proposed for airbags where the airbag activates a lower pulses (9g or less). The ILD activates at a higher pulse (14.5g), closer to the pulse specified in the airworthiness requirements. Boeing states that, in this case, a 2g deviation below this ideal pulse is more appropriate and would be acceptable for ensuring the pulse meets the pulse-shape requirement.

The FAA determined that the ideal pulse discussion in the proposed special conditions is consistent with FAA's previous guidance on this issue. The FAA's intent in the Discussion section is to model the less-severe or reduced-pulse test conditions after the ideal pulse defined in AC 25.562–1B, figure 3.1, where t_1 is defined as the rise time. The recommendation to not deviate from the ideal pulse by more than 0.5g until $1.33t_1$ is intended to ensure an appropriate pulse shape is achieved for such reduced-pulse tests. This is not a typographical error and is consistent with previous policy provided for conducting reduced-pulse tests for seats with airbag systems. This recommendation remains true regardless of the activation setting for the feature under consideration, provided that the activation setting is less than the minimum pulse defined in AC 25.562–1B, figure 3.1, *e.g.,* 16g for a forward test. A 2g deviation from the ideal pulse is discussed in appendix 1 of AC 25.562–1B, and is relevant only when evaluating an actual pulse to the ideal pulse under normal (non-reduced) conditions. Because the Discussion section of this special conditions document is intended to convey an acceptable means for conducting reduced-pulse tests, and is not a regulatory requirement, the content of the Discussion section remains as proposed. However, the FAA recognizes that other means to conduct reduced-pulse tests may be proposed, provided

that the applicant can show that the test conditions are scaled appropriately.

Except as discussed above, the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 737 series airplanes. Should Boeing apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only one novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 737 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating an inertia locking device (ILD) must meet the following:

1. *Level of Protection Provided by ILD*—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. *Protection Provided Below and Above the ILD Actuation Condition*—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. *Protection Over a Range of Crash Pulse Vectors*—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. *Protection During Secondary Impacts*—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. *Protection of Occupants other than 50th Percentile*—Protection of occupants for a range of stature from a 2-year-old child to a 95th percentile male must be shown.

6. *Inadvertent Operation*—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. *Installation Protection*—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. *Reliability*—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging/drying of lubricants, and corrosion.

9. *Maintenance and Functional Checks*—The design, installation and operation of the ILD must be such that it is possible to functionally check the device in place. Additionally, a functional-check method and a maintenance-check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. *Release Function*—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Des Moines, Washington, on October 25, 2019.

James E. Wilborn,

Acting Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–23740 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2019–0814; Special Conditions No. 25–759–SC]

Special Conditions: Airbus Model A340 Series Airplanes; Seats With Inertia Locking Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Airbus Model A340 series airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. This design feature is seats with inertia locking devices (ILD). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Airbus on October 31, 2019. Send comments on or before December 16, 2019.

ADDRESSES: Send comments identified by Docket No. FAA–2019–0814 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the

individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478).

Docket: Background documents or comments received may be read at *http://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Shannon Lennon, Cabin and Airframe Safety Section, AIR–675, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone and fax 206–231–3209; email *Shannon.Lennon@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been subject to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, the FAA has determined that prior public notice and comment are unnecessary, and finds that, for the same reason, good cause exists for adopting these special conditions upon publication in the **Federal Register**.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On December 19, 2017, Airbus applied for a change to Type Certificate No. A43NM for seats with ILD in the Model A340 series airplanes. The Airbus Model A340 series airplane is a four-engine, transport category airplane with a maximum takeoff weight of 824,528 pounds and seating for 440 passengers.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR) 21.101, Airbus must show that the Airbus Model A340 series airplanes, as changed, continue to meet the applicable provisions of the regulations listed in Type Certificate No. A43NM, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Airbus Model A340 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Airbus Model A340 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34, and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Airbus Model A340 series airplanes will incorporate the following novel or unusual design features:

Seats with inertia locking devices.

Discussion

Airbus will install, in Model A340 series airplanes, Thompson Aero Seating Ltd. first-class passenger seats that can be translated in the fore and aft direction by an electrically powered motor (actuator) that is attached to the seat primary structure. Under typical service-loading conditions, the motor internal brake is able to translate the seat and hold the seat in the translated position. However, under the inertial loads of emergency-landing loading conditions specified in 14 CFR 25.562, the motor internal brake may not be able to maintain the seat in the required position. The ILD is an ''active'' device intended to control seat movement (*i.e.,* a system that mechanically deploys during an impact event) to lock the gears of the motor assembly in place. The ILD mechanism is activated by the higher inertial load factors that could occur during an emergency-landing event. Each seat place incorporates two ILDs, one on either side of the seat pan. Only one ILD is required to hold an occupied seat in position during worst-case dynamic loading specified in § 25.562.

The ILD will self-activate only in the event of a predetermined airplane loading condition such as that occurring during crash or emergency landing, and will prevent excessive seat forward translation. A minimum level of protection must be provided if the seat-locking device does not deploy.

The normal means of satisfying the structural and occupant protection requirements of § 25.562 result in a non-quantified, but nominally predictable, progressive structural deformation or reduction of injury severity for impact conditions less than the maximum specified by the rule. A seat using ILD technology, however, may involve a step change in protection for impacts below and above that at which the ILD activates and deploys to retain the seat pan in place. This could result in structural deformation or occupant injury output being higher at an intermediate impact condition than that resulting from the maximum impact condition. It is acceptable for such step-change characteristics to exist, provided the resulting output does not exceed the maximum allowable criteria at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by the requirements.

The ideal triangular maximum severity pulse is defined in Advisory Circular (AC) 25.562–1B. For the evaluation and testing of less-severe pulses for purposes of assessing the effectiveness of the ILD deployment setting, a similar triangular pulse should be used with acceleration, rise time, and velocity change scaled accordingly. The magnitude of the required pulse should not deviate below the ideal pulse by more than 0.5g until 1.33 t_1 is reached, where t_1 represents the time interval between 0 and t_1 on the referenced pulse shape as shown in AC 25.562–1B. This is an acceptable method of compliance to the test requirements of the special conditions.

Conditions 1 through 5 address ensuring that the ILD activates when intended, to provide the necessary

protection of occupants. This includes protection of a range of occupants under various accident conditions. Conditions 6 through 10 address maintenance and reliability of the ILD, including any outside influences on the mechanism, to ensure it functions as intended.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Airbus Model A340 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on one model series of airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Airbus Model A340 series airplanes.

In addition to the requirements of § 25.562, passenger seats incorporating an inertia locking device (ILD) must meet the following:

1. Level of Protection Provided by ILD—It must be demonstrated by test that the seats and attachments, when subject to the emergency-landing dynamic conditions specified in § 25.562, and with one ILD not deployed, do not experience structural failure that could result in:

a. Separation of the seat from the airplane floor.

b. Separation of any part of the seat that could form a hazard to the seat occupant or any other airplane occupant.

c. Failure of the occupant restraint or any other condition that could result in the occupant separating from the seat.

2. Protection Provided Below and Above the ILD Actuation Condition—If step-change effects on occupant protection exist for impacts below and above that at which the ILD deploys, tests must be performed to demonstrate that the occupant is shown to be protected at any condition at which the ILD does or does not deploy, up to the maximum severity pulse specified by § 25.562. Test conditions must take into account any necessary tolerances for deployment.

3. Protection Over a Range of Crash Pulse Vectors—The ILD must be shown to function as intended for all test vectors specified in § 25.562.

4. Protection During Secondary Impacts—The ILD activation setting must be demonstrated to maximize the probability of the protection being available when needed, considering a secondary impact that is above the severity at which the device is intended to deploy up to the impact loading required by § 25.562.

5. Protection of Occupants other than 50th Percentile—Protection of occupants for a range of stature from a two-year-old child to a 95th percentile male must be shown.

6. Inadvertent Operation—It must be shown that any inadvertent operation of the ILD does not affect the performance of the device during a subsequent emergency landing.

7. Installation Protection—It must be shown that the ILD installation is protected from contamination and interference from foreign objects.

8. Reliability—The performance of the ILD must not be altered by the effects of wear, manufacturing tolerances, aging or drying of lubricants, and corrosion.

9. Maintenance and Functional Checks—The design, installation, and operation of the ILD must be such that it is possible to functionally check the device in place. Additionally, a functional check method and a maintenance check interval must be included in the seat installer's instructions for continued airworthiness (ICA) document.

10. Release Function—If a means exists to release an inadvertently activated ILD, the release means must not introduce additional hidden failures that would prevent the ILD from functioning properly.

Issued in Des Moines, Washington, on October 25, 2019.

James E. Wilborn,

Manager, Transport Standards Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2019–23798 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0716; Product Identifier 2019–NM–168–AD; Amendment 39–19764; AD 2019–20–11]

RIN 2120–AA64

Airworthiness Directives; ATR–GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all ATR–GIE Avions de Transport Régional Model ATR72 airplanes. This AD was prompted by reports of incorrectly installed main landing gear (MLG) bushings. This AD requires a one-time general visual inspection of the bushing installation on the left-hand and right-hand MLG, and replacement of incorrectly installed bushings, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective November 15, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publications listed in this AD as of November 15, 2019.

The FAA must receive comments on this AD by December 16, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu*;

internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, 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 in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0716.

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–2019–0716; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, 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: Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0236, dated September 23, 2019 (''EASA AD 2019–0236'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all ATR–GIE Avions de Transport Régional Model ATR72 airplanes.

This AD was prompted by reports of incorrectly installed MLG bushings. The FAA is issuing this AD to address MLG bushings installed in the inverted position, which could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to occupants. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0236 describes procedures for a one-time general visual inspection of the bushing installation on the left-hand and right-hand MLG, and replacement of incorrectly installed bushings. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to a bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI referenced above. The FAA is issuing this AD because the agency evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2019–0236 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD. This AD also requires sending the inspection results to ATR.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA initially worked with Airbus and EASA to develop a process to use certain EASA ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has since coordinated with other manufacturers and civil aviation authorities (CAAs) to use this process. As a result, EASA AD 2019–0236 will be incorporated by reference in the FAA final rule. This AD, therefore, requires compliance with EASA AD 2019–0236 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in the EASA AD does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in the EASA AD. Service information specified in EASA AD 2019–0236 that is required for compliance with EASA AD 2019–0236 will be available on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0716 after the FAA final rule is published.

FAA's Justification and Determination of the Effective Date

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 MLG bushings installed in the inverted position could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to occupants. Therefore, the FAA finds good cause that notice and opportunity for prior public comment are impracticable. In addition, for the reasons stated above, the FAA finds that good cause exists 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 the FAA did not precede it by notice and opportunity for public comment. The FAA invites you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0716; Product Identifier 2019–NM–168–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this AD. The FAA will consider all comments received by the closing date and may amend this AD based on 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 AD.

Interim Action

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

Regulatory Flexibility Act

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

and comment, RFA analysis is not required.

Costs of Compliance

The FAA estimates that this AD affects 19 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$1,615

* Table does not include estimated costs for reporting the inspection results.

The FAA estimates that it takes about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $1,615, or $85 per product.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
27 work-hours × $85 per hour = $2,295	$14,982	$17,277

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the Information Collection Clearance Officer, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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

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

For the reasons discussed above, I certify 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):

2019–20–11 ATR–GIE Avions de Transport Régional: Amendment 39–19764; Docket No. FAA–2019–0716; Product Identifier 2019–NM–168–AD.

(a) Effective Date

This AD becomes effective November 15, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes, all manufacturer serial numbers, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of incorrectly installed main landing gear (MLG) bushings. The FAA is issuing this AD to address MLG bushings installed in the inverted position, which could lead to MLG structural failure and subsequent collapse of the MLG, possibly resulting in damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2019–0236, dated September 23, 2019 (''EASA AD 2019–0236'').

(h) Exceptions to EASA AD 2019–0236

(1) For purposes of determining compliance with the requirements of this AD: Where EASA AD 2019–0236 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0236 does not apply to this AD.

(3) Paragraph (6) of EASA AD 2019–0236 specifies to report inspection results to ATR within a certain compliance time. For this AD, report inspection results at the applicable time specified in paragraph (h)(3)(i) or (ii) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(i) No Requirement for Return of Parts

Although the service information referenced in EASA AD 2019–0236 specifies to return parts to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Section, Transport Standards 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 International Section, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or ATR–GIE Avions de Transport Régional's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Paperwork Reduction Act Burden Statement:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the Information Collection Clearance Officer, FAA, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(k) Related Information

For more information about this AD, contact Shahram Daneshmandi, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3220.

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0236, dated September 23, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0236, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu*; Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, 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. This material may be found in the AD docket on the internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0716.

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

Issued in Des Moines, Washington, on October 10, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–23712 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0816 Airspace Docket No. 19–AWA–4]

RIN 2120–AA66

Amendment of Class C Airspace; Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Huntsville, AL, Class C airspace area by amending the legal description to update the current airport reference point (ARP) for the Huntsville International-Carl T. Jones Field and the name of the Redstone AAF airport information. Additionally, minor administrative edits to the legal description title and the Chart Supplement reference are made for readability. This action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area.

DATES: Effective date 0901 UTC, December 5, 2019. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: 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 Rules and Regulations 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: Colby Abbott, Rules and Regulations

Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of 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 updates the ARP geographic coordinates for the Huntsville International-Carl T. Jones Field and the airport name for the Redstone AAF that is contained in the Huntsville, AL, Class C airspace description.

History

Class C airspace areas are designed to improve air safety by reducing the risk of midair collisions in high volume airport terminal areas and to enhance the management of air traffic operations in that area. During a recent review of the Huntsville, AL, Class C airspace area description, the FAA identified that the airport's ARP geographic coordinates and the Redstone AAF airport name were incorrect. This action updates the Huntsville International-Carl T. Jones Field ARP geographic coordinates and the Redstone AAF airport name to coincide with the FAA's aeronautical database information. There are no changes to the boundaries, altitudes, or air traffic control services resulting from this action.

Class C airspace designations are published in paragraph 4000 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR part 71.1. The Class C airspace designation 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.

Availability and Summary of Documents for Incorporation by Reference

This document amends 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 Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Huntsville International-Carl T. Jones Field ARP geographic coordinates and the Redstone AAF airport name contained in the airspace area description. The Huntsville International-Carl T. Jones Field ARP geographic position for the airport is changed from ''lat. 34°38′25″ N, long. 86°46′30″; W'' to ''lat. 34°38′14″ N, long. 86°46′23″ W.'' and the airport name ''Redstone Army Air Field'' is changed to ''Redstone AAF''. These amendments to the Huntsville International-Carl T. Jones Field ARP geographic coordinates and Redstone AAF airport name reflect the current information in the FAA's aeronautical database. Additionally, minor administrative edits to the legal description title and Chart Supplement reference were made for readability and to comply with airspace legal description policy guidance.

This is an administrative change and does not affect the boundaries, altitudes, or operating requirements of the airspace, therefore, notice and public procedure under 5 U.S.C. 553(b) is unnecessary.

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. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act, and its agency implementing regulations in FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' regarding categorical exclusions for procedural actions at paragraph 5–6.5a, which categorically excludes from full environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points. Since this action does not change the boundaries, altitudes, or operating requirements of the Class C airspace area, and only amends the legal description to contain the current Huntsville International-Carl T. Jones Field ARP geographic coordinates and Redstone AAF airport name information, this airspace action is not expected to cause any potentially significant environmental impacts. In accordance with FAAO 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, this action has been reviewed for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis, and it is determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 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 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, effective September 15, 2019, is amended as follows:

Paragraph 4000 Class C Airspace.

* * * * *

ASO AL C Huntsville, AL [Amended]

Huntsville International-Carl T. Jones Field, AL
(Lat. 34°38′14″ N, long. 86°46′30″ W)
Redstone AAF, AL
(Lat. 34°40′43″ N, long. 86°41′05″ W)

That airspace within a 5-mile radius of the Huntsville International-Carl T. Jones Field extending upward from the surface to and including 4,600 feet MSL, excluding that airspace within a 1-mile radius of the Redstone AAF; and that airspace within a 10-mile radius of the airport from the 015° bearing from the airport clockwise to the 145° bearing from the airport extending upward from 2,400 feet MSL to and including 4,600 feet MSL; and that airspace within a 10-mile radius of the airport from the 145° bearing from the airport clockwise to the 015° bearing from the airport extending upward from 2,000 feet MSL to and including 4,600 feet MSL. All airspace contained within Restricted Areas R–2104A, R–2104B, and R–2104C is excluded from this Class C airspace area when they are active. This Class C 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.

Issued in Washington, DC, on October 21, 2019.

Scott M. Rosenbloom,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2019–23398 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2019–0631]

RIN 1625–AA08

Special Local Regulation; Atlantic Ocean, Key West, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation for power boat races. This action is necessary to ensure safety of life on navigable waters on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. This regulation prohibits persons and vessels from entering, transiting through, anchoring in, or remaining within the regulated area without permission from the Captain of the Port Key West or a designated representative.

DATES: This rule is effective from 9:30 a.m. until 4:30 p.m. each day on November 6, 8, and 10, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2019–0631 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 Ensign Vera Max, Sector Key West Waterways Management Division, Coast Guard; telephone (305) 292–8768, email *SKWWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On May 20, 2019, Race World Offshore notified the Coast Guard that it would be conducting high speed boat races from 9:30 a.m. until 4:30 p.m. each day on November 6, 8, and 10, 2019. Approximately 50 participants and 200 spectator craft are expected to attend the event, which will take place in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance in Key West, FL. In response, on August 6, 2019, the Coast Guard published a notice of proposed rulemaking (NPRM) titled, ''Special Local Regulation; Atlantic Ocean, Key West, FL'' (84 FR 38148). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this power boat race event. During the comment period that ended September 5, 2019, we received one supporting comment.

Another sponsor intends to conduct a high-speed boat race on the same dates and times as the Race World Offshore's event. The other sponsor has an existing waterway closure already listed in the regulations at 33 CFR 100.701, Table to § 100.701(c)(4). Regardless of which sponsor's event or events are conducted, the regulated area will be the same, as both events have nearly identical race courses.

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**. This rule has already been released for public comments, which are addressed in Section IV. Delaying the effective date of this rule would be impracticable because the event is taking place on November 6, 8, and 10, 2019, and immediate action is needed to respond to the potential safety hazards associated with this event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041 (previously 33 U.S.C. 1233). The Captain of the Port Key West (COTP) has determined that the potential hazards associated with the high-speed boat race would be a safety concern for the participants, participant vessels, and the general public. The purpose of this rule is to protect event participants, spectators, and vessels on the navigable waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance before, during, and after the scheduled event.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment in support of our NPRM, which published on August 6, 2019. There is one change in the regulatory text from the regulatory text in the NPRM. The sponsor's event title is removed due to the uncertainty of which entity will be responsible for the races. The races will be held in the same location, on the same dates, at the same time, regardless of which sponsor is responsible. All other particulars for the event are the same.

This rule establishes a temporary special local regulation from 9:30 a.m. until 4:30 p.m. on November 6, 8, and 10, 2019. The temporary special local regulation consists of two regulated areas: (1) Race and safety buffer are, and (2) spectator area. These areas prohibit persons and vessels from entering, transiting through, anchoring in, or remaining within the race area or buffer zone and prohibit vessels from transiting at speeds that cause wake within the spectator area, unless authorized by the COTP Key West or a designated representative. The temporary special local regulation covers all navigable waters in the Atlantic Ocean, off the tip of Key West, Florida, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance.

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 location, duration, and time-of-day of the regulated area. Although persons and vessels may not enter, transit through, anchor in, or remain within the area without authorization from the COTP or a designated representative, they will be able to safely transit around the area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the area, and the rule will allow vessels to seek permission to enter the area between race heats.

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 received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary special local regulation lasting 7 hours on 3 days that will prohibit entry into the race area or buffer zone, and prohibit vessels from transiting at speeds that cause wake within the spectator area. It is categorically excluded from further review under paragraph L61 in Table 3–1 of U.S. Coast Guard Environmental Planning Implementing Procedures. 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add a temporary § 100.T799–0631 to read as follows:

§ 100.T799–0631 Special Local Regulation; Power Boat Races, Key West, FL.

(a) *Locations.* The following regulated areas are established as special local regulations. All coordinates are North American Datum 1983.

(1) *Race and Safety Buffer Area.* Waters of the Atlantic Ocean of Key

West, FL that are encompassed within the following points: Starting at Point 1 in position 24°32.506′ N, 81°49.984′ W; thence southwest to Point 2 in position 24°32.455′ N, 81°49.040′ W; thence northwest to Point 3 in position 24°32.559′ N, 81°49.584′ W; thence northwest to Point 4 in position 24°32.608′ N, 81°49.628′ W; thence northwest to Point 5 in position 24°33.095′ N, 81°49.265′ W; thence northeast to Point 6 in position 24°33.518′ N, 81°48.902′ W; thence northeast to Point 7 in position 24°33.908′ N, 81°48.448′ W; thence east to Point 8 in position 24°33.898′ N, 81°48.364′ W; thence southeast back to origin.

(2) *Spectator Area.* All waters of the Atlantic Ocean in Key West, FL that are encompassed within the following points: Starting at Point 1 in position 24°33.123′ N, 81°49.290′ W; thence northeast to Point 2 in position 24°33.545′ N, 81°48.923′ W; thence east to Point 3 in position 24°33.518′ N, 81°48.902′ W thence southwest to point 4 in position 24°33.095′ N, 81°49.265′ W thence west back to origin.

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

(c) *Regulations.* (1) All non-participant persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated areas described in paragraph (a) of this section unless authorized by the Captain of the Port Key West or their designated representative.

(2) All persons are prohibited from entering the water or swimming in the spectator area described in paragraph (a)(2) of this section.

(3) All vessels are prohibited from transiting at speeds that cause wake within the spectator area described in paragraph (a)(2) of this section.

(4) To seek permission to enter, contact the Captain of the Port Key West or a designated representative by telephone at (305) 433–0954, or via VHF radio on channel 16. If authorization is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative

(5) The Coast Guard will provide notice of the regulated area by Broadcast Notice to Mariners and on-scene designated representatives.

(d) *Enforcement Period.* This section will be enforced from 9:30 a.m. until 4:30 p.m. on November 6, 8, and 10, 2019.

Dated: October 17, 2019.

A. Chamie,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2019–23808 Filed 10–30–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0561]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the existing drawbridge operation regulation for the Jensen Beach (SR707a) Bridge across the Atlantic Intracoastal Waterway, mile 981.4, at Stuart, FL. The drawbridge was converted to a fixed bridge in 2005. The operating regulation is no longer applicable or necessary.

DATES: This rule is effective October 31, 2019.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Type USCG–2019–0561 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Jennifer Zercher, Bridge Administration Branch, United States Coast Guard District Seven; telephone 305–415–6740, email *jennifer.n.zercher@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this final 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because Jensen Beach (SR707a) Bridge was converted to a fixed bridge in 2005 and no longer requires the draw operations in 33 CFR 117.261(o). Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

We are issuing this rule under 5 U.S.C. 553(d)(3). The Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge was removed from the waterway 14 years ago and this rule merely requires an administrative change to the **Federal Register** in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority of The Bridge Act of 1894, 33 U.S.C. 499.

The Jensen Beach (SR707a) Bridge was converted to a fixed bridge in 2005. The regulation for the previously existing drawbridge was not removed subsequent to the bridge's conversion to a fixed bridge. The conversion of this bridge necessitates the removal of the drawbridge operation regulation, 33 CFR 117.261(o), because this drawbridge regulation governs a bridge that is no longer able to be opened.

IV. Discussion of Final Rule

The Coast Guard is changing the regulation in 33 CFR 117.261 by removing restrictions and the regulatory burden related to draw operations for a

bridge, which is no longer a drawbridge. The change removes 33 CFR 117.261(o) of the regulation governing the Jensen Beach (SR707a) Bridge since the bridge has been converted to a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing language that governs the operation of the Jensen Beach (SR707a) Bridge, which is no longer a drawbridge. This change does not affect waterway or land traffic. This change does not affect or alter the operating schedules in 33 CFR 117.261 that govern the remaining active drawbridges on the Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

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 protesters.

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, it 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 fact that the bridge was removed from the waterway and the replacement structure is a fixed bridge. The removal of the operating schedule from 33 CFR 117 subpart B will have no effect on the movement of waterway or land traffic.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 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.

For the reasons stated in section V.A above this final 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**, above.

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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). We have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

A Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

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 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

§ 117.261 [Amended]

■ 2. Amend § 117.261 by removing and reserving paragraph (o).

Dated: October 22, 2019.

Eric C. Jones,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 2019–23885 Filed 10–30–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0269, FRL–10001–52–Region 10]

Air Plan Approval; OR: 2018 Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Oregon State Implementation Plan (SIP) submitted on December 11, 2018. The revisions update the SIP to allow for electronic public notice of proposed major stationary source permits, add references to stationary source sampling requirements, make use of plain language, and correct errors. The EPA has determined the changes are consistent with Clean Air Act requirements.

DATES: This final rule is effective December 2, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2019–0269. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly-available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–6357, or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it refers to the EPA.

Table of Contents

I. Background
II. Response to Comment
III. Final Action
IV. Incorporation by Reference
V. Oregon Notice Provision
VI. Statutory and Executive Order Review

I. Background

On December 11, 2018, Oregon submitted revised regulations to the EPA for approval into the Oregon SIP. On July 16, 2019, we proposed to approve the submitted changes (84 FR 33883). The reasons for our proposed approval were stated in the proposed rule and will not be re-stated here. The public comment period for our proposed action ended on August 15, 2019. We received two comments.

II. Response to Comment

The first comment, submitted anonymously, supported the proposed action. The second comment, submitted by Oregon Business & Industry (OBI), also supported the proposed action. In the comment, OBI requested that we make clear in the final rule that the EPA's action does not approve or incorporate by reference into the Oregon SIP any source obligation or regulatory requirement under the Cleaner Air Oregon program, regardless of whether such obligation or regulation is included in any sections of the Oregon Administrative Rules or in the Source Sampling Manual. We believe our regulatory text amending 40 CFR part 52, subpart MM, clearly states the scope of our approval and addresses the comment. The full text of the comments are in the docket for this action.

III. Final Action

The EPA is approving, and incorporating by reference, the submitted changes to the following provisions, State effective November 16, 2018:

- Division 200 General Air Pollution Procedures and Definitions (0020, 0035);
- Division 209 Public Participation (0020, 0030, 0040, 0050); and
- Division 216 Air Contaminant Discharge Permits (0020, 0030, 0040, 0090, 8020).

These changes are approved only to the extent the requirements apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

The EPA is also approving, but not incorporating by reference, the submitted changes to the following provisions, State effective November 16, 2018:

- Division 12 Enforcement Procedure and Civil Penalties (0030, 0053, 0054, 0135, 0140), only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP; and
- Source Sampling Manual, Volume I, 2018 Edition, for purposes of the limits in the Oregon SIP.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference of Oregon Administrative Rules as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 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 the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the Oregon Department of Environmental Quality from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

[1] 62 FR 27968 (May 22, 1997).

VI. Statutory and Executive Order Review

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 that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: October 7, 2019.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM–Oregon

■ 2. In § 52.1970:

■ a. Paragraph (c), Table 2, is amended by:

■ i. Revising entries ''200–0020'', ''200–0035'', ''209–0020'', ''209–0030'', ''209–0040'', ''209–0050'', ''216–0020'', ''216–0030'', ''216–0040'', ''216–0090'', ''216–8020''; and

■ ii. Revising footnote number 1; and

■ b. Paragraph (e), Table 2, is amended by:

■ i. Revising the undesignated center heading ''Division 12—Enforcement Procedure and Civil Penalties'';

■ ii. Revising entries ''12–0030'', ''12–0053'', ''12–0054'', ''12–0135'', and ''12–0140''; and

■ iii. Adding footnote number 1 at the end of the table; and

■ c. Paragraph (e), Table 5, is amended by revising entry ''ODEQ Source Sampling Manual''.

The revisions and addition read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 2—EPA APPROVED OREGON ADMINISTRATIVE RULES (OAR) [1]

State citation	Title/subject	State effective date	EPA approval date	Explanations
CHAPTER 340—DEPARTMENT OF ENVIRONMENTAL QUALITY				
*	*	*	*	*
Division 200—General Air Pollution Procedures and Definitions				
*	*	*	*	*
200–0020	General Air Quality Definitions	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
200–0035	Reference Materials	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Division 209—Public Participation				
*	*	*	*	*
209–0020	Applicability	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
209–0030	Public Notice Categories and Timing	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
209–0040	Public Notice Information	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
209–0050	Public Notice Procedures	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Division 216—Air Contaminant Discharge Permits				
*	*	*	*	*
216–0020	Applicability and Jurisdiction	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
216–0030	Definitions	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
216–0040	Application Requirements	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
216–0090	Sources Subject to ACDPs and Fees	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
216–8020	Table 2—Air Contaminant Discharge Permits.	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

[1] The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

* * * * * (e) * * *

TABLE 2—OREGON ADMINISTRATIVE RULES APPROVED BUT NOT INCORPORATED BY REFERENCE

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Division 12—Enforcement Procedure and Civil Penalties [1]				
12–0030	Definitions	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
12–0053	Classification of Violations that Apply to all Programs.	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
12–0054	Air Quality Classification of Violations	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
12–0135	Selected Magnitude Categories	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
12–0140	Determination of Base Penalty	11/16/2018	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

[1] The EPA approves the provisions in Table 2 of this paragraph (e) only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP.

* * * * *

TABLE 5—STATE OF OREGON AIR QUALITY CONTROL PROGRAM APPROVED BUT NOT INCORPORATED BY REFERENCE

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanations
*	*	*	*	*
EPA-Approved Manuals				
ODEQ Source Sampling Manual.	State-wide	12/11/2018	10/31/2019, [Insert **Federal Register** citation].	Volume I (November 2018 edition) and Volume II (April 2015 edition) only for purposes of the emission limits and requirements approved into the Oregon SIP.
*	*	*	*	*

[FR Doc. 2019–23522 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2019–0426, FRL–10001–56–Region 10]

Air Plan Approval: Lane County, Oregon; 2019 Permitting Rule Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Oregon State Implementation Plan (SIP) submitted on June 13, 2019. The revisions, applicable in Lane County, Oregon, update regulations contained in the SIP to make minor syntax and renumbering changes, add a reference to the electronic public notice option, and update citations to reference materials such as the Code of Federal Regulations (CFR) and the most recent Oregon Source Sampling Manual. The EPA reviewed the submitted revisions and determined they are consistent with Clean Air Act (CAA) requirements.

DATES: This final rule is effective December 2, 2019.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2019–0426. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

I. Background

On June 13, 2019, Oregon submitted revised Lane Regional Air Protection Agency (LRAPA) regulations to the EPA for approval into the Oregon SIP. On August 14, 2019, the EPA proposed to approve the submitted changes (84 FR 40349). The reasons for our proposed approval were stated in the proposed rule and will not be re-stated here. The public comment period for our proposed action ended on September 13, 2019. We received no comments.

II. Final Action

The EPA is approving, and incorporating by reference, the submitted changes to the following regulations, State effective May 17, 2019:

- Title 12 General Provisions and Definitions (005, 020, 025);
- Title 31 Public Participation (0020, 0030, 0040, 0050); and
- Title 37 Air Contaminant Discharge Permits (0010, 0020, 0030, 0040, 0090, 8020).

These changes are approved only to the extent the requirements apply to (1) pollutants for which National Ambient Air Quality Standards (NAAQS) have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

The EPA is also approving, but not incorporating by reference, the submitted changes to the following regulations, State effective May 17, 2019:

- Title 15 Enforcement Procedure and Civil Penalties (005, 018, 020, 025, 030, 045, 055, 060), only to the extent the rules relate to enforcement of the requirements contained in the Oregon SIP.

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 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 the EPA for inclusion in the SIP, have been incorporated by reference by the EPA into that plan, are fully federally-enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits the Oregon Department of Environmental Quality from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five-day period. By its terms, the statute does not apply to Oregon's title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

V. Statutory and Executive Order Review

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 that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 30, 2019. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: October 16, 2019.

Chris Hladick,

Regional Administrator, Region 10.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart MM—Oregon

■ 2. In § 52.1970:

■ a. Paragraph (c), Table 4, is amended by:

■ i. Removing undesignated center heading ''Title 12—Definitions'' and adding in its place ''Title 12—General Provisions and Definitions'';

■ ii. Revising entries ''12–005'', ''12–020'', ''12–025'', ''31–0020'', ''31–0030'', ''31–0040'', ''31–0050'', ''37–0010'', ''37–0020'', ''37–0030'', ''37–0040'', ''37–0090'', ''37–8020''; and

■ iii. Revising footnote number 1; and

■ b. Paragraph (e), Table 3, is amended by:

■ i. Removing undesignated center heading ''Title 15—Enforcement Procedures and Civil Penalties'' and adding in its place ''Title 15—Enforcement Procedure and Civil Penalties'' and adding a reference to footnote number 1;

■ ii. Revising entries ''15–005'', ''15–018'', ''15–020'', ''15–025'', ''15–030'', ''15–045'', ''15–055'', and ''15–060''; and

■ iii. Adding footnote number 1 at the end of the table.

The revisions and additions read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON [1]

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Title 12—General Provisions and Definitions				
*	*	*	*	*
12–005	Definitions	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
12–020	Exceptions	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
12–025	Reference Materials	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Title 31—Public Participation				
*	*	*	*	*
31–0020	Applicability	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
31–0030	Public Notice Categories and Timing	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
31–0040	Public Notice Information	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
31–0050	Public Notice Procedures	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
Title 37—Air Contaminant Discharge Permits				
37–0010	Purpose	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
37–0020	Applicability and Jurisdiction	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	

TABLE 4—EPA APPROVED LANE REGIONAL AIR PROTECTION AGENCY (LRAPA) RULES FOR OREGON [1]—Continued

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
37–0030	Definitions	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
37–0040	Application Requirements	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
37–0090	Sources Subject to ACDPs and Fees	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
37–8020	Table 2—Air Contaminant Discharge Permit	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

[1] The EPA approves the requirements in Table 2 of this paragraph (c) only to the extent they apply to (1) pollutants for which NAAQS have been established (criteria pollutants) and precursors to those criteria pollutants as determined by the EPA for the applicable geographic area; and (2) any additional pollutants that are required to be regulated under Part C of Title I of the CAA, but only for the purposes of meeting or avoiding the requirements of Part C of Title I of the CAA.

* * * * * (e) * * *

TABLE 3—LANE REGIONAL AIR PROTECTION AGENCY REGULATIONS APPROVED BUT NOT INCORPORATED BY REFERENCE

LRAPA citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	*	*	*
Title 15—Enforcement Procedure and Civil Penalties [1]				
*	*	*	*	*
15–005	Definitions	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
15–018	Notice of Permit Violations (NPV) and Exceptions.	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
15–020	Enforcement Actions	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
15–025	Civil Penalty Schedule Matrices	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
15–030	Civil Penalty Determination Procedure (Mitigating and Aggravating Factors).	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
15–045	Stipulated Penalties	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
15–055	Air Quality Classification of Violation	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*
15–060	Selected Magnitude Categories	05/17/2019	10/31/2019, [Insert **Federal Register** citation].	
*	*	*	*	*

[1] The EPA approves the provisions in Table 3 of this paragraph (e) only to the extent the provisions relate to enforcement of the requirements contained in the Oregon SIP.

* * * * *

[FR Doc. 2019–23517 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 209, 212, and 252

[Docket DARS–2019–0065]

RIN 0750–AK58

Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Provision Related to Disclosure of Information for Litigation Support (DFARS Case 2019–D021)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a provision that is no longer necessary, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to remove DFARS provision 252.204–7013, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, its associated prescription at 204.7403 and related text at 209.505–4(b)(ii) and 212.301. This provision is included in solicitations for the acquisition of litigation support services. The provision includes a representation that, by submission of its offer, the offeror agrees to handle and protect all litigation information and documentation as described in the provision, indemnify the Government from any liability or claim that arises from the offeror's misuse of the litigation information, and ensure its employees are subject to the same use and nondisclosure obligations stated in the provision prior to accessing any litigation information. The provision also notifies offerors that third parties holding proprietary rights or any other legally protectable interest in the provided litigation information have the right of direct action against the offeror for any unauthorized use or disclosure by the offeror.

DFARS provision 252.204–7013 is unnecessary. The same information is provided to offerors by including DFARS clause 252.204–7014, Limitations on the Use or Disclosure of Information by Litigation Support Contractors, in a solicitation.

II. Discussion and Analysis

DFARS clause 252.204–7014 implements the authority and requirements of 10 U.S.C. 129d, which permits DoD to disclose information to a litigation support contractor if the disclosure is for the sole purpose of providing administrative, technical, or professional services to DoD in anticipation of or during litigation. The statute also requires that, under a contract, the contractor agree to and acknowledge specific terms and conditions on the use and disclosure of the information, and that any violation of these terms and conditions is a basis for termination of the litigation support contract. DFARS clause 252.204–7014 is included in all solicitations and contracts that involve litigation support services. The clause contains all of the information in DFARS provision 252.204–7013, as well as a statement that violation of the terms and conditions of the clause is a basis for termination of the contract. As such, the DFARS provision is redundant and can be removed from the DFARS.

The repeal of the DFARS provision implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on the provision. Subsequently, the DoD Task Force reviewed the requirements of DFARS provision 252.204–7013 and determined that it could be repealed.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only removes obsolete DFARS provision 252.204–7013, Limitations on the Use or Disclosure of Information by Litigation Support Contractors. This rule does not create any new provisions or clauses or impose any new requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an unnecessary provision from the DFARS.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C.

1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 209, 212, and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 209, 212, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 209, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE AND INFORMATION MATTERS

204.7403 [Amended]

■ 2. Amend section 204.7403 by—

■ a. In the section heading, removing ''Solicitation provision and contract'' and adding ''Contract'' in its place;

■ b. Removing paragraph (a); and

■ c. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively.

PART 209—CONTRACTOR QUALIFICATIONS

■ 3. Revise section 209.505–4(b)(ii) to read as follows:

209.505–4 Obtaining access to proprietary information.

(b) * * *

(ii) For litigation support contractors accessing litigation information, including that originating from third parties, use and non-disclosure requirements are addressed through the use of the clause at 252.204–7014, as prescribed at 204.7403(a). Pursuant to the clause, litigation support contractors are not required to enter into non-disclosure agreements directly with any third party asserting restrictions on any litigation information.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.301 [Amended]

■ 4. Amend section 212.301 by—

■ a. Removing paragraph (f)(ii)(E);

■ b. Redesignating paragraphs (f)(ii)(F) and (G) as paragraphs (f)(ii)(E) and (F), respectively;

■ c. In the newly redesignated (f)(ii)(E) removing ''204.7403(b)'' and adding ''204.7403(a)'' in its place; and

■ d. In the newly redesignated (f)(ii)(F) removing ''204.7403(c)'' and adding ''204.7403(b)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.204–7013 [Removed and Reserved]

■ 5. Remove and reserve section 252.204–7013.

252.204–7014 [Amended]

■ 6. Amend section 252.204–7014, in the introductory text, by removing ''204.7403(b)'' and adding ''204.7403(a)'' in its place.

252.204–7015 [Amended]

■ 7. Amend section 252.204–7015, in the introductory text, by removing ''204.7403(c)'' and adding ''204.7403(b)'' in its place.

[FR Doc. 2019–23802 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 207, 215, 216, and 234

[Docket DARS–2019–0026]

RIN 0750–AK38

Defense Federal Acquisition Regulation Supplement: Reliability and Maintainability in Weapon System Design (DFARS Case 2019–D003)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DOD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that requires the use of reliability and maintainability sustainment factors in weapon system design.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 125 on June 28, 2019, to implement section 834 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 834 of the NDAA for FY 2018 amends 10 U.S.C. to add section 2443, sustainment factors in weapon system design which requires program managers or comparable requiring activity officials exercising program management responsibilities to ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements for major weapon systems design and contracts for the—

- Engineering and manufacturing development of a weapon system, including embedded software; or
- Production of a weapon system, including embedded software.

As a matter of policy, the Under Secretary of Defense for Acquisition and Sustainment directed the application of the requirements of 10 U.S.C. 2443 to the technical maturation and risk reduction phase. No public comments were received on the proposed rule, and no changes are made in the final rule.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not propose to create any new provisions or clauses or impact any existing provisions or clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This final rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

This final rule is necessary to implement section 834 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 834 of the NDAA for FY 2018 amends Title 10, United States Code, to add section 2443, Sustainment factors in weapon system design. Section 2443 requires program managers or comparable requiring activity officials, exercising program management responsibilities, to ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements for major weapon systems design and contracts for the technical maturation and risk reduction and engineering and manufacturing development of a weapon system, including embedded software; or production of a weapon system. The objective of this final rule is to implement section 834 of the NDAA for FY 2018.

There were no issues raised by the public in response to the initial regulatory flexibility analysis provided in the proposed rule.

The final rule will apply to all small entities that have been or will be awarded contracts for the development of major weapon systems. Small business statistics were obtained from the Federal Procurement Data System for FY 2018 data identifying the DoD research and development engineering development awards issued, including task and delivery orders under single-award indefinite delivery indefinite quantity contracts and Basic Ordering Agreements as of February 26, 2019. Of the 78 contract awards, 15 awards or approximately 19 percent were made to unique small business entities.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives of the statute.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 207, 215, 216, and 234

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 207, 215, 216, and 234 are amended as follows:

■ 1. The authority citation for 48 CFR parts 207, 215, 216, and 234 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 207—ACQUISITION PLANNING

■ 2. Amend section 207.106 by—

■ a. In paragraph (S–70)(1), removing ''Section 802(a)'' and adding ''section 802(a)'' in its place;

■ b. Redesignating paragraphs (S–70)(2)(ii) through (iv) as paragraphs (iii) through (v), respectively;

■ c. Adding a new paragraph (S–70)(2)(ii); and

■ d. Adding paragraph (S–72)(5).

The additions read as follows:

207.106 Additional requirements for major systems.

* * * * *

(S–70) * * *

(2) * * *

(ii) In accordance with 10 U.S.C. 2443, to emphasize reliability and maintainability in weapon system design, ensure that reliability and maintainability are included in the performance attributes of the key performance parameters on sustainment during the development of capabilities requirements. For additional guidance see PGI 207.105(b)(14)(ii)*(2);*

* * * * *

(S–72) * * *

(5) In accordance with 10 U.S.C. 2443, acquisition plans for engineering manufacturing and development and production of major systems as defined in 10 U.S.C. 2302 and 2302d and for major defense acquisition programs as defined in 202.101, shall include performance measures that are developed using best practices for responding to the positive or negative performance of a contractor for the engineering and manufacturing development or production of a weapon system, including embedded software. At a minimum the contracting officer shall—

(i) Encourage the use of incentive fees and penalties as appropriate; and

(ii) Allow the program manager or comparable requiring activity official exercising program management responsibilities, to base determinations of a contractor's performance on reliability and maintainability data collected during the program. Such data collection and associated evaluation metrics shall be described in detail in the contract; and to the maximum extent practicable, the data shall be shared with appropriate contractor and Government organizations.

* * * * *

PART 215—CONTRACTING BY NEGOTIATION

■ 3. Amend section 215.304 by adding paragraph (c)(vi) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(vi) Ensure source selections emphasize sustainment factors and objective reliability and maintainability evaluation criteria in competitive contracts for the—

(A) Technical maturation and risk reduction phase of weapon system design (see guidance at PGI 207.105(b)(14)(ii)(*2*));

(B) Engineering and manufacturing development phase of a weapon system, including embedded software (10 U.S.C. 2443); or

(C) Production and deployment phase of a weapon system, including embedded software (10 U.S.C. 2443).

PART 216—TYPES OF CONTRACTS

■ 4. Amend section 216.402–2 by—

■ a. Designating the text as paragraph (1); and

■ b. Adding paragraph (2).

The addition reads as follows:

216.402–2 Technical performance incentives.

* * * * *

(2) Contracting officers shall ensure requirements about the payment of incentive fees or the imposition of penalties are included in the solicitation for a contract for the engineering and manufacturing development or production of a weapon system, including embedded software, if the program manager or comparable requiring activity official exercising program manager responsibilities includes—

(i) Provisions for the payment of incentive fees to the contractor, based on achievement of design specification requirements for reliability and maintainability of weapons systems under the contract; or

(ii) The imposition of penalties to be paid by the contractor to the Government for failure to achieve such design specification requirements (10 U.S.C. 2443).

PART 234—MAJOR SYSTEM ACQUISITION

■ 5. Amend section 234.004 by adding paragraph (3) to read as follows:

234.004 Acquisition strategy.

* * * * *

(3) The contracting officer shall include in solicitations for contracts for the technical maturation and risk reduction phase, engineering and manufacturing development phase or production phase of a weapon system, including embedded software—

(i) Clearly defined measurable criteria for engineering activities and design specifications for reliability and maintainability provided by the program manager, or the comparable requiring activity official performing program management responsibilities; or

(ii) Ensure a copy of the justification, executed by the program manager or the comparable requiring activity official performing program management responsibilities for the decision that engineering activities and design specifications for reliability and maintainability should not be a requirement, is included in the contract file (10 U.S.C. 2443).

[FR Doc. 2019–23812 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[Docket DARS–2019–0015]

RIN 0750–AK39

Defense Federal Acquisition Regulation Supplement: Nonmanufacturer Rule for 8(a) Participants (DFARS Case 2019–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a Small Business Administration rule that implemented a section of the National Defense Authorization Act for Fiscal Year 2013 to revise and standardize the limitations on subcontracting and the nonmanufacturer rule, which apply to small business concerns, including participants in the 8(a) Program.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer D. Johnson, telephone 571–372–6100.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 12187 on April 1, 2019, to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** at 81 FR 34243 on May 31, 2016. SBA's final rule implemented section 1651 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112–239, 15 U.S.C. 657s). Section 1651 revised and standardized the limitations on subcontracting and the nonmanufacturer rule that apply to small business concerns, including 8(a) Program participants, under procurements conducted pursuant to Federal Acquisition Regulation (FAR) part 19, Small Business Programs. Two respondents submitted public comments in response to the proposed rule.

II. Discussion and Analysis

DoD reviewed the public comments in the development of the final rule.

A. Summary of Significant Changes

There are no significant changes made to the final rule from the proposed rule. One minor edit is made to the clause in paragraph (a)(3) to change ''by the SBA'' to ''by SBA''.

B. Analysis of Public Comments

1. Support for the Rule

Comment: Both respondents expressed support for the proposed rule.

Response: DoD acknowledges the respondents' support.

2. Scope of the Rule

Comment: The respondents recommended expanding the rule to include all small businesses instead of limiting the rule to 8(a) participants. One respondent noted that application of the nonmanufacturer rule to all small business set-asides would require contracting officers to make a good faith effort to locate small business manufacturers before requesting a waiver from SBA. The respondent further noted that, without the nonmanufacturer rule and the waiver process, small business nonmanufacturers would serve as a pass-through for large global and foreign manufacturers.

Response: The scope of this final DFARS rule is limited to the 8(a) Program and cannot be expanded to all small business set-asides. Application of the nonmanufacturer rule to all small business set-asides is addressed in the FAR and will be updated in the final rule for FAR case 2016–011, Revision of Limitations on Subcontracting. DoD contracting officers must follow the FAR with regard to application of the nonmanufacturer rule to small business programs other than the 8(a) Program. In competitive procurements under the 8(a) Program, DoD contracting officers must use the clause at DFARS 252.219–7010, Notification of Competition Limited to Eligible 8(a) Participants—Partnership Agreement, which takes into account the Partnership Agreement between DoD and SBA.

III. Expected Impact of the Rule

Prior to publication of this final rule, the clause at DFARS 252.219–7010 required 8(a) participants that offer end items they did not manufacture or produce (*i.e.,* nonmanufacturers) to offer end items manufactured or produced by small business concerns in the United States or its outlying areas. This requirement is known as the ''nonmanufacturer rule.'' DFARS 252.219–7010 provided an exemption from the nonmanufacturer rule for contracts valued at or below $25,000 and awarded under simplified acquisition procedures. For these contracts, an 8(a) participant could offer end items manufactured or produced by any domestic firm.

SBA's final rule applied the nonmanufacturer rule to 8(a) contracts at any dollar value. There was no exemption for contracts valued at or below $25,000 and awarded under simplified acquisition procedures. Therefore, this rule removes that exemption from DFARS 252.219–7010. This change means the nonmanufacturer rule will apply to 8(a) contracts at any dollar value, and 8(a) participants that are nonmanufacturers will be required to offer end items manufactured, processed, or produced by small business concerns in the United States or its outlying areas.

To estimate the number of 8(a) participants that may be impacted by this change, DoD obtained data from the Federal Procurement Data System on DoD contracts, for products, awarded to 8(a) participants under the 8(a) Program. Contracts for services, including construction, were excluded because the nonmanufacturer rule only applies to

products, not services. In FY 2016 through FY 2018, DoD awarded contracts for products to an average of 285 8(a) participants each year. An average of 90 of those 8(a) participants per year were awarded approximately 2 contracts each that were valued at or below $25,000, using simplified acquisition procedures. Therefore, DoD estimates that approximately 90 participants may be impacted by this rule. Due to the small number of 8(a) participants that may be impacted, it is expected that the cost associated with this rule will be de minimis.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule applies the requirements of section 1651 of the NDAA for FY 2013 to contracts at or below the simplified acquisition threshold (SAT) and to contracts for the acquisition of commercial items, including commercially available off-the-shelf (COTS) items.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to contracts or subcontracts in amounts not greater than the simplified acquisition threshold. It is intended to limit the applicability of laws to such contracts or subcontracts. 41 U.S.C. 1905 provides that if a provision of law contains criminal or civil penalties, or if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt contracts or subcontracts at or below the SAT, the law will apply to them. The Principal Director, Defense Pricing and Contracting (DPC), is the appropriate authority to make comparable determinations for regulations to be published in the DFARS, which is part of the FAR system of regulations.

Therefore, given that SBA applied section 1651 to contracts and subcontracts at or below the SAT and that nearly 76 percent of the DoD contracts awarded to 8(a) participants in recent years are valued at or below the SAT, DoD has determined that it is in the best interest of the Federal Government to apply section 1651 to contracts or subcontracts at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including COTS Items

10 U.S.C. 2375 governs the applicability of laws to DoD contracts and subcontracts for the acquisition of commercial items, including COTS items, and is intended to limit the applicability of laws to contracts and subcontracts for the acquisition of Start Printed Page 25227commercial items, including COTS items. 10 U.S.C. 2375 provides that if a provision of law contains criminal or civil penalties, or if the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items. Due to delegations of authority from USD(A&S), the Principal Director, DPC, is the appropriate authority to make this determination.

C. Determinations

DoD has determined that it would not be in the best interest of the United States to exempt contracts not greater than the SAT or for the acquisitions of commercial items, including COTS items, from the applicability of section 1651 of the NDAA for FY 2013. These requirements are reflected in the SBA final rule published in the **Federal Register** on May 31, 2016 (81 FR 34243), which did not exempt contracts and subcontracts at or below the SAT or the acquisition of commercial items that are competed among, or awarded on a sole-source basis to, 8(a) Program participants. Application of section 1651 to these procurements will ensure that the benefits of contracts awarded under the 8(a) Program will flow to the intended parties. Nearly 76 percent of the DoD contracts awarded under the 8(a) Program are in amounts at or below the SAT, and approximately 72 percent of such contracts are for commercial items, including COTS items. Therefore, it is in the best interest of the Federal Government to apply the rule to contracts in amounts at or below the SAT and to the acquisition of commercial items, including COTS items, as defined at FAR 2.101.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published in the **Federal Register** on May 31, 2016, at 81 FR 34243. SBA's final rule implemented section 1651 of the National Defense Authorization Act for Fiscal Year (FY) 2013 (Pub. L. 112–239; 15 U.S.C. 657s), which revised and standardized the limitations on subcontracting and the nonmanufacturer rule that apply to small business concerns, including 8(a) Program participants, under procurements conducted pursuant to Federal Acquisition Regulation part 19, Small Business Programs.

The objective of the rule is to implement the revised nonmanufacturer rule for 8(a) Program participants by updating the clause at DFARS 252.219–7010, Notification of Competition Limited to Eligible 8(a) Participants—Partnership Agreement.

There were no significant issues raised by the public in response to the Initial Regulatory Flexibility Analysis.

This rule will apply to 8(a) participants that contract with DoD. According to data obtained from the Federal Procurement Data System (FPDS), DoD awarded contracts for products (*i.e.,* contracts to which the nonmanufacturer rule would apply) to an average of 285 8(a) participants each year during FY 2016 through FY 2018. The clause at DFARS 252.219–7010 provided an exemption from the nonmanufacturer rule for contracts valued at or below $25,000 and awarded under simplified acquisition procedures. SBA's final rule applied the nonmanufacturer rule to 8(a) contracts at any dollar value, with no exemption for contracts at or below $25,000. DoD awarded contracts at or below $25,000 to an average of 90 8(a) participants

each year during FY 2016 through FY 2018.

This rule does not impose any new reporting, recordkeeping or other compliance requirements for small entities.

There are no known, significant alternatives that would meet the requirements of the applicable statute.

VIII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219 and 252 are amended as follows:

■ 1. The authority citation for parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.811–3 [Amended]

■ 2. Amend section 219.811–3 by removing ''Eligible 8(a) Concerns'' and adding ''Eligible 8(a) Participants'' wherever they appear.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.219–7010 by—

■ a. In the section heading, removing ''Eligible 8(a) Concerns'' and adding ''Eligible 8(a) Participants'' in its place;

■ b. In the clause heading—

■ i. Removing ''Eligible 8(a) Concerns'' and adding ''Eligible 8(a) Participants'' in its place; and

■ ii. Removing ''(MAR 2016)'' and adding ''(OCT 2019)'' in its place;

■ c. In the paragraph (a) introductory text, removing ''in the SBA's'' and adding ''in SBA's'' in its place;

■ d. In paragraph (a)(2), removing ''by the SBA'' and adding ''by SBA'' in its place;

■ e. In paragraph (a)(3), removing ''*by the SBA*'' and adding ''*by SBA*'' in its place;

■ e. Redesignating paragraph (d)(2) as paragraph (e); and

■ f. Revising paragraph (d).

The revision reads as follows:

252.219–7010 Notification of Competition Limited to Eligible 8(a) Participants—Partnership Agreement

* * * * *

(d)(1) Unless SBA has waived the requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause in accordance with 13 CFR 121.1204, a small business concern that provides an end item it did not manufacture, process, or produce, shall—

(i) Provide an end item that a small business has manufactured, processed, or produced in the United States or its outlying areas; for kit assemblers, see paragraph (d)(2) of this clause instead;

(ii) Be primarily engaged in the retail or wholesale trade and normally sell the type of item being supplied; and

(iii) Take ownership or possession of the item(s) with its personnel, equipment, or facilities in a manner consistent with industry practice; for example, providing storage, transportation, or delivery.

(2) When the end item being acquired is a kit of supplies, at least 50 percent of the total cost of the components of the kit shall be manufactured, processed, or produced by small businesses in the United States or its outlying areas.

(3) The requirements of paragraphs (d)(1)(i) through (iii) and (d)(2) of this clause do not apply to construction or service contracts.

* * * * *

[FR Doc. 2019–23811 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0061]

RIN 0750–AK52

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Protection Against Compromising Emanations'' (DFARS Case 2019–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update a reference in an existing clause.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the clause at DFARS 252.239–7000, Protection Against Compromising Emanations, to update a reference within the clause to the current TEMPEST standard. This clause is included in solicitations and contracts involving information technology that requires protection against compromising emanations. The clause requires contractors to provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of the National Security Agency National TEMPEST standards or other standards specified by the contract. The clause further identifies NACSEM No. 5100 and NACSEM No. 5100A as examples of TEMPEST Standards. NSTISSAM TEMPEST 1–92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U) is the most current TEMPEST standard and supersedes the NACSEM standards identified in the clause. This rule updates the example provided in the clause to the current standard.

II. Discussion and Analysis

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.239–7000, determined that the clause should be updated, and recommended its modification in the DFARS.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule only updates a reference in an existing clause. The rule does not impose any new requirements on

contracts at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the Federal Acquisition Regulation (FAR) is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely updating a reference in an existing clause.

V. Executive Orders 12866 and 13563

E.O. 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

VI. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VII. Regulatory Flexibility Act

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section IV. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

VIII. Paperwork Reduction Act

This rule modifies a clause included in a currently approved collection under Office of Management and Budget (OMB) Control Number 0704–0341, DFARS Part 239, Acquisition of Information Technology, and associated clauses at DFARS 252.239–7000. However, this rule does not affect the requirements of the currently approved collection or add any new collection requirements that necessitate OMB approval under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for parts 239 and 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Amend section 239.7102–2 by revising paragraph (a) to read as follows:

239.7102–2 Compromising emanations—TEMPEST or other standard.

* * * * *

(a) The required protections, *i.e.,* an established National TEMPEST standard (*e.g.,* NSTISSAM TEMPEST 1–92) or a standard used by other authority;

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.239–7000 by—

■ a. Removing the clause date ''(JUN 2004)'' and adding ''(OCT 2019)'' in its place; and

■ b. Revising paragraph (a)(1) to read as follows:

252.239–7000 Protection Against Compromising Emanations.

* * * * *

(a) * * *

(1) The National Security Agency National TEMPEST Standards (NSTISSAM TEMPEST 1–92, Compromising Emanations Laboratory Test Requirements, Electromagnetics (U)); or

* * * * *

[FR Doc. 2019–23804 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 239 and 252

[Docket DARS–2019–0029]

RIN 0750–AK11

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Obligation of the Government'' (DFARS Case 2018–D046)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of two other DFARS clauses on the same subject, in an effort to streamline contract terms and conditions for contractors, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Effective October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the **Federal Register** at 84 FR 30988 on June 28, 2019, to rename and modify DFARS clause 252.239–7013, Obligation of the Government, by: (1) Incorporating the information included in DFARS clause 252.239–7014, Term of Agreement; (2) creating an alternate for DFARS clause 252.239–7013 that is used in certain circumstances, in lieu of the basic clause, and includes the information in DFARS clauses 252.239–7013, –7014, and –7015; and, (3) amending the clause text to align with the termination notification requirement in the Federal Acquisition Regulation. As a result, DFARS clauses 252.239–7014 and 252.239–7015 are removed from the DFARS. No public comments were received in response to the proposed rule. An editorial change is made in the final rule to the clause title of DFARS 252.239–7013 to add a designation of ''Basic'' or ''Alternate I'' to the respective clause titles.

II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This rule does not create any new provisions or clauses. The rulemaking combines three existing clauses on the same topic into a basic and alternate clause and updates a notification timeframe within the clause to comply with existing regulations. This rule does not change the applicability of the affected clause.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and E.O. 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

V. Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The FRFA is summarized as follows:

The Department of Defense is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to: Rename DFARS clause 252.239–7013, Obligation of the Government, to include the information in DFARS clause 252.239–7014, Term of Agreement; create an alternate for DFARS clause 252.239–7013 that is used in certain circumstances, in lieu of the basic clause, and include the information in DFARS clauses 252.239–7013, –7014, and –7015; and, amend the text of 252.239–7013 to align with the termination notification timeframe in the Federal Acquisition Regulation. Combining these clauses will result in DFARS clauses 252.239–7014 and 252.239–7015 being removed from the DFARS. The objectives of this rule are to streamline contract terms and conditions pertaining to telecommunications services and update the requisite termination notification timeframe to comply with existing regulations.

The modification of these DFARS clauses supports a recommendation from the DoD Regulatory Reform Task Force. No public comments were received in response to the initial regulatory flexibility analysis.

This rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because it is simply combining two existing clauses that address the same topic into a single comprehensive clause, and clarifies the current practices regarding DoD liability to reimburse telecommunication services contractors in certain circumstances.

The Federal Procurement Data System (FPDS) does not collect information on the number of basic agreements that are negotiated or contracts and orders placed under basic agreements with contractors; instead, FPDS collects data on the orders and contracts awarded for telecommunication services, of which a percentage of those awards incorporate the terms and conditions of a basic agreement. Based on fiscal year 2018 data from FPDS, the Government awarded approximately 8,670 contracts and orders for services to 1,787 unique entities under the product and supply code (PSC) D3—Information Technology and Telecommunications. Of the 8,671 contracts and orders awarded, approximately 2,444 (28%) awards were made to 1,047 (59%) unique small businesses entities. The PSC D3 does not breakdown further into information technology services and telecommunications services; therefore, the number of small business entities affected by this rule is expected to be less than 1,047.

This rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known significant alternative approaches to the rule that would meet the stated objectives.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Amend section 239.7411 by revising paragraph (c) to read as follows:

239.7411 Contract clauses.

* * * * *

(c) Use the basic or alternate of the clause at 252.239–7013, Term of Agreement and Continuation of Services, in basic agreements for telecommunications services.

(1) Use the basic clause in basic agreements that do not supersede an existing basic agreement with the contractor.

(2) Use the alternate I clause in basic agreements that supersede an existing basic agreement with the contractor. Complete paragraph (c)(1) of the clause with the basic agreement number, date, and contacting office that issued the basic agreement being superseded.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Revise section 252.239–7013 to read as follows:

252.239–7013 Term of Agreement and Continuation of Services.

Basic. As prescribed in 239.7411(c)(1), use the following clause:

Term of Agreement and Continuation of Services—Basic (Oct 2019)

(a) This basic agreement is not a contract. The Government incurs liability only upon issuance of a communication service authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) Communication service authorizations issued under this basic agreement may be modified to incorporate the terms and

conditions of a new basic agreement negotiated with the Contractor.

(End of clause)

Alternate I. As prescribed in 239.7411(c)(2), use the following clause, which uses a different paragraph (c) than the basic clause and adds a new paragraph (d).

Term of Agreement and Continuation of Services—Alternate I (Oct 2019)

(a) This basic agreement is not a contract. The Government incurs liability only upon issuance of a communication service authorization, which is a contract that incorporates the terms and conditions of this basic agreement.

(b) This agreement shall continue in force from year to year, unless terminated by either party by 30 days' written notice. Termination of this basic agreement does not terminate or cancel any communication service authorizations issued under this basic agreement prior to the termination.

(c) The Contractor's current communication services authorizations have been modified to incorporate the terms and conditions of this basic agreement.

(1) All current communication service authorizations issued by _____ that incorporate Basic Agreement Number _____, dated _____, are modified to incorporate this basic agreement.

(2) Current communication service authorizations, issued by the activity in paragraph (c)(1) of this clause, that incorporate other agreements with the Contractor may also be modified to incorporate this basic agreement.

(d) Communication service authorizations issued under this basic agreement may be modified to incorporate a new basic agreement with the Contractor.

(End of clause)

252.239–7014 [Removed and Reserved]

■ 4. Remove and reserve section 252.239–7014.

252.239–7015 [Removed and Reserved]

■ 5. Remove and reserve section 252.239–7015.

[FR Doc. 2019–23806 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 151215999–6960–02]

RIN 0648–XX022

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to the 2019 Specifications

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

ACTION: Temporary rule; in-season adjustment.

SUMMARY: NMFS increases the 2019 Atlantic herring annual catch limit and Area 1A sub-annual catch limit by 1,000 mt. This action is required by the herring regulations when, based on data through October 1, the New Brunswick weir fishery lands less than 4,000 mt of herring. This notice is intended to inform the public of these catch limit changes.

DATES: Effective October 28, 2019, through December 31, 2019.

FOR FURTHER INFORMATION CONTACT: Alyson Pitts, Fishery Management Specialist, (978) 281–9352; or *Alyson.Pitts@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS published final 2019 specifications for the Atlantic Herring Fishery Management Plan on February 8, 2019 (84 FR 2760), establishing the 2019 annual catch limit (ACL) and area sub-ACLs. Table 1 shows the original herring specifications for 2019 and the specifications that are revised by this action for the remainder of the calendar year.

The NMFS Regional Administrator tracks herring landings in the New Brunswick weir fishery each year. The regulations at 50 CFR 648.201(h) require that if the New Brunswick weir fishery landings through October 1 are less than 4,000 mt, then NMFS subtracts 1,000 mt from the management uncertainty buffer and increases the ACL and Area 1A sub-ACL by 1,000 mt. When such a determination is made, NMFS is required to notify the New England Fishery Management Council and publish the ACL and Area 1A sub-ACL adjustment in the **Federal Register**.

The Regional Administrator has determined, based on the best available information, that the New Brunswick weir fishery landed less than 4,000 mt through October 1, 2019. Therefore, effective October 28, 2019, 1,000 mt will be re-allocated from the management uncertainty buffer to the Area 1A sub-ACL. This increases the Area 1A sub-ACL from 4,354 mt to 5,354 mt and the ACL from 15,065 mt to 16,065 mt. These revised specifications will be used to project when catch will reach 92 percent of the Area 1A sub-ACL or 95 percent of the ACL for the purpose of implementing a 2,000-lb (907-kg) herring possession limit in Area 1A or in all management areas, respectively.

TABLE 1—ATLANTIC HERRING SPECIFICATIONS FOR 2019

[mt]

	Original specifications	Revised specifications
Overfishing Limit	30,668	30,668
Acceptable Biological Catch	21,266	21,266
Management Uncertainty	6,200	5,200
Optimum Yield/ACL	15,065	16,065
Domestic Annual Harvest	15,065	15,065
Border Transfer	0	0
Domestic Annual Processing	15,065	15,065
U.S. At-Sea Processing	0	0
Area 1A Sub-ACL (28.9%)	4,354	5,354
Area 1B Sub-ACL (4.3%)	647	647
Area 2 Sub-ACL (27.8%)	4,188	4,188
Area 3 Sub-ACL (39%)	5,876	5,876
Fixed Gear Set-Aside	39	39
Research Set-Aside	(*)	(*)

* 3 percent of sub-ACLs.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this in-season adjustment because it would be contrary to the public interest. This action allocates a portion of the management uncertainty buffer to the ACL and Area 1A sub-ACL for the remainder of the year. If implementation of this in-season action is delayed to solicit prior public comment, the objective of the fishery management plan to achieve the optimum yield (OY) in the fishery could be compromised. Deteriorating weather conditions during the latter part of the fishing year may reduce fishing effort, and could also prevent the ACL from being fully harvested. This would conflict with NMFS' legal obligation under the Magnuson-Stevens Fishery Conservation and Management Act to achieve the OY from a fishery on a continuing basis, resulting in a negative economic impact on vessels permitted to fish in this fishery. Moreover, the process being applied here was the subject of notice and comment rulemaking; the adjustment is routine and formulaic, required by regulation, and is expected by industry. The potential to re-allocate the management uncertainty buffer was also outlined in the final 2019 herring specifications that were published February 8, 2019, which were developed through public notice and comment. Based on these considerations, NMFS further finds, pursuant to 5 U.S.C 553(d)(3), good cause to waive the 30-day delayed effectiveness period for the reasons stated above.

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

Dated: October 25, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–23734 Filed 10–28–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 211
Thursday, October 31, 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 39

[Docket No. FAA–2019–0759; Product Identifier 2018–SW–075–AD]

RIN 2120–AA64

Airworthiness Directives; Various Experimental and Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for various helicopters operating under experimental airworthiness certificates and various type certificated restricted category helicopters. This proposed AD was prompted by multiple accidents and incidents involving failure of the tail boom attachment structure and bolts. This proposed AD would require revising the Rotorcraft Flight Manual (RFM) for your helicopter to incorporate pre-flight checks; removing paint and sealant, and cleaning; repetitive inspections of structural components that attach the tail boom to the fuselage; and depending on the outcome of the inspections, repairing or replacing components, or re-bonding the structure. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by December 16, 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For AST, Inc. service information identified in this NPRM, contact: AST, Inc., 34976 Kamph Drive NE, Albany, OR 97322.

For JJASPP Engineering Services, LLC service information identified in this NPRM, contact: JJASPP Engineering Services, LLC, 511 Harmon Terrace, Arlington, TX 76010; phone: (817) 465–4495; website: *www.jjaspp.com.*

For Northwest Rotorcraft, LLC service information identified in this NPRM, contact: Northwest Rotorcraft, LLC, 1000 85th Ave. SE, Olympia, WA 98501; phone: (360) 754–7200; website: *www.nwhelicopters.com.*

For Richards Heavylift Helo, Inc., service information identified in this NPRM, contact: Richards Heavylift Helo, Inc., 1181 Osprey Nest Point, Orange Park, FL 32073.

For Robinson Air Crane, Inc., service information identified in this NPRM, contact: Robinson Air Crane, Inc., 230 Bermuda Beach Drive, Ft Pierce, FL 34949; phone: (305) 302–9696.

For Rotorcraft Development Corporation service information identified in this NPRM, contact: Rotorcraft Development Corporation, P.O. Box 430, Corvallis, MT 59828; phone: (207) 329–2518; email: *administration@rotorcraftdevelopment.com.*

For San Joaquin Helicopters service information identified in this NPRM, contact: San Joaquin Helicopters, 1407 South Lexington Street, Delano, CA 93215; phone: (661) 725–1898; website: *www.sjhelicopters.com.*

For Southwest Florida Aviation International, Inc. service information identified in this NPRM, contact: Southwest Florida Aviation International, Inc., 28000–A9 Airport Road, Bldg. 101, Punta Gorda, FL 33982–9587.

For Tamarack Helicopters Inc. service information identified in this NPRM, contact: Tamarack Helicopters Inc, 2849 McIntyre Rd, Stevensville, MT 59870; phone: (406) 777–0144; website: *www.tamarackhelicopters.com.*

You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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–2019–0759; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the special airworthiness information bulletins (SAIBs), the supplemental type certificate, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Richard R. Thomas, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; phone: (303) 342–1085; fax: (303) 342–1088; email: *richard.r.thomas@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2019–0759; Product Identifier 2018–SW–075–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA proposes to adopt a new AD for Model EH–1H, EH–1X, HH–1H, HH–

1N, UH–1D, UH–1M, UH–1N, and UH–1V helicopters operating under experimental airworthiness certificates; and for restricted category type certificated Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B without STC No. SR00026DE installed, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. The FAA plans to publish separate rulemaking to address Model UH–1B with STC No. SR00026DE installed.

The type certificate holders for the restricted category models are Arrow Falcon Exporters Inc.; AST, Inc.; Bell Helicopter Textron, Inc.; California Department of Forestry; West Coast Fabrications; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; International Helicopters, Inc.; JJASPP Engineering Services, LLC; JTBAM, Inc.; Northwest Rotorcraft, LLC; Red Tail Flying Services, LLC; Richards Heavylift Helo, Inc.; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; Smith Helicopters; Southwest Florida Aviation International, Inc.; and Tamarack Helicopters, Inc.

This proposed AD would require revising the RFM for your helicopter to incorporate pre-flight checks; removing paint and sealant, and cleaning structural components that attach the tail boom to the fuselage; repetitive inspections of the cleaned structural components; repairing scratches, nicks, gouges, tears, and corrosion within allowable limits; replacing structural components with non-repairable damage, cracks, buckling, or distortion; replacing loose or missing rivets; re-bonding structures with dis-bonds; and removing loose bolts and self-locking nuts from service and replacing them with new bolts and new self-locking nuts.

This proposed AD was prompted by a series of accidents and incidents involving failure of the tail boom attachment structure on several restricted category military surplus helicopters. This condition, if not addressed, could result in separation of the tail boom from the helicopter, and subsequent loss of control of the helicopter.

In January 1982, a tail boom separated from a UH–1B helicopter engaged in logging operations, resulting in a fatal accident. The National Transportation Safety Board's (NTSB) final report identified structural fatigue and inadequate maintenance as probable causes. In September 2013, a tail boom separated from another UH–1B helicopter engaged in logging operations, resulting in another fatal accident. The NTSB's final report for that accident identified the cause as fatigue failure of the upper two tail boom attach points. Contributing to this accident was poor maintenance throughout the helicopter's operational life. In addition to these accidents, the FAA is aware of three forced landings due to tail boom attachment structure failures, one in May 2014 on a UH–1H helicopter, one in August 2016 on a UH–1H helicopter, and one in August 2018 on a UH–1F helicopter. The helicopter involved in the May 2014 forced landing was engaged in construction operations. The operations the helicopter was engaged in during the August 2016 forced landing are unknown. The helicopter involved in the August 2018 forced landing was engaged in firefighting operations.

In the first fatal accident and two of the forced landings, a loud pop or bang was heard in the rear of the aircraft at the moment of failure. In the second fatal accident, the pilot indicated before the flight that the helicopter felt like it ''shuffled'' during translational lift. Four of the five incidents involved a failure of the upper left hand tail boom attachment structure. In three cases it was the attach fitting on the tail boom side. In one case it was the longeron on the tail boom side. The upper left hand tail boom attach point is the most heavily loaded of the four attach points.

The FAA issued Special Airworthiness Information Bulletin SW–18–29 (SAIB SW–18–29) on October 1, 2018 to alert owners and operators of Restricted Category Bell Model HH–1K, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P, TH–1F, and TH–1L helicopters of failure of the tail boom attachment structure.

SAIB SW–18–29 recommends adhering to the helicopter's Instructions for Continued Airworthiness which includes a repetitive 100 hour time-in-service (TIS) inspection of the tail boom attachment structure on both sides of the four attachment points. SAIB SW–18–29 also specifies the following supplemental recommendations: Keeping the fittings on both sides of all four attachment points, the cap angles running forward from the fuselage side fitting, and the longerons running aft from the tail boom side fitting, clean and free of paint and any non-faying sealant; and inspecting for cracks in the attachment structure with a borescope since the tail boom side structure is difficult to access. On the fuselage side, SAIB SW–18–29 recommends paying particular attention to the most forward fitting fasteners, the cap angle and the cap angle rivets just forward of the fitting as failures in these areas are more common. On the tail boom side, SAIB SW–18–29 recommends paying particular attention to the most aft fitting fasteners as failures in this area are more common. SAIB SW–18–29 also advises that smoking rivets are an indicator of attachment point issues. For helicopters that perform heavy lift operations, SAIB SW–18–29 recommends performing a repetitive 20 hours TIS inspection of both the fuselage and tail boom upper left-hand (LH) attach fittings, fuselage side cap angle, and tail boom side longeron. Lastly, for all affected helicopters, if a loud noise (typically a ''pop'' or ''bang'') is heard in the rear of the aircraft during flight, SAIB SW–18–29 recommends minimizing hovering, slow flight, and pedal turns; reducing power when possible to avoid left pedal input; jettisoning external loads (if present) as soon as possible; and landing the aircraft as soon as possible. If an external load must be landed, SAIB SW–18–29 recommends performing a forward descent until the load touches down.

Based on input from a repair station, the FAA revised SAIB SW–18–29 to SAIB SW–18–29R1, dated February 19, 2019 (SAIB SW–18–29R1), to alert all owners and operators of clarified paint and sealant removal procedures and simplify the wording of recommendations to provide clarity. In particular, it was necessary to correct the emphasized inspection areas. The fuselage side fitting emphasis was revised to focus on the fitting section through the rivets closest to the attach bolt (the aft fitting fasteners) rather than through the most forward fitting fasteners. The tail boom side fitting emphasis was revised to focus on the fitting section through the rivets closest to the attach bolt (the forward fitting fasteners) rather than through the most aft fitting fasteners.

Related Service Information

The FAA reviewed portions of the following related service information:

- Garlick Helicopters Inc. Instructions for Continued Airworthiness Report No. GH–H13WE–CA1H, UH–1H Helicopters, Revision 4, dated August 9, 2012, available from Rotorcraft Development Corporation. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a Continued Airworthiness Documents Section that lists Army Technical Manuals required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, and appliances, and for special purpose modifications.

• Garlick Helicopters Inc. Instructions for Continued Airworthiness Report No. GH–H5NM–CA1, UH–1E, UH–1L, TH–1L and HH–1K Helicopters, Revision Original, dated October 22, 2002, available from Rotorcraft Development Corporation. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a Continued Airworthiness Documents Section that lists Army Technical Manuals required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, appliances, and for special purpose modifications.

• Headquarters, Department of the Army, Aviation Unit and Intermediate Maintenance Instructions Model UH–1H/V/EH–1H/X Helicopters, Technical Manual TM 55–1520–210–23–1, Change 42, dated April 14, 2003, available from JJASPP Engineering Services, LLC, Richards Heavylift Helo, Inc., and San Joaquin Helicopters. This service information contains: Tail boom hoisting/handling instructions; hard landing, tail rotor blade strike, and sudden stoppage due to compressor stall tail boom inspection requirements; tail boom removal and installation instructions including attachment bolt installation and tightening instructions, tail boom attachment fitting inspection instructions, tail boom and fuselage attachment fitting bolt hole wear limits, allowable tail boom attachment fitting damage and corrosion repair instructions; loose attachment fitting fastener inspection and replacement instructions; tail boom attachment fitting replacement instructions; classification of damage as negligible, repairable or requiring replacement for tail boom structure including rivets, fasteners, tail boom attachment fittings, stringers, and longerons; tail boom structural material specifications; allowable area for damage repair of tail boom attachment fittings; longeron damage limits and repair criteria; and stringer repair instructions.

• Headquarters, Department of the Army, Aviation Unit and Intermediate Maintenance Instructions Army Model UH–1H/V/EH–1H/X, Technical Manual TM 55–1520–210–23–3, Change 8, dated June 14, 1996, available from JJASPP Engineering Services, LLC, Richards Heavylift Helo, Inc., and San Joaquin Helicopters. This service information contains: A Maintenance Allocation Chart which assigns tail boom maintenance functions to three levels, (1) high-frequency field tasks requiring general knowledge to maintain the helicopter in an airworthy condition or return the helicopter to an airworthy condition, (2) low-frequency field tasks requiring specialized knowledge to return the helicopter to an airworthy condition, and (3) helicopter or component maintenance tasks which cannot be performed in the field; and instructions for field manufacture of part number (P/N) 204–030–800–443, Tail Boom Assembly Cover, and P/N 205–031–801–53, Tail Boom Cover.

• Headquarters, Department of the Army, Aviation Unit Maintenance (AVUM) and Aviation Intermediate Maintenance (AVIM) Manual for General Aircraft Maintenance (General Maintenance and Practices), Volume 1, Technical Manual TM 1–1500–204–23–1, Change 5, dated May 31, 2006, available from Richards Heavylift Helo, Inc. This service information contains general maintenance practice information.

• Headquarters, Department of the Army, AVUM and AVIM Manual for General Aircraft Maintenance (Hardware and Consumable Materials) Volume 6, Technical Manual TM 1–1500–204–23–6, Change 4, dated August 20, 2004, available from Richards Heavylift Helo, Inc. This service information contains general information pertaining to the use and identification of hardware and materials, specifically bolts, nuts, rivets, clamps, fittings, plate nuts, torque values, lockwire techniques, cotter pins, safety pins, and Hi-Shear rivets.

• Headquarters, Department of the Army, AVUM and AVIM Manual for General Aircraft Maintenance (Nondestructive Testing and Flaw Detection Procedures and Practices) Volume 7, Technical Manual TM 1–1500–204–23–7, Change 1, dated December 30, 1993, available from Richards Heavylift Helo, Inc. This service information contains general information pertaining to nondestructive testing and flaws, and nondestructive inspection procedures and practices, particularly magnetic particle inspections, radiography, ultrasonic inspections, and electromagnetic inspections.

• Headquarters, Department of the Army, AVUM and AVIM Manual for General Aircraft Maintenance (Sheet Metal Shop Practices) Volume 10, Technical Manual TM 1–1500–204–23–10, Change 3, dated August 20, 2004, available from Richards Heavylift Helo, Inc. This service information contains general information pertaining to the repair of aircraft structures, structural metals, forming of replacement structure, rivets and riveting techniques, airframe sheet metal repair, and sandwich construction repair.

• Headquarters, Department of the Army, AVUM and AVIM Manual Nondestructive Inspection Procedures for UH–1 Helicopter Series, Technical Manual TM 1–1520–256–23, dated November 30, 1996, available from Richards Heavylift Helo, Inc. This service information contains instructions for accomplishing an eddy current inspection of the fuselage structure, tail boom and fuselage tail boom attachment fittings, and tail boom longerons.

• Headquarters, Department of the Army, Operator's Manual Army Model UH–1B Helicopter, Technical Manual TM 55–1520–219–10, Change 20, dated May 16, 1983, available from Richards Heavylift Helo, Inc., and Rotorcraft Development Corporation. This manual contains operating instructions and procedures for the UH–1B helicopter. It includes a brief description of the tail boom structure.

• Headquarters, Department of the Army, Operator's Manual Army Model UH–1H/V Helicopters, Technical Manual TM 55–1520–210–10, Change 20, dated June 23, 2005, available from Northwest Rotorcraft, LLC, Richards Heavylift Helo, Inc., and Rotorcraft Development Corporation. This manual contains operating instructions and procedures for the UH–1H/V helicopter. It includes a brief description of the tail boom structure and a pre-flight check of the tail boom attachment bolts.

• Headquarters, Department of the Army, Organizational Maintenance Manual Army Model UH–1B Helicopter, Technical Manual TM 55–1520–219–20, Change 28, dated August 2, 1982, available from Richards Heavylift Helo, Inc., Rotorcraft Development Corporation, and Southwest Florida Aviation International, Inc. This manual provides various maintenance instructions for flight line maintenance crews, including special inspections of the tail boom attachment structure. Following hard landings, tail rotor blade strikes, or compressor stalls, maintenance crews are required to inspect the area where the tail boom attaches to the forward fuselage section, specifically the attachment fittings, longerons and cap angles, for cracks, distortion, and loose rivets, and the attachment bolts for torque.

• Headquarters, Department of the Army, Preparation for Shipment of UH–1/EH–1 Helicopters, Technical Manual TM 55–1520–242–S, Change 5, dated June 30, 1993, available from JJASPP Engineering Services, LLC. This service information contains instructions to coat attachment points and hardware with corrosion preventive when tail boom is removed for transport.

• Headquarters, Department of the Army, Rotorcraft Development

Corporation, UH–1B Aircraft Preventive Maintenance Services, Technical Manual TM 55–1520–219–PMS, Change 7, dated August 9, 1976, available from Rotorcraft Development Corporation. This service information contains requirements: To inspect the tail boom attaching bolts for security and the fittings for cracks daily and every 25, 50, 75, and 100 flight hours; and to inspect the tail boom interior structure and longerons for damage, cracks, and corrosion every 100 flight hours.

• Headquarters, Department of the Army, UH–1B DS and GS Maintenance Manual, Technical Manual TM 55–1520–219–34, Change 9, dated June 5, 1972, available from Richards Heavylift Helo, Inc., Rotorcraft Development Corporation, and Southwest Florida Aviation International, Inc. This service information contains: Instructions to remove and install the tail boom; attachment bolt exposed thread limits; attachment bolt tightening instructions with instructions for manufacturing a special torque wrench extension; allowable tail boom attachment fitting hole diameters; damage classifications for tail boom skin, stringers and longerons as negligible, reparable by patching, reparable by insertion, or damage necessitating replacement; and instructions for field manufacture of P/N 204–030–800–443, Tail Boom Assembly Cover.

• Headquarters, Department of the Army, UH–1H/V and EH–1H/X Aircraft Phased Maintenance Checklist, Technical Manual TM 55–1520–210–PM, Changes 22, dated May 8, 2002, available from Northwest Rotorcraft, LLC. This service information contains phased inspection requirements for the tail boom interior and fuselage heater compartment to check for damage, cracks, and corrosion.

• Headquarters, Department of the Army, UH–1H/V and EH–1H/X Aircraft Preventative Maintenance Daily Inspection Checklist, Technical Manual TM 55–1520–210–PMD, Preventive Maintenance Daily Inspection Checklist UH–1H/V and EH–1H/X Helicopters, Change 11, dated April 11, 2003, available from JJASPP Engineering Services, LLC, and Northwest Rotorcraft, LLC. This service information contains preventative daily maintenance instructions to be accomplished prior to the first flight of the day to inspect for loose or missing rivets, the tail boom attachment bolts for security, and tail boom attachment fittings and longerons up to 12 inches from the fittings for cracks.

• JJASPP Engineering Services Instructions for Continued Airworthiness for Restricted Category UH–1H Rotorcraft Report No. JJASPP–ICA–12–005, Revision IR, approved February 6, 2013, available from JJASPP Engineering Services, LLC. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a Continued Airworthiness Documents section that list documents and reports required for servicing, maintaining, inspecting, repairing, and overhauling the rotorcraft, its engine, rotors, and appliances.

• Northwest Rotorcraft, LLC, UH–1H Instructions for Continued Airworthiness Report No. PH–106, Revision 7, approved March 15, 2012, available from Northwest Rotorcraft, LLC. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a Continued Airworthiness Documents Section, which lists Army Technical Manuals required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, and appliances, and for special purpose modifications.

• Rotorcraft Development Corporation Instructions for Continued Airworthiness Report No. GH–H3NM–CA1, UH–1B Helicopters, Revision 1, dated December 6, 2012, available from Rotorcraft Development Corporation. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a Continued Airworthiness Documents Section that lists Army Technical Manuals required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, and appliances, and for special purpose modifications.

• Tamarack Helicopters, Inc., Instructions for Continued Airworthiness Report No. ICA–1, UH–1F, UH–1P AND TH–1F Helicopters, Revision 6, dated March 14, 2016, available from Tamarack Helicopters, Inc. This report contains a Component Overhaul Schedule, an Airworthiness Limitation Schedule, and a list of Air Force Technical Orders required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, and appliances.

• Tamarack Helicopters, Inc., UH–1H Instructions for Continued Airworthiness Report No. TAM–102, Revision Original, dated July 23, 2009, available from Tamarack Helicopter, Inc. This report contains a Component Overhaul Schedule, an Airworthiness Limitations Schedule and a Continued Airworthiness Documents section, which lists documents and reports required for servicing, maintaining, inspecting, repairing, and overhauling the helicopter, its engine, rotors, appliances and special purpose modifications.

• U.S. Army Aviation and Missile Command Depot Maintenance Work Requirement DMWR 55–1560–222, All H–1Series Tailboom Structural Assemblies, Change 6, dated June 18, 2002, available from JJASPP Engineering Services, LLC. This service information contains descriptions of the tail boom structure and guidance explaining tail boom attachment fitting structural loads; tail boom differences between helicopter models; required depot level modifications; tail boom structure isometric figures identifying the structural components; instructions to inspect the tail boom longerons for dents, cracks, holes, tears, corrosion, and distortion; longeron repair limits and repair instructions; instructions to inspect attachment fittings for cracks and hole elongation; attachment fitting repair limits and repair instructions; tail boom attachment fitting deburr before bonding to longeron instructions; and a requirement to dye penetrant the tail boom attachment fittings.

• U.S. Army Aviation and Troop Command Aircraft Depot Maintenance Work Requirement DMWR 55–1520–210, UH–1H/UH–1V Helicopters, Change 11, dated August 31, 1994, available from Northwest Rotorcraft, LLC, and Southwest Florida Aviation International, Inc. This higher-level document directs maintenance personnel to DMWR 55–1560–222 for detail depot maintenance instructions. It also contains information regarding differences between the two models, instructions for cleaning and corrosion control, longeron and stringer allowable damage and repair; requirements to check tail boom for alignment; general aircraft repair procedures; guidance explaining tail boom attachment fitting structural loads; and guidance regarding primary vs. secondary tail boom structure.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the RFM for your helicopter to add before each flight and before first flight of the day pre-flight checks; removing excess paint and sealant from, and cleaning certain tail boom

attachment structures; repetitive inspections for scratches, nicks, gouges, tears, corrosion, cracks, bond separation, loose, missing, and smoking rivets, buckling, distortion, number of attachment bolt exposed threads, and attachment bolt movement.

This proposed AD would require repairing scratches, nicks, gouges, tears, and corrosion within allowable limits. This proposed AD would require removing from service components with scratches, nicks, gouges, tears, and corrosion that exceed allowable limits, removing from service components with any cracks, buckling, or distortion, and removing from service loose, missing, or smoking rivets. This proposed AD would also require re-bonding any structure with dis-bonds, and removing loose bolts and self-locking nuts from service, and replacing them with new bolts and new self-locking nuts.

Differences Between This Proposed AD, the SAIB, and the Service Information

This proposed AD differs from SAIB SW–18–29R1 by expanding the applicability to add various model helicopters operating under experimental airworthiness certificates due to design similarity. This proposed AD also updates part name nomenclature from SAIB SW–18–29R1 by using ''attachment bolt'' and ''attachment fitting'' instead of ''attach bolt'' and ''attach fitting.''

This proposed AD would require daily checks be performed with a flashlight and 25 hour and 100 hour TIS inspections be performed with a bright light and borescope. The service information does not specify any items to assist with the required checks or inspections. The proposed AD would require pushing on the tail boom while making certain inspections. The service information does not. On the fuselage side, this proposed AD would require paying particular attention to the attachment fitting section near the rivets closest to the attachment bolt, and the cap angle rivets next to the fitting. On the tail boom side, this proposed AD would require paying particular attention to the attachment fitting section near the rivets closest to the attachment bolt. The service information does not single out these sections. This proposed AD would require replacing any cracked components, while the service information allows stop drilling of certain cracks. This proposed AD would require removing any loose attachment bolts and their self-locking nuts from service and replacing them with new bolts and new self-locking nuts. The service information does not require replacement of any loose attachment bolts.

Costs of Compliance

The FAA estimates that this proposed AD would affect 504 helicopters of U.S. registry. Labor costs are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this proposed AD.

Revising the RFM for your helicopter would take about 0.5 work-hour, for an estimated cost of $43 per helicopter and $21,672 for the U.S. fleet. The pre-flight check before each flight would take about 0.25 work-hour, for an estimated cost of $21 per helicopter per check and $10,584 for the U.S. fleet per check. The pre-flight check before first flight of the day would take about 0.5 work-hour, for an estimated cost of $43 per helicopter per check and $21,672 for the U.S. fleet per check.

Removing excess paint and sealant, and cleaning all eight tail boom attachment fittings would take about 5 work-hours and a nominal materials cost, for an estimated cost of $425 per helicopter per instance and $214,200 for the U.S. fleet per instance.

Inspecting all four tail boom attachments for scratches, nicks, gouges, tears, corrosion, cracks, bond separation, loose, missing or smoking rivets, buckling, distortion, attachment bolt exposed thread, and attachment bolt movement would take about 4 work-hours, for an estimated cost of $340 per helicopter per inspection and $171,360 for the U.S. fleet per inspection.

Inspecting only the upper left hand tail boom attachment for scratches, nicks, gouges, tears, corrosion, cracks, bond separation, loose, missing or smoking rivets, buckling, distortion, attachment bolt exposed threads, and attachment bolt movement would take about 0.5 work-hour, for an estimated cost of $43 per helicopter per inspection.

The FAA cannot estimate the costs to do any allowable repair based on the results of the inspections and the FAA has no way of determining the number of aircraft that might need repair.

The FAA estimates the following costs to do any necessary replacements based on the results of the inspections. The FAA has no way of determining the number of aircraft that might need these replacements.

- Replacing a tail boom attachment fitting would take about 33 work-hours and parts would cost about $1,500 for an estimated cost of $4,305.
- Replacing a tail boom longeron bond assembly (attachment fitting, longeron, and doubler) would take about 42 work-hours and parts would cost about $7,000 (rebuilt) or $21,270 (new) for an estimated cost of $10,570 (rebuilt) or $24,840 (new parts).
- Replacing a fuselage attachment fitting would take about 45 work-hours and parts would cost about $1,838 for an estimated cost of $5,663.
- Replacing a fuselage cap angle would take about 42 work-hours and parts would cost about $1,827 for an estimated cost of $5,397.
- Replacing an attachment bolt and self-locking nut would take about 1 work-hour and parts would cost about $313 for an estimated cost of $398.

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

Regulatory Findings

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

For the reasons discussed above, I certify that this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Various Experimental and Restricted Category Helicopters: Docket No. FAA–2019–0759; Product Identifier 2018–SW–075–AD.

(a) Comments Due Date

The FAA must receive comments by December 16, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following helicopters, certificated in any category, including experimental and restricted:

(1) Model EH–1H, EH–1X, HH–1H, HH–1N, UH–1D, UH–1M, UH–1N, and UH–1V helicopters;

(2) Rotorcraft Development Corporation Model HH–1K helicopters;

(3) Robinson Air Crane, Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc., Model TH–1F helicopters;

(4) Bell Helicopter Textron, Inc.; JTBAM, Inc.; and Rotorcraft Development Corporation, Model TH–1L helicopters;

(5) Richards Heavylift Helo, Inc., Model UH–1A helicopters;

(6) International Helicopters, Inc.; JTBAM, Inc.; Red Tail Flying Services, LLC; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; San Joaquin Helicopters; and Southwest Florida Aviation International, Inc., Model UH–1B helicopters without Supplemental Type Certificate (STC) No. SR00026DE installed;

(7) Bell Helicopter Textron, Inc.; West Coast Fabrications; JTBAM, Inc.; Rotorcraft Development Corporation; and Smith Helicopters, Model UH–1E helicopters;

(8) AST, Inc.; California Department of Forestry; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc., Model UH–1F helicopters;

(9) Arrow Falcon Exporters Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; JJASPP Engineering Services, LLC; JTBAM, Inc.; Northwest Rotorcraft, LLC; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; Southwest Florida Aviation International, Inc.; and Tamarack Helicopters, Inc., Model UH–1H helicopters;

(10) Bell Helicopter Textron, Inc.; JTBAM, Inc.; and Rotorcraft Development Corporation, Model UH–1L helicopters; and

(11) Robinson Air Crane, Inc.; and Rotorcraft Development Corporation, Model UH–1P helicopters.

(d) Subject

Joint Aircraft System Component (JASC): 5302, Rotorcraft Tail Boom.

(e) Unsafe Condition

This AD was prompted by multiple accidents and incidents involving failure of the tail boom attachment structure and bolts. The FAA is issuing this AD to address fatigue cracking of tail boom attachment fittings, cap angles, longerons, and bolts. The unsafe condition, if not addressed, could result in separation of the tail boom from the helicopter and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight, revise the limitations section of the Rotorcraft Flight Manual (RFM) for your helicopter by adding the information in Figure 1 to paragraph (g)(1) of this AD or by inserting a copy of this AD. This action may be done by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD by following 14 CFR 43.9 (a)(1) through (4) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

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PRE-FLIGHT TAIL BOOM ATTACHMENT CHECK

(1) Before each flight, use two hands to push on the tail boom at the third vertical rivet line aft of the trailing edge of the elevator to check for looseness of the tail boom. Gradually apply and relieve pressure using body weight a minimum of three times in each of the following directions: inboard pushing from the left; inboard pushing from the right; and upward pushing from the bottom. If there is any looseness, further flight is prohibited until looseness is repaired and the helicopter is approved for return to service.

Note to paragraph (1) of this check: This check is not required for helicopters with 39-inch extended landing gear installed per STC SR01742NY.

(2) Before the first flight of each day: with the oil cooler/baggage compartment door on the right hand side of the helicopter open to gain access to the interior of the tail boom, and with an additional person applying and relieving pressure as detailed in paragraph (1) and using a flashlight, first, check for upper left hand attachment bolt movement by observing the torque stripe if present and attempting to rotate the bolt by hand, and second, check the upper left hand tail boom attachment structure for any loose and missing rivets, and any cracks in the following areas: on the fuselage side, check the fitting and the cap angle running forward from the fitting for any cracks, paying particular attention to the fitting section near the rivets closest to the attachment bolt and the cap angle rivets next to the fitting; and on the tail boom side, check the fitting and the longeron running aft from the fitting for any cracks, paying particular attention to the fitting section near the rivets closest to the attachment bolt. If the attachment bolt torque stripe is no longer aligned or the bolt rotates by hand, further flight is prohibited until the attachment bolt and self-locking nut are removed from service, replaced with a new bolt and new self-locking nut, and the helicopter is approved for return to service. If there are any loose or missing rivets, or cracks, further flight is prohibited until loose and missing rivets, and cracked components are remove from service and the helicopter is approved for return to service.

Note to paragraph (2) of this check: It is not required to push on the tail boom on helicopters with 39-inch extended landing gear installed per STC SR01742NY while checking for attachment bolt movement, loose and missing rivets and cracks.

Figure 1 to Paragraph (g)(1)

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(2) Within 25 hours time in service (TIS):

(i) Open the oil cooler/baggage compartment door on the right hand side of the helicopter to gain access to the interior of the tail boom.

(ii) Remove paint and stray sealant and clean the eight attachment fittings (four on the tail boom side and four on the fuselage side). Remove paint and stray sealant and clean the four cap angles, forward of the fuselage fittings, for at least 12 inches from

the end of the fittings. Remove paint and stray sealant and clean the four longerons, aft of the tail boom fittings, for at least 12 inches from the end of the fittings. It is only necessary to remove the topcoat. Primer may be left in place and edge and fillet sealant may be left in place. If any primer or edge or fillet sealant is removed, before further flight, reapply the removed primer and sealant.

Note 1 to paragraph (g)(2)(ii) of this AD: On some models, the baggage compartment floor and net must be removed to gain access to the lower fuselage attachment fittings and cap angles.

(iii) With an additional person pushing on the tail boom at the third vertical rivet line aft of the trailing edge of the elevator with both hands and gradually applying and relieving pressure using body weight a minimum of three times in each of the following directions: Inboard pushing from the left; inboard pushing from the right; and upward pushing from the bottom; and using a bright light and borescope, inspect each of the four tail boom attachment structures for cracks, bond separation, and loose rivets. On the fuselage side, inspect the fittings and the cap angles running forward from the fittings, paying particular attention to the fitting sections near the rivets closest to the attachment bolts and the cap angle rivets next to the fittings. On the tail boom side, inspect the fittings and the longerons running aft from the fittings, paying particular attention to the fitting sections near the rivets closest to the attachment bolts. Without pushing on the tail boom, and using a bright light and borescope, inspect each of the four tail boom attachment structures for scratches, nicks, gouges, tears, corrosion, buckling, and distortion, and for loose, missing, and smoking rivets. If there are any scratches, nicks, gouges, tears, or corrosion within allowable limits, before further flight, repair the affected components. If there are any scratches, nicks, gouges, tears, or corrosion that exceed allowable limits, or any cracks, buckling or distortion, or loose, missing, or smoking rivets, before further flight, remove the affected components from service. If there is any bond separation, before further flight, re-bond the affected components.

Note 2 to paragraph (g)(2)(iii) of this AD: It is not required to push on the tail boom on helicopters with 39-inch extended landing gear installed per STC SR01742NY while checking for cracks, bond separation, and loose rivets.

(iv) Inspect each of the four tail boom attachment bolts for exposed threads. If there is less than one full thread or more than three threads exposed, before further flight, remove the bolt and self-locking nut from service and replace with a new bolt and new self-locking nut.

(v) Inspect each of the four tail boom attachment bolts for movement by either applying the required installation torque in the tightening direction only, or by inspecting for torque stripe misalignment if present and attempting to rotate the bolt by hand. If a bolt is under-torqued, a torque stripe is misaligned, or a bolt moves, before further flight, remove the bolt and self-locking nut from service and replace with a new bolt and new self-locking nut.

(vi) After the first flight following any bolt replacement as required by paragraph (g)(iv) or (v) of this AD, retighten any replaced bolt by applying torque in the tightening direction only and then apply a torque stripe on the bolt head.

(3) At intervals not to exceed 25 hours TIS, perform the actions required by paragraph (g)(2)(i) through (vi) of this AD, except you are only required to perform the actions on the upper left hand tail boom attachment structure and bolt.

(4) At intervals not to exceed 100 hours TIS, perform the actions required by paragraph (g)(2)(i) through (vi) of this AD at all four tail boom attachment locations.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Denver 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 your proposal to: Richard R. Thomas, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; phone: (303) 342–1085; fax: (303) 342–1088; email: *richard.r.thomas@faa.gov* and *9-Denver-Aircraft-Cert@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Richard R. Thomas, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 East 68th Ave., Room 214, Denver, CO 80249; phone: (303) 342–1085; fax: (303) 342–1088; email: *richard.r.thomas@faa.gov.*

Issued in Fort Worth, Texas, on October 23, 2019.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2019–23686 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Parts 801 and 803

Premerger Notification; Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to the premerger notification rules (''the Rules'') to clarify how to determine if an entity is a United States or foreign person or issuer for purposes of determining reportability under the Hart Scott Rodino Act (''the Act'' or ''HSR'').

DATES: Comments must be received on or before December 30, 2019.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Invitation to Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''16 CFR parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316'' on your comment. File your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Robert L. Jones (202–326–3100), Assistant Director, Premerger Notification Office, Bureau of Competition, Federal Trade Commission, 400 7th Street SW, Room CC–5301, Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 30, 2019. Write ''16 CFR parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://www.regulations.gov* by following the instructions on the web-based form.

If you file your comment on paper, write ''16 CFR parts 801 and 803: Amendments to the Premerger Notification Rules, Matter No. P989316'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission,

Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website, *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential,''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the FTC General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *https://www.regulations.gov*—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 30, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, *see https://www.ftc.gov/site-information/privacy-policy.*

Overview

The Act and Rules require the parties to certain mergers and acquisitions to file notifications with the Federal Trade Commission (''the FTC'' or ''the Commission'') and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (''the Assistant Attorney General'') (collectively, ''the Agencies'') and to wait a specified period of time before consummating such transactions. The reporting and waiting period requirements are intended to enable the Agencies to determine whether a proposed merger or acquisition may violate the antitrust laws if consummated and, when appropriate, to seek a preliminary injunction in federal court in order to successfully enjoin anticompetitive mergers prior to consummation.

Section 7A(d)(1) of the Act, 15 U.S.C. 18a(d)(1), directs the Commission, with the concurrence of the Assistant Attorney General, in accordance with the Administrative Procedure Act, 5 U.S.C. 553, to require that premerger notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. In addition, Section 7A(d)(2) of the Act, 15 U.S.C. 18a(d)(2), grants the Commission, with the concurrence of the Assistant Attorney General, in accordance with 5 U.S.C. 553, the authority to define the terms used in the Act and prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

In this proposed rulemaking, the Commission proposes amending § 801.1(e)(1) of the Rules to define the term ''principal offices'' in order to provide clarity in determining whether an entity is a ''U.S. person'' and/or a ''U.S. issuer.'' In addition, the Commission proposes amending § 801.1(e)(2) to simplify the definitions of ''foreign person'' and ''foreign issuer'' to include entities that are not ''U.S. persons'' or ''U.S. issuers'' under § 801.1(e)(1). The Commission also proposes eliminating the phrase ''principal executive offices'' from the § 803.5(a) notice requirement to avoid confusion with the proposed definition of ''principal offices.''

Part 801—Coverage Rules

Section 801.1(e) Definitions

A. Background

Whether an entity is a U.S. person or issuer or, instead, a foreign person or issuer determines the availability of two exemptions found in the Rules, §§ 802.50 and 802.51 (the ''foreign exemptions''), which exclude certain foreign transactions from the Act's requirements. In general, acquisitions of foreign assets and voting securities of foreign issuers may be exempt from the HSR filing requirements when there is only a limited nexus with United States commerce. For instance, § 802.50(b) exempts certain acquisitions of foreign assets where both the acquiring and acquired persons are foreign persons and only have limited sales and assets in the United States. In addition, § 802.51 exempts certain acquisitions of voting securities of foreign issuers where the acquiring person is a U.S. person (§ 802.51(a)) or a foreign person (§ 802.51(b)), and the issuer has only limited sales and assets in the U.S., or both the acquiring and acquired persons are foreign persons with limited U.S. sales and assets (§ 802.51(c)).

As specified in the original Statement of Basis and Purpose published in 1978 (''1978 SBP''), the foreign exemptions were meant to exclude from the premerger notification requirements those transactions with ''only a limited nexus with United States commerce.'' 43 FR 33450, 33497 (July 31, 1978), *see also id.* at 33498. Determining whether an entity is a U.S. or foreign person or issuer is often a necessary first step in analyzing whether the foreign exemptions may be available.

The definitions for a ''United States person,'' ''United States issuer,'' ''foreign person,'' and ''foreign issuer'' are provided in § 801.1(e). Sections 801.1(e)(1)(i)(A) and (ii) articulate three tests to determine whether an entity is a U.S. person or a U.S. issuer, and §§ 801.1(e)(2)(i)(A) and (ii) mirror these tests for a foreign person and foreign issuer. In both §§ 801.1(e)(1) and (2), the first test focuses on where the entity is incorporated, and this is unambiguous. The second, which asks under which laws the entity is organized, is also unambiguous. The third test focuses on the location of the entity's ''principal

offices.'' The Rules do not currently define this term, creating ambiguity when determining whether persons or issuers are U.S. or foreign.

The 1978 SBP, the only source of formal Commission guidance on the meaning of ''principal offices,'' provided that the term should include ''that single location which the person regards as the headquarters office of the ultimate parent entity. This location may or may not coincide with the location of its principal operations.'' 43 FR 33461. Despite this guidance from the 1978 SBP, the FTC's Premerger Notification Office (''PNO'') and outside parties have found this third prong hard to define and difficult to apply to modern globalized businesses. The Commission now believes that ''principal offices'' should, in fact, relate to the location of an entity's principal operations. Thus, the Commission proposes clarifying the meaning of ''principal offices'' to more accurately reflect where an entity principally operates and, therefore, make the test in §§ 801.1(e)(1)(i)(A) easier to apply.

B. Principal Offices

Since the 1978 SBP was published, the number of multinational business organizations has increased. While the ''single location'' of the ''principal offices'' may have been a straightforward question of the entity's headquarters location at that time, today it is quite common for an entity to have multiple headquarters. This makes determining the ''single location'' of the ''principal offices'' challenging. In response to questions from practitioners, the PNO's informal guidance has focused largely on the business location of officers as a proxy for the location of the ''principal offices.'' This approach, however, still assumes that officers operate out of a single location. In today's modern globalized world, with capabilities to work from numerous locations, the 1978 SBP's emphasis on a ''single location'' is no longer appropriate.

The Commission recognizes the need to provide a clearer way to determine the location of an entity's principal offices. In undertaking this analysis, the Commission looks to the purpose of the foreign exemptions, which is to provide a mechanism for exempting transactions with a limited nexus with the United States. Despite the Commission's determination in 1978 that principal offices ''may or may not coincide'' with principal operations, in today's era of multinational organizations, the location where an entity conducts its principal operations is key to determining whether the entity is a U.S. person or issuer and whether the foreign exemptions should apply. Principal operations within the U.S. demonstrate sufficient ties to the U.S. to be considered a U.S., rather than foreign, person or issuer. The Commission proposes moving away from the 1978 SBP's construction of the term ''principal offices,'' which focused solely on the headquarters location, and instead looking more broadly at where an entity's principal operations take place.

To accomplish this, the Commission proposes amending the Rules to provide that ''principal offices'' should be determined based on the location of the applicable ultimate parent entity's (''UPE,'' *see* § 801.1(a)(3) of the Rules) or issuer's executives or assets. Specifically, the Commission proposes amending § 801.1(e)(1) to provide that the relevant entity has ''principal offices'' in the United States if (1) 50% or more of the officers reside in the U.S., or (2) 50% or more of the directors reside in the U.S., or (3) 50% or more of its assets (including assets of all entities it controls) are located in the U.S., based on a fair market value determination of the assets. Thus, filers will evaluate whether the relevant entity is incorporated in the U.S., or organized under the laws of the U.S., or has its ''principal offices'' located in the U.S., per the proposed amendments to § 801.1(e)(1), to determine whether the entity has a sufficient nexus to the U.S. to be a U.S. person and/or a U.S. issuer.

Proposed §§ 801.1(e)(1)(iii)(A) and 801.1(e)(1)(iii)(B) focus on where the officers or directors reside. ''Officers'' are individuals in positions that are either (1) provided for in the entity's articles of incorporation or by-laws, or (2) appointed by the board of directors. In determining whether an entity is a ''U.S. person,'' the proposed rule looks to the officers and directors of the entity's ultimate parent. For a ''U.S. issuer,'' the proposed rule looks to the officers and directors of the issuer itself. Whether within the UPE or issuer (which may be the same), these executives are charged with overall responsibility for the operation of the entity. In the Commission's view, if half or more of these business executives reside in the U.S., that is a viable proxy for concluding that the entity is principally operating in the U.S. and should be considered a U.S. person and/or a U.S. issuer.

The Commission invites comments on whether clarification is needed on the question of how an individual's residency is to be determined and, if so, what factors should be used in that determination. Factors could include the location of an individual's primary residence, based on the individual's primary tax residence or the country where he or she resides for at least half of the calendar year; or the location of at least half of the total real property owned by the individual. As discussed below, non-corporate entities without officers and directors would analyze the residency of those ''individuals exercising similar functions as officers and directors.'' Sometimes these individuals are based within third parties because a third-party entity serves as the equivalent of an office or director. In such cases, the residency analysis will focus on the locations where the third-party entities are incorporated and the laws under which they are organized. The analysis will not require looking through the third-party entities to analyze the specific individuals within the third-party entities serving as officers and directors for the non-corporate entity in question.

Although the test for a natural person in § 801.1(e)(1)(i)(B) considers citizenship as well as residency, the citizenship of officers and directors does not necessarily reflect whether an entity operates in the U.S. and consequently has ''principal offices'' in the U.S. For example, consider a corporation that is incorporated abroad where all of its assets are also located abroad. It has six officers (all of whom reside abroad), and three of these officers are U.S. citizens. Despite the U.S. citizenship of three of its officers, this corporation operates abroad and thus would not be a U.S. person or a U.S. issuer.

Secondly, proposed §§ 801.1(e)(1)(iii)(A) and 801.1(e)(1)(iii)(B) also consider an entity's assets to determine whether that entity is physically based in the U.S. For a ''U.S. person,'' the assets prong of the test looks not only at the entity's UPE, but also at all entities that the UPE controls, directly or indirectly. Likewise, for a ''U.S. issuer,'' the test looks to all assets of the issuer and all entities it controls. The broader focus on the UPE or issuer (which may be the same) and all entities it controls, directly or indirectly, will capture holding companies and other organizational structures where the assets and operations are located within subsidiaries below the UPE or issuer. As with the location of business executives, the Commission believes that if 50% or more of the relevant entity's assets are located in the U.S., that fact is an adequate proxy to establish that the entity is principally operating in the U.S. and should be considered a U.S. person and/or a U.S. issuer.

In determining whether 50% or more of the UPE's or issuer's assets are located in the U.S., the proposed amendments rely on the fair market value of the relevant entity's assets, determined in accordance with § 801.10(c)(3) of the Rules. This includes both tangible and intangible assets. For example, if the entity's total assets have a fair market value of $500 million, and $250 million or more of that fair market value is attributable to U.S. assets, then 50% of the entity's assets are deemed to be in the United States and its principal offices are in the United States. Therefore, the entity is a U.S. person and/or a U.S. issuer.

For entities without officers or directors, the analysis under the proposed amendments would focus on individuals exercising similar functions as officers and directors. If, for example, a limited partnership is not organized under U.S. law and does not have officers and directors, it must look to individuals exercising similar functions for the partnership. Serving as the equivalent of an officer or director includes making decisions regarding, and overseeing, the day-to-day affairs of the partnership. For example, those ''exercising similar functions'' for an investment fund partnership may include the general partner of the partnership, and/or any investment manager, if one exists. The general partner and investment manager need not be under common control, for HSR purposes, with the partnership for the ''exercising similar functions'' concept to apply. In applying the officers and directors prongs of the test, if the investment manager or general partner is a third-party entity (rather than an individual), then for purposes of determining ''residency,'' the analysis will focus on the locations where the investment manager and general partner are incorporated and the laws under which they are organized.

For example, Investment Fund LP is not organized under U.S. law, does not have any officers and directors, and does not have 50% or more of its assets in the United States. For purposes of the officers and directors analysis, Investment Fund LP must focus on individuals or entities exercising similar functions as officers and directors. In this case, the entities that exercise similar functions as officers and directors for Investment Fund LP are its General Partner, as well as its Investment Manager, even though General Partner and Investment Manager are not under common HSR control with Investment Fund LP. In this instance, given the lack of HSR control, a viable proxy for determining Investment Fund LP's nexus to the U.S., for purposes of the officers and directors prongs of the proposed principal offices test, is whether the Investment Manager or General Partner is organized or incorporated under U.S. law. If General Partner is not incorporated in the U.S. or organized under U.S. law, but Investment Manager is organized under U.S. law, Investment Fund LP would be operated out of the United States, making it a U.S. person.

The proposed definitions of ''principal offices'' in § 801.1(e)(1)(iii) retain the intent of the 1978 SBP to exempt transactions with a limited connection with U.S. commerce, while recognizing that the 1978 SBP's focus on a ''single location,'' which may not be connected with principal operations, is no longer appropriate. An entity's principal operations are relevant to determining whether there is a connection with U.S. commerce, and the Commission proposes focusing on director and officer residency and the location of assets as proxies for these operations. This proposed rule will mean that all three tests for determining principal offices will be straightforward, and it should therefore be easier for an entity to evaluate whether it satisfies any of the prongs of § 801.1(e)(1)(i)(A) and (ii), and whether it is a U.S. person and/or a U.S. issuer or, instead, a foreign person and/or a foreign issuer under the proposed changes to § 801.1(e)(2) discussed below.

The proposed definitions of ''principal offices'' will benefit parties analyzing premerger notification requirements by reducing the ambiguity and uncertainty in the current Rules and making it easier to determine whether an entity is a U.S. person and/or U.S. issuer. The Agencies will also benefit by having Rules that more accurately identify and exclude from the filing requirements those transactions that have only a limited nexus with U.S. commerce, as intended by the 1978 SBP. The Commission does not anticipate that the proposed definitions will increase the burden on parties, because identifying both where officers and directors reside, and whether half of an entity's assets are located in the U.S. or abroad, should not be overly complicated or onerous.

C. Foreign Person and Issuer

With the proposed amendments to the definitions of a U.S. person and a U.S. issuer in § 801.1(e)(1), the three-part test to determine whether an entity is a foreign person and/or a foreign issuer in § 801.1(e)(2) is no longer necessary. Any person or issuer that is not a U.S. person or a U.S. issuer is necessarily a foreign person or a foreign issuer. Therefore, the Commission proposes simplifying the definitions for ''foreign person'' and ''foreign issuer'' to reflect this approach.

The proposed amendment will benefit parties analyzing premerger notification requirements because it will simplify and clarify the analysis for determining whether an entity is a foreign person and/or a foreign issuer.

Part 803—Transmittal Rules

Section 803.5 Affidavits Required

A. Background

The purpose of the notice provision in § 803.5(a)(1) is to inform the acquired issuer or unincorporated entity, and its UPE, of the obligation to make a premerger notification filing under the Act. There are certain categories of transactions, captured by § 801.30 of the Rules, that do not necessarily involve an agreement between the acquiring and acquired persons. In such circumstances, the § 803.5(a)(1) notice requirement is necessary because the acquired issuer or unincorporated entity may not otherwise be aware of the transaction and any premerger notification obligations. *See* 43 FR 33497, 33510 (July 31, 1978). Section 803.5(a)(1) currently requires that the notice be received at the ''principal executive offices'' of the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired. Given the use of ''principal offices'' in § 801.1(e)(1), the Commission proposes removing the phrase ''principal executive offices'' from § 803.5(a)(1). This will benefit filing parties by avoiding confusion. Section 803.5(a)(1) specifies to whom notice must be sent.

Communications by Outside Parties to Commissioners and Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. 16 CFR 1.26(b)(5).

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that the agency conduct an initial and final regulatory analysis of the anticipated economic impact of the proposed amendments on small entities, except where the Commission certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. Because of the size of the transactions necessary to invoke an HSR filing, the

premerger notification rules rarely, if ever, affect small entities.[1] The 2000 amendments to the Act exempted all transactions valued at $50 million or less, with subsequent automatic adjustments to take account of changes in Gross National Product resulting in a current threshold of $84.4 million. Further, none of the proposed amendments expands the coverage of the premerger notification rules in a way that would affect small entities. Accordingly, the Commission certifies that these proposed amendments will not have a significant economic impact on a substantial number of small entities. This document serves as the required notice of this certification to the Small Business Administration.

Paperwork Reduction Act

As noted above, the proposed amendments should make it easier for entities to evaluate whether a given transaction will qualify for the foreign exemptions to reporting obligations under the HSR Act. As such, Commission staff believes that the proposed amendments will not increase, and may even reduce, PRA burden.

List of Subjects in 16 CFR Parts 801 and 803

Antitrust.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend 16 CFR parts 801 and 803 as set forth below:

PART 801—COVERAGE RULES

■ 1. The authority citation for part 801 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 2. Amend § 801.1 by revising paragraph (e) to read as follows:

§ 801.1 Definitions.

* * * * *

(e)(1)(i) *United States person.* The term *United States person* means a person the ultimate parent entity of which—

(A) Is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States; or

(B) If a natural person, either is a citizen of the United States or resides in the United States.

(ii) *United States issuer.* The term *United States issuer* means an issuer which is incorporated in the United States, is organized under the laws of the United States or has its principal offices within the United States.

(iii) *Principal offices.* Principal offices are within the United States—

(A) For purposes of paragraph (e)(1)(i)(A) of this section, if 50% or more of the ultimate parent entity's officers reside in the United States; or 50% or more of the ultimate parent entity's directors reside in the United States; or 50% or more of the ultimate parent entity's assets (including the assets of all entities that the ultimate parent entity controls directly or indirectly), based on a fair market value that is determined in accordance with § 801.10(c), are located within the United States. In the case of an entity lacking officers and directors, the analysis is based on individuals exercising similar functions.

(B) For purposes of paragraph (e)(1)(ii) of this section, if 50% or more of the issuer's officers reside in the United States; or 50% or more of the issuer's directors reside in the United States; or 50% or more of the issuer's assets (including the assets of all entities that the issuer controls directly or indirectly), based on a fair market value that is determined in accordance with § 801.10(c), are located within the United States. In the case of an entity lacking officers and directors, the analysis is based on individuals exercising similar functions.

Example 1 to paragraph (e)(1). X Corporation, the ultimate parent entity, is not incorporated in the U.S. or organized under U.S. law. The members of its Board of Directors do not reside in the U.S. Of its ''officers''—the individuals in positions that are either (a) provided for in the entity's articles of incorporation or by-laws, or (b) appointed by the board of directors—5 reside in the U.S. and 5 do not reside in the U.S. X Corporation is a U.S. person because 50% of its officers reside in the U.S.

Example 2 to paragraph (e(1)). Fund LP is not incorporated in the U.S. nor organized under U.S. law and does not have officers or directors. Fund LP has a General Partner and Investment Manager, both of which exercise similar functions as officers for Fund LP. Neither the General Partner nor Investment Manager are individuals, but are third-party entities. Because the individuals exercising similar functions as officers and directors are based within third-party entities, the residency analysis will focus on the locations where these third-party entities are incorporated and the laws under which they are organized. The analysis will not require looking through the Investment Manager LP and General Partner to analyze the specific individuals within these third-party entities serving as officers and directors for Fund LP. The General Partner of Fund LP is a corporation that is not incorporated in the U.S. or organized under U.S. law. Fund LP's investment decisions are made by Investment Manager LP, pursuant to an investment management agreement. Investment Manager LP is organized under U.S. law, and therefore Fund LP is operated out of the U.S. and a United States person.

Example 3 to paragraph (e)(1). X Corporation, the ultimate parent entity, is not incorporated in the U.S. or organized under U.S. law. Four of the seven members of its Board of Directors reside outside of the U.S., and seven of the ten officers of X Corporation reside outside of the U.S. X Corporation and its directly and indirectly controlled subsidiaries have assets, including offices, manufacturing facilities, and intellectual property, among others, both in the U.S. and outside of the U.S. Based upon a fair market valuation, X Corporation determines that 75% of its total assets are in the U.S. X Corporation is therefore a U.S. person.

(2)(i) *Foreign person.* The term *foreign person* means a person the ultimate parent entity of which is not a United States person under paragraph (e)(1)(i) of this section.

(ii) *Foreign issuer.* The term *foreign issuer* means an issuer which is not a United States issuer under paragraph (e)(1)(ii) of this section.

* * * * *

PART 803—TRANSMITTAL RULES

■ 3. The authority citation for part 803 continues to read as follows:

Authority: 15 U.S.C. 18a(d).

■ 4. Amend § 803.5 by revising paragraph (a)(1) introductory text to read as follows:

§ 803.5 Affidavits Required.

(a)(1) *Section 801.30 acquisitions.* For acquisitions to which § 801.30 applies, the notification required by the Act from each acquiring person shall contain an affidavit, attached to the front of the notification, or with the DVD submission, attesting that the issuer or unincorporated entity whose voting securities or non-corporate interests are to be acquired has received written notice delivered to an officer (or a person exercising similar functions in the case of an entity without officers) by email or by certified or registered mail, wire, or hand delivery, of:

* * * * *

[1] *See* 13 CFR part 121 (regulations defining small business size).

By direction of the Commission.

April Tabor,

Acting Secretary.

[FR Doc. 2019–23560 Filed 10–30–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 15

Office of the Secretary

43 CFR Parts 4, 30

[Docket No. DOI–2019–0001]

RIN 1094–AA55; 190A2100DD/AAKC001030/A0A501010.999900253G; 19XD0120OS/DS68241000/DOTN00000.000000/DX68201.QAGENLAM

Updates to American Indian Probate Regulations

AGENCY: Bureau of Indian Affairs, Office of the Secretary, Interior.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: The Department of the Interior (Department) is considering potential updates to regulations governing probate of property that the United States holds in trust or restricted status for American Indians. Since the regulations were revised in 2008, the Department identified opportunities for improving the probate process. The Department is seeking Tribal input and public comment on its ideas for improvements in the regulations in general, and on the potential regulatory changes identified below in particular.

DATES: Submit written comments by December 30, 2019.

ADDRESSES: You may submit comments by any one of the following methods:

- *Federal rulemaking portal: www.regulations.gov.* The rule is listed under Agency Docket Number DOI–2019–0001.
- *Email: consultation@bia.gov.*
- *Mail, Hand Delivery, or Courier:* Ms. Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 4660, Washington, DC 20240.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

Public Availability of Comments

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

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

SUPPLEMENTARY INFORMATION:

Background

The Department probates thousands of estates each year for American Indian individuals who own trust or restricted property. The Bureau of Indian Affairs (BIA), the Office of Hearings and Appeals (OHA), and the Office of the Special Trustee for American Indians (OST) each play a role in the probate process. BIA compiles the information necessary to build a case record (*i.e.,* the probate file) and then transfers the record to OHA for a judge to hold a hearing and issue a final probate decision. In accordance with the judge's final probate decision, BIA distributes the trust or restricted real property (''land'') and OST distributes the trust personalty (''trust funds'') from the estate.

After the American Indian Probate Reform Act (AIPRA) was enacted in 2004, the Department codified regulations implementing it at 43 CFR part 30 for the OHA adjudication process and at 25 CFR part 15 for the BIA and OST portions of the probate process. In an effort to streamline the process and benefit Indian heirs and devisees, the Department is in the process of identifying where improvements can be made through regulatory change.

Identified Issues and Potential Regulatory Changes

The Department has identified parts of the current regulations that are unclear and/or create uncertainty and recognizes that such problems can lengthen the time it takes to process probates. The Department is considering potential approaches to changing these parts of the regulations and welcomes Tribal input, comment from individuals who hold trust or restricted property, and comment from the general public. The issues and potential approaches to improving the probate process are listed below, in no particular order.

Issue 1: Gaps in AIPRA Intestacy Distribution

AIPRA sets out how a decedent's estate should be distributed when the decedent dies without a will (*i.e.,* intestate) at 25 U.S.C. 2206(a). AIPRA addresses how the judge should distribute an estate to any surviving spouse, individual heirs, and/or Tribal heirs, but fails to account for distribution of trust funds under two circumstances when there are no eligible familial heirs under AIPRA: (1) The estate contains trust personalty but no trust real property; and (2) more than one Tribe has jurisdiction over trust real property in the estate. The current 43 CFR 30.254 implements AIPRA and the pre-AIPRA Federal statute for how a judge will distribute the trust real property of a person who dies without a will (*i.e.,* intestate) and has no heirs.

a. Distribution of Trust Personalty When There Are No AIPRA Heirs

AIPRA's intestacy scheme at 25 U.S.C. 2206(a)(2) is limited explicitly by the presumption that a decedent's estate contains interests in trust or restricted land, such that the distribution of a decedent's trust personalty will follow the distribution of the trust land interests. AIPRA provides that if there are no other heirs, the interests will pass to the Tribe with jurisdiction over the trust land interests. *See* 25 U.S.C. 2206(a)(2)(B)(v). The current regulation at § 30.254 incorporates the statutory provision at § 2206(a)(2) but does not identify trust personalty as a stand-alone category of trust property for distribution. In practice, this creates instances where AIPRA's intestacy scheme fails to resolve how trust personalty will be distributed. Those instances occur when there are no eligible person heirs and the decedent has no land interests where a Tribe could have jurisdiction and be considered the ''heir.'' OHA judges have declined to distribute a decedent's trust personalty estate if it is the only trust estate asset and there are no eligible person heirs. Instead, OHA judges dismiss these estates on the basis that a statutory or regulatory change is required to provide authority for distribution of the trust personalty.

b. Distribution of Trust Personalty When More Than One Tribe Has Jurisdiction

As mentioned above, AIPRA provides that if there are no other heirs, the interests will pass to the Tribe with jurisdiction over the trust land interests.

See 25 U.S.C. 2206(a)(2)(B)(v). Neither AIPRA nor the implementing regulations specify which Tribe will receive the trust personalty if more than one Tribe has jurisdiction over trust land interests in the estate.

• *Potential Regulatory Change:* To address these gaps in AIPRA's default intestacy scheme, the Department is considering revising 43 CFR 30.254 and adding additional sections. Specifically, the Department is considering having these additional sections provide clear authority for an OHA judge to order distribution of trust funds when there are either no land interests in a decedent's estate or there are land interests within the jurisdiction of more than one Tribe. The rule under consideration identifies potential recipients of the trust personalty: Close relatives who do not inherit under AIPRA as ''eligible heirs,'' followed by nieces and nephews, and then by the Tribe where the decedent was enrolled. If a decedent does not have close relatives, nieces or nephews, and was not enrolled in any Tribe, then the potential recipients would include the Tribe(s) in which the decedent's parents or grandparents were enrolled. If the decedent was not enrolled in any Tribe, and none of the decedent's parents or grandparents were enrolled in any Tribe, then the judge would exercise discretion by determining the Tribe with whom decedent was most closely affiliated. Such a determination could take into account the Tribal enrollment or affiliation of a decedent's ancestors from whom he or she inherited trust or restricted real property or trust personalty.

Issue 2: Overly Burdensome ''purchase at probate'' Process

AIPRA authorizes certain ''eligible purchasers'' to purchase trust and restricted interests in a parcel of land in the decedent's estate under certain circumstances. *See* 25 U.S.C. 2206(o). The regulations set out this ''purchase at probate'' process at 43 CFR subpart G. *See* §§ 30.160 through 30.175. A number of issues have arisen in implementing these regulations.

a. The current regulations establishing the purchase at probate process are not in chronological order.

• *Potential Regulatory Change:* Rewrite subpart G of the regulations to list the purchase at probate steps in chronological order.

b. Currently if someone seeks to purchase interests in one tract that is included in an estate, the purchase at probate process proceeds for the interests in that tract but the entire estate is kept open in the meantime.

• *Potential Regulatory Change:* Allow for final distribution of all parts of an estate not subject to purchase at probate while the purchase at probate process takes place.

c. The current regulations require the purchase at probate to occur before OHA issues its final decision. This forces OHA to make provisional determinations of heirs or devisees, which opens the possibility of having to redo the already-lengthy purchase at probate process in situations such as will contests or objections regarding determinations of heirs that are made when the final decision is issued. The problems of completing the purchase at probate process before the heirs/devisees are determined is intensified in situations in which the purchase may only be approved if the heirs/devisees consent. If the preliminary determination of heirs/devisees is incorrect, the wrong individuals have consented or refused to consent.

• *Potential Regulatory Change:* Allow OHA to issue the final decision to determine the heirs/devisees before beginning the purchase at probate process.

d. The current regulations do not include a provision to seek initial consent from heirs/devisees as to their willingness to consider bids to purchase property interests. Instances occur in which heirs/devisees do not indicate intent to participate in the purchase at probate process. When initial consent is not included, the purchase at probate process may progress for a long time before the heir/devisee's consent is sought, thus resulting in process delays.

• *Potential Regulatory Change:* For purchases in which consent is required, add provisions stating that OHA will issue an initial order to heirs/devisees to provide written notification of their willingness to consider bids that may be made by potential purchasers, and that if written notification is not received by a deadline, OHA may presume the heirs/devisees do not consent to the purchase of the property interest(s) and may deny the request to purchase.

e. When OHA receives a request to purchase at probate, the current regulations require OHA to notify all ''eligible purchasers.'' ''Eligible purchasers'' include persons who own undivided trust or restricted interests in the same parcel of land involved in the probate proceeding, *i.e.,* co-owners. For co-owners who have not submitted a purchase request, OHA provides notice by posting in multiple places. This posting adds significant time to the process, while resulting in few, if any, co-owner requests to purchase. AIPRA does not require notice in such a scenario.

• *Potential Regulatory Change:* Revise the regulations to require co-owner notice only to co-owners who have submitted prior notice to the BIA that they want to receive notice of probates involving specified allotments, and to establish that such notice will be made by mailing rather than posting. These potential changes would work to reserve notice to co-owners only for situations in which a co-owner has requested to receive notice, while continuing to meet due process requirements and reducing complexities in the probate process.

f. AIPRA prohibits approval of a purchase at probate interest for less than fair market value, and the current probate regulations state that market value will be determined by an appraisal or valuation method developed by the Secretary. At this time the Department is able to provide the fair market value of a real property interest only via an appraisal. The Department is unable to perform appraisals for minerals-only interests.

• *Potential Regulatory Change:* Revise the purchase at probate regulations to clarify that no minerals-only property may be purchased at probate and to accurately reflect the Department's current appraisal practice.

Issue 3: Notice to Co-Owners Who Are ''potential heirs''

Under AIPRA's intestate distribution scheme, co-owners of allotments are potential heirs in some circumstances. For example, if a decedent dies without any eligible person heirs as listed in AIPRA's order of succession, and there is no Tribe with jurisdiction over the allotment, a surviving co-owner of a trust or restricted interest in the allotment can potentially be an ''heir'' of last resort. Allotments often have many co-owners; some have over one thousand, for example. The current regulations require OHA to provide all interested parties—including co-owners—with mailed notice of probate proceedings. Mailing notice to all co-owners who are potential heirs in a probate case makes the process unnecessarily complex.

• *Potential Regulatory Change:* Modify the regulations to state that potential heirs who may inherit solely based on their status as co-owners will not receive mailed notice of a probate proceeding, unless they have previously filed a request for notice with BIA or OHA. Public notice will continue to be posted.

Issue 4: Insufficient Trust Funds for Funeral Services

The current regulations allow whoever is responsible for making the funeral arrangements on behalf of the decedent's family to obtain up to $1,000 from the decedent's Individual Indian Money (IIM) account to pay for funeral services. (*See* 25 CFR 15.301). This amount has repeatedly proven to be insufficient. The current regulations further require there to be at least $2,500 in the decedent's IIM account at the date of death in order to request the $1,000 distribution.

• *Potential Regulatory Change:* Allow individuals to request up to $5,000 from the decedent's IIM account to pay for funeral services and eliminate the requirement for a certain amount of trust funds to be in the IIM account as of the date of death. This change recognizes the increase in the costs of funeral services and would ensure that family members are able to pay such costs immediately.

Issue 5: No Current Regulatory Process for Exercise of ''tribal purchase'' Option

Aside from the ''purchase at probate'' provisions discussed above, AIPRA also authorizes a Tribe with jurisdiction to purchase an interest in trust or restricted land, if the owner of that interest devises it to a non-Indian. *See* 25 U.S.C. 2205(c)(1)(A). No current regulations implement this statutory Tribal purchase option. Cases in which the Tribal purchase option is available could be processed more efficiently if there are provisions addressing such topics as notice procedures to a Tribe and other interested parties, timeframes that a Tribe must meet to exercise the option, and the process by which fair market value will be determined. Regulations would also ensure uniformity of process from one case to the next.

• *Potential Regulatory Change:* Add new regulations to implement the 25 U.S.C. 2205(c)(1)(A) Tribal purchase option in an efficient and uniform manner.

Issue 6: Cumbersome Process for Minor Estate Inventory Corrections

In the course of its probate work, BIA sometimes determines after a probate decision has been issued that trust or restricted property belonging to a decedent was either omitted from or incorrectly included in the inventory of an estate. Such circumstances require an inventory correction, so that the probate decision can be applied to the property interest in question. The current regulations, at 43 CFR 30.126, require OHA to issue a modification order for these inventory corrections to occur. The regulations also require that the modification order be appealable to the Interior Board of Indian Appeals (IBIA). As a result, it can take significant time to make minor estate inventory corrections to include omitted property.

• *Potential Regulatory Change:* Revise the probate regulations to improve probate process efficiency and reduce the amount of time for estate inventory corrections to be made. Potential revisions could be to authorize BIA to make minor estate inventory corrections or to streamline the process that OHA follows before issuing an inventory modification order. One such streamlining measure could involve an heir or devisee being allowed to—prior to the exercise of an IBIA appeal option—request that an OHA judge reconsider a modification order, thus reducing the number of cases that might result in such an IBIA appeal.

Issue 7: Unclear Judicial Authority To Access Necessary Information

In probate cases involving a challenge to a will—such as on the basis of testamentary capacity or one's ability to make a valid will—the presiding OHA judge may need to order medical records. Under the current regulations, it is unclear what authority an OHA judge has to order such information. Likewise, it is unclear under the current regulations what authority a judge has to issue interrogatories in cases involving will contests. (*See* 25 CFR 15.204 and 43 CFR 30.114). Recipients of such orders and information requests sometimes challenge OHA's authority and may even refuse to provide information necessary for a probate decision to be made. This adds the time necessary to complete the probate process and may result in a final probate decision based on a minimally sufficient record.

• *Potential Regulatory Change:* Add provisions explicitly allowing the OHA judge to order medical records and vital records from State and local entities as needed, and to issue interrogatories in cases involving will contests.

Issue 8: Indian Status Determinations Not Necessary in Every Case

Under current probate regulations, a final probate decision must determine the Indian status of every heir or devisee. A determination of Indian status is often not necessary and applying the definition of ''Indian'' can be complicated.

• *Potential Regulatory Change:* Require probate decisions to determine the Indian status of an heir or devisee only when such a determination is necessary; for example, the determination of Indian status may be necessary in AIPRA cases involving a will and where the devisee is not a lineal descendant of the decedent.

Issue 9: Increase the Scope of Opportunities to Use ''renunciation'' as a Means for Maintaining Property Being Held in Trust

The current regulations allow an heir or devisee to renounce an inherited or devised interest in trust or restricted property. (*See* 43 CFR pt. 43 supt. H). A renunciation must take place before a probate decision is made. Once a probate decision is made, renunciation is not allowed. The current regulations allow petitions for rehearing to be filed within 30 days of a probate decision being made but fail to list renunciation among the bases for which an OHA judge may grant a rehearing.

• *Potential Regulatory Change:* Revise the regulations to allow for renunciation at the rehearing stage, so that the renunciation option can be exercised to prevent property from going out of trust even if renunciation was not sought before an initial probate decision was made.

Issue 10: Make More Relevant the Presumption-of-Death Rule

The probate process obligates OHA—in some circumstances—to determine whether a person is deceased. Proof of death is not always available. To facilitate the decision-making process, the current regulations allow OHA make a presumption of death. The current rule is that such a presumption may be made if there has been no contact with the absent person for the last six years, dating back from the time of the *hearing*. The hearing does not always occur until well after a probate file is sent by BIA to OHA.

• *Potential Regulatory Change:* Revise the presumption-of-death provisions in 43 CFR 30.124(b)(2), keeping the six-year rule but having it date back to the last date of known contact with the absent person. As needed for practicality, these revisions could include exceptions and/or rules about what ''known contact'' entails and/or how ''known contact'' is shown.

Issue 11: The Requirements for Filing Petitions for Rehearing and Reopening Need Clarification

In separate areas of the current regulations, a party may file a petition for rehearing or a petition for reopening (*see* 43 CFR 30.240 and 30.125). A petition for rehearing must be filed within 30 days of the probate decision

and the requirements for presenting new evidence are very specifically laid out. Petitions for reopening may be filed much later by someone who had the chance to participate in the initial probate proceeding but did not do so. Time spent processing a reopening request reduces the time available for other probate cases.

• *Potential Regulatory Change:* Revise the current regulations to: (1) Limit the ability of a party who did not use the opportunity to participate in an initial probate proceeding to later file a petition for reopening; and (2) in a rehearing and reopening proceedings, make clear the circumstances under which new evidence may be presented.

Issue 12: Even Small, Simple Estates Must Undergo a Probate Proceeding

Heirs and devisees often express frustration at how long it takes the Department to process a decedent's estate. One reason that probate takes time is that the current regulations require cases with any amount of trust funds to be adjudicated by an OHA decision maker.

• *Potential Regulatory Changes:* Increase the scope of estates that are subject to OHA's summary process, which does not require a formal hearing (*see* 43 CFR part 30 subpart I), and/or determine what would be considered a small estate and, for estates within that definition, create a streamlined distribution scheme for such estates.

Issue 13: Current Regulations Fail To Address Implementation of the AIPRA Provision Regarding Descent of Off-Reservation Lands

AIPRA distinctly addresses the descent of interests in trust or restricted lands that are located outside the boundaries of an Indian reservation and are not subject to the jurisdiction of a Tribe. *See* 25 U.S.C. 2206(d)(2). The current regulations fail to address implementation of this statutory provision, however, which may be applied inconsistently or not at all.

• *Potential Regulatory Changes:* Address implementation of an AIPRA provision (25 U.S.C. 2206(d)(2)) concerning off-reservation lands. The purpose of such a change would be to ensure consistency and transparency in OHA decisions, and to increase the public's awareness about exceptions to the AIPRA rules that exist.

Authority

The Department is issuing this ANPRM under the authority of 5 U.S.C. 301, 25 U.S.C. 2, 9, 372, 373 and the Indian Land Consolidation Act of 2000 (ILCA) as amended by the American Indian Probate Reform Act of 2004 (AIPRA), 25 U.S.C. 2201 *et seq.*

Susan Combs,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2019–23748 Filed 10–30–19; 8:45 am]

BILLING CODE 4334–63–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2014–0741; FRL–10001–62–OAR]

RIN 2060–AU53

National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills; Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-alone Semichemical Pulp Mills and the New Source Performance Standards (NSPS) for Kraft Pulp Mills constructed, reconstructed, or modified after May 23, 2013. This proposed rule clarifies how operating limits are required to be established for smelt dissolving tank scrubbers and corrects cross-reference errors in both rules.

DATES:

Comments. Comments must be received on or before December 30, 2019.

Public Hearing. If anyone contacts us requesting a public hearing on or before November 5, 2019, we will hold a hearing. Additional information about the hearing, if requested, will be published in a subsequent **Federal Register** document and posted at *https://www.epa.gov/stationary-sources-air-pollution/kraft-soda-sulfite-and-stand-alone-semichemical-pulp-mills-mact-ii.* See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OAR–2014–0741, by any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.

• *Email: a-and-r-docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2014–0741 in the subject line of the message.

• *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2014–0741.

• *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Docket ID No. EPA–HQ–OAR–2014–0741, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand/Courier Delivery:* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operation are 8:30 a.m.–4:30 p.m., Monday–Friday (except federal holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions about this proposed action, contact Dr. Kelley Spence, Sector Policies and Programs Division (E143–03), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3158; fax number: (919) 541–0516; and email address: *spence.kelley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Public Hearing. Please contact Ms. Virginia Hunt at (919) 541–0832 or by email at *hunt.virginia@epa.gov* to request a hearing, to register to speak at the hearing, or to inquire as to whether a public hearing will be held.

Docket. The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2014–0741. All documents in the docket are listed in *Regulations.gov.* Although listed, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy. Publicly

available docket materials are available either electronically in *Regulations.gov* or in hard copy at the EPA Docket Center, Room 3334, EPA WJC West Building, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

Instructions. Direct your comments to Docket ID No. EPA–HQ–OAR–2014–0741. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov/,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov/* or email. This type of information should be submitted by mail as discussed below.

The EPA may publish any comment received to its public docket. Multimedia submissions (audio, video, *etc.*) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

The *https://www.regulations.gov/* website allows you to submit your comment anonymously, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov/,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any digital storage media you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should not include special characters or any form of encryption and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Submitting CBI. Do not submit information containing CBI to the EPA through *https://www.regulations.gov/* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on any digital storage media that you mail to the EPA, mark the outside of the digital storage media as CBI and then identify electronically within the digital storage media the specific information that is claimed as CBI. In addition to one complete version of the comments that includes information claimed as CBI, you must submit a copy of the comments that does not contain the information claimed as CBI directly to the public docket through the procedures outlined in *Instructions* above. If you submit any digital storage media that does not contain CBI, mark the outside of the digital storage media clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and the EPA's electronic public docket without prior notice. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 Code of Federal Regulations (CFR) part 2. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention Docket ID No. EPA–HQ–OAR–2014–0741.

Preamble acronyms and abbreviations. We use multiple acronyms and terms in this preamble. While this list may not be exhaustive, to ease the reading of this preamble and for reference purposes, the EPA defines the following terms and acronyms here:

ADI Applicability Determination Index
CAA Clean Air Act
CBI Confidential Business Information
CFR Code of Federal Regulations
EPA Environmental Protection Agency
ESP electrostatic precipitator
HAP hazardous air pollutant(s)
NAICS North American Industry Classification System
NESHAP national emission standards for hazardous air pollutants
NSPS new source performance standards
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFLA percent full load amperage
PM particulate matter
RPM revolutions per minute
SDT smelt dissolving tank

Organization of this document. The information in this preamble is organized as follows:

I. General Information
A. Why is the EPA issuing this proposed action?
B. Does this action apply to me?
C. Where can I get a copy of this document and other related information?
II. Proposed Amendments
A. What are the proposed amendments to the NESHAP?
B. What are the proposed amendments to the NSPS?
III. Summary of Cost, Environmental, and Economic Impacts
A. What are the affected sources?
B. What are the air quality impacts?
C. What are the cost impacts?
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E. What are the benefits?
IV. Request for Comments
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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E. Unfunded Mandates Reform Act (UMRA)
F. Executive Order 13132: Federalism
G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer and Advancement Act (NTTAA)
K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Why is the EPA issuing this proposed action?

This document proposes to amend the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM), and the Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (40 CFR part 60, subpart BBa). We are proposing this action to clarify how smelt dissolving tank (SDT) scrubber fan

amperage limits should be determined and amend these rules to correct cross-reference errors. We explain our reasons for this action in this preamble.

B. Does this action apply to me?

Table 1 of this preamble lists the NESHAP, NSPS, and associated regulated industrial source categories that are the subject of this proposal. Table 1 is not intended to be exhaustive, but rather provides a guide for readers regarding the entities that this proposed action is likely to affect. The proposed amendments, once promulgated, will be directly applicable to the affected sources. Federal, state, local, and tribal government entities will not be affected by this proposed action. As defined in the *Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act Amendments of 1990* (*see* 57 FR 31576, July 16, 1992) and *Documentation for Developing the Initial Source Category List, Final Report* (*see* EPA–450/3–91–030, July 1992), the Pulp and Paper Production source category is any facility engaged in the production of pulp and/or paper. This category includes, but is not limited to, integrated mills (where pulp alone or pulp and paper or paperboard are manufactured on-site), non-integrated mills (where paper or paperboard are manufactured, but no pulp is manufactured on-site), and secondary fiber mills (where waste paper is used as the primary raw material). Examples of pulping methods include kraft, soda, sulfite, semi-chemical, and mechanical. The pulp and paper production process units include operations such as pulping, bleaching, and chemical recovery. A kraft pulp mill is defined as a facility engaged in kraft pulping and includes digester systems, brown stock washer systems, multiple-effect evaporator systems, condensate stripper systems, recovery furnaces, SDTs, and lime kilns.

TABLE 1—REGULATIONS AND INDUSTRIAL SOURCE CATEGORIES AFFECTED BY THIS PROPOSED ACTION

Source category	Name of action	NAICS code [1]
Pulp and Paper Production	Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR part 63, subpart MM).	32211, 32212, 32213
Kraft Pulp Mills	Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013 (40 CFR part 60, subpart BBa).	3221

[1] North American Industry Classification System.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this action is available on the internet. Following signature by the EPA Administrator, the EPA will post a copy of this proposed action at *https://www.epa.gov/stationary-sources-air-pollution/kraft-soda-sulfite-and-stand-alone-semichemical-pulp-mills-mact-ii* and *https://www.epa.gov/stationary-sources-air-pollution/kraft-pulp-mills-new-source-performance-standards-nsps-40-cfr-60.* Following publication in the **Federal Register**, the EPA will post the **Federal Register** version of the proposal at this same website.

A redline version of the regulatory language that incorporates the proposed changes in this action is available in the docket (Docket ID No. EPA–HQ–OAR–2014–0741).

II. Proposed Amendments

A. What are the proposed amendments to the NESHAP?

With this action, the EPA is proposing to clarify how SDT scrubber fan amperage operating limits should be determined. A technical-feasibility issue with implementing the residual risk and technology review amendments to 40 CFR part 63, subpart MM, published in 2017 (82 FR 47328, October 11, 2017) was brought to the EPA's attention through alternative monitoring requests the Agency received.

The 2017 NESHAP amendment that added the fan amperage [1] alternative parameter to 40 CFR 63.864(e)(10)(iii) was based on the EPA's review of alternative monitoring requests for SDTs available in the EPA's Applicability Determination Index (ADI) (81 FR 97074, December 30, 2016). In these previously approved alternative monitoring requests, the EPA acknowledged that pressure drop is not the best indicator of particulate matter (PM)/hazardous air pollutant (HAP) control device performance when the SDT scrubber is a low-energy entrainment scrubber or a dynamic scrubber that operates near atmospheric pressure. Low-energy entrainment scrubbers use the rotation of the fan blade to shatter the scrubbing liquid into fine droplets, while at the same time accelerating the particles into the airstream. The PM removal efficiency of these scrubbers is a function of the number of liquid droplets produced (to create a large contacting surface area) and the velocity of the particulates imparted by the fan blade, which in turn is a function of the amount of scrubbing liquid introduced and the tip speed of the fan blade. Therefore, the most important parameters to continuously monitor are the scrubbing liquid flow rate and the fan rotational speed (as indicated by the amperage of the fan motor or revolutions per minute (RPM)).

The 2017 NESHAP amendment also specified a method in 40 CFR 63.864(j)(5)(i)(A) for setting the fan motor amperage operating limit, requiring that the minimum fan amperage operating limit be set as the lowest of the 1-hour average fan amperage values associated with each run demonstrating compliance with the applicable emission limit. The intent of establishing the operating limit as the lowest 1-hour average fan amperage was to demonstrate that the scrubber was operating as intended and removing HAP accordingly, because fan amperage values can be correlated with fan speed. This seemed reasonable during the development of the 2017 NESHAP amendments because the fan on these units are constant speed fans and changes in the load to the fan motor (*e.g.,* changes in gas density/pressure or fan belt issues) result in changes in the amperage needed to maintain the constant speed. For example, a scrubber operating without any scrubbing liquid or exhaust gas would pull a certain amount of amperage on the fan motor to maintain a constant speed. When the exhaust gas and scrubbing liquid are added, the fan motor amperage will increase to maintain that speed. Based on this concept, the basis for the fan motor amperage operating limit in the 2017 NESHAP amendments was that a drop in fan motor amperage below a certain point showed that the motor

[1] Fan amperage refers to the amperage delivered to the fan motor.

would no longer turn the fan properly (because, for example, the belt that connects the motor to the fan was slipping or broken), which in turn would mean the scrubber was not operating as well as it was during the emissions performance test.

As facilities began to plan their repeat performance test required by the 2017 NESHAP amendments and determine the appropriate operating parameters, they discovered that the method dictated to set the fan motor amperage did not accurately represent proper scrubber performance and submitted alternative monitoring requests. The alternative monitoring requests that EPA has received explained that setting the fan amperage operating limit as outlined in the 2017 NESHAP amendments at 40 CFR 63.864(j)(5)(i)(A) could result in a minimum limit that does not correlate with scrubber emissions-reduction performance and cannot be achieved at all times, leading to deviations of the amperage operating parameter even when the fan is turning as designed and the scrubber is operating properly to achieve the required HAP reduction. More details on these alternative monitoring requests are available in the memorandum titled *Smelt Dissolving Tank Scrubber Operating Parameter Review,* in the docket for this rulemaking (EPA Docket ID No. EPA–HQ–OAR–2014–0741).

After reviewing how the SDT scrubbers in question operate, the EPA agrees that use of the average fan motor amperage measured during the performance test to establish the fan amperage limit as dictated in 40 CFR 63.864(j)(5)(i)(A) of the 2017 NESHAP amendments can be problematic because it does not necessarily correlate with proper operation of the scrubber. The EPA's intent with adding the fan motor amperage alternative as part of the 2017 NESHAP amendments was to add regulatory flexibility while ensuring proper scrubber operation, not to arbitrarily set an operating limit that may not be met, even while the SDT scrubber is operating properly. The requirement for determining the fan motor amperage during the performance test to set the minimum limit was included in the 2017 NESHAP (40 CFR part 63, subpart MM) amendments for new and existing sources and in the NSPS (40 CFR part 60, subpart BBa) promulgated in 2014 (79 FR 18952, April 4, 2014) which applies to new sources only. The issue was not identified in public comments on either rule but was discovered as existing sources began to implement the 2017 NESHAP amendments.

Upon further review of the EPA's responses to historical alternative monitoring requests included in the ADI, recent requests for alternative monitoring and other available information, we recognize that the requirement to monitor fan amperage directly and establish a minimum fan amperage limit based on the average amperage measured during the performance test may result in deviations even when the scrubber is properly operating. Some facilities were approved by the EPA to use indicators of fan operation closely related to fan amperage (*e.g.,* RPM) and engineering design considerations when setting the site-specific fan amperage limit indicative of proper scrubber operation. For more details, see the memorandum titled *Smelt Dissolving Tank Scrubber Operating Parameter Review,* in the docket for this rulemaking (EPA Docket ID No. EPA–HQ–OAR–2014–0741).

To continue with our original intent to measure scrubber performance with an alternative method in these rules, this action is proposing to modify the language at 40 CFR 63.864(e)(10)(iii) and (j)(5)(i) to clarify how wet scrubber parameter limits are to be established and that fan amperage or RPM can be used to demonstrate compliance for the SDT scrubbers in question. Specifically, we are proposing to replace 40 CFR 63.864(j)(5)(i)(A) with a requirement to set the minimum scrubbing liquid flow rate operating limit as the lowest of the 1-hour average scrubbing liquid flow rate values associated with each test run demonstrating compliance with the applicable emission limit. This requirement was inadvertently left out of the 2017 NESHAP amendment but was required by other sections of the rule. Additionally, we are proposing to add a new subsection, 40 CFR 63.864(j)(5)(i)(B) to clarify how wet scrubber fan amperage operating limits should be established.

The proposed text in 40 CFR 63.864(j)(5)(i)(B) would have the same requirements that were previously in the 40 CFR 63.864(j)(5)(i) introductory paragraph, which states the scrubber pressure drop operating limit must be set as the lowest of the 1-hour average pressure drop values associated with each test run demonstrating compliance with the applicable emission limit and provides alternatives for determining parameters for dynamic or low energy entrainment scrubbers. The proposed new 40 CFR 63.864(j)(5)(i)(B)(*1*) would clarify that, for SDT dynamic wet scrubbers operating at ambient pressure or for low energy entrainment scrubbers where fan speed does not vary, the minimum fan amperage operating limit must be set as the midpoint between the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit and the no-load amperage value. Additionally, the proposed regulatory text specifies that the no-load amperage value must be determined using manufacturers specifications or by performing a no-load test of the fan motor, and that it must be verified that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test. The proposed 40 CFR 63.864(j)(5)(i)(B)(*2*) would allow for the use of percent full load amperage (PFLA) to demonstrate compliance. The minimum PFLA to the fan motor must be set as the percent of full load amps under no-load, plus 10 percent. Because the no-load value represents the amperage pulled by the motor without a fan belt (*i.e.,* the fan is not engaged), the additional 10 percent will ensure that the belt has not broken and the fan is engaged during operation. This proposed subsection also would require verification that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test. Further, we are proposing 40 CFR 63.864(j)(5)(i)(B)(*3*) to allow the use of RPM to demonstrate compliance. The minimum RPM must be set at 95 percent of the design RPM. Finally, we are proposing a conforming amendment in 40 CFR 63.867(c)(3)(iii)(C)(*1*) to incorporate this language.

In addition to clarifying how to set SDT fan amperage operating limits, the EPA is also proposing to correct the following cross-reference errors in the promulgated Combustion Source NESHAP (40 CFR part 63, subpart MM):

- An incorrect paragraph reference in the definition of ''modification'' in 40 CFR 63.861;
- An incorrect paragraph reference in 40 CFR 63.864(e)(10)(iii), referring to 40 CFR 63.864(e)(3)(i) instead of 40 CFR 63.864(e)(10)(i) as intended;
- Incorrect paragraph references in 40 CFR 63.864(j)(1), (3), and (5) which cross-referenced requirements that were proposed (81 FR 97046, December 30, 2016) but not finalized for establishing site-specific electrostatic precipitator (ESP) operating limits. Instead, the EPA finalized a requirement to maintain proper operation of the ESP's automatic voltage control (82 FR 47328, October 11, 2017), but inadvertently kept the cross-references to the proposed requirements in the final rule; and
- Omission of reference to wet scrubber liquid flow rate in 40 CFR 63.864(j)(5) which specifies how to establish operating limits.

B. What are the proposed amendments to the NSPS?

With this action, the EPA is proposing similar amendments to the fan amperage requirements as discussed in section II.A of this preamble to 40 CFR 60.284a(b)(2)(iii), (c)(4), and (d)(4)(ii) and 40 CFR 60.287(b)(4)(i) for consistency between the two rules that apply to the same scrubbers. Additionally, the EPA is also proposing to correct a cross-reference error in the promulgated Kraft Pulp Mills NSPS (40 CFR part 60, subpart BBa). Specifically, the EPA is proposing to amend incorrect paragraph references in 40 CFR 60.285a(b)(1) and 60.285a(d)(1) intended to cross-reference the rule's oxygen correction equation.

III. Summary of Cost, Environmental, and Economic Impacts

A. What are the affected sources?

The sources affected by this proposal are chemical pulp mills that use SDTs equipped with low-energy entrainment scrubbers or dynamic scrubbers that operate near atmospheric pressure. We estimate that there are 54 facilities that utilize these types of scrubbers.

B. What are the air quality impacts?

There are no air quality impacts associated with the proposed amendments.

C. What are the cost impacts?

No cost impacts are estimated to be associated with this proposed action because the proposal serves only to provide regulatory clarity. This proposed action reduces the likelihood that facilities will choose to submit site-specific alternative monitoring requests but does not change the scope of any regulatory requirements.

D. What are the economic impacts?

There are no economic impacts associated with the proposed amendments.

E. What are the benefits?

Because these proposed amendments are not considered economically significant, as defined by Executive Order 12866, and because we did not estimate any emission reductions associated with the proposal, we did not estimate any benefits from reducing emissions.

IV. Request for Comments

We solicit comments on this proposed action. In addition to general comments on this action, we are also interested in any additional SDT scrubber performance data that may improve the parameter calculations needed to determine compliance. Such data should include supporting documentation in sufficient detail to allow characterization of the quality and representativeness of the data or information.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Executive Order 13771: Reducing Regulation and Controlling Regulatory Costs

This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulation (40 CFR part 63, subpart MM) and has assigned OMB control number 2060–0377. This action does not change the information collection requirements.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action does not create any new requirements or burdens, and no costs are associated with this proposed action.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175. The EPA does not know of any pulp mills owned or operated by Indian tribal governments or located within tribal lands. Thus, Executive Order 13175 does not apply to this action.

H. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

I. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations, and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). This action does not affect the level of protection provided to human health or the environment.

List of Subjects

40 CFR Part 60

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Monitoring requirements.

40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 22, 2019.

Andrew R. Wheeler,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 60 and 63 as follows:

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart BBa—Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013

■ 2. Section 60.284a is amended by revising paragraphs (b)(2)(iii), (c)(3)(i), (c)(4), and (d)(4)(ii) to read as follows:

§ 60.284a Monitoring of emissions and operations.

* * * * *

(b) * * *

(2) * * *

(iii) As an alternative to pressure drop measurement under paragraph (b)(2)(i) of this section, a monitoring device for measurement of fan amperage or revolutions per minute (RPM) may be used for smelt dissolving tank dynamic scrubbers that operate at ambient pressure or for low-energy entrainment scrubbers where the fan speed does not vary.

* * * * *

(c) * * *

(3) * * *

(i) Calculate 12-hour block averages from the recorded measurements of wet scrubber pressure drop (or smelt dissolving tank scrubber fan amperage or RPM) and liquid flow rate (or liquid supply pressure), as applicable.

* * * * *

(4) During the initial performance test required in § 60.285a, the owner or operator must establish site-specific operating limits for the monitoring parameters in paragraphs (b)(2) through (4) of this section by continuously monitoring the parameters and determining the arithmetic average value of each parameter during the performance test. The arithmetic average of the measured values for the three test runs establishes your minimum site-specific operating limit for each wet scrubber or ESP parameter (except for smelt dissolving tank scrubber fan amperage or RPM). For smelt dissolving tank scrubber fan amperage, see 40 CFR 63.864(j)(5)(i)(B). For smelt dissolving tank scrubber RPM, the minimum RPM must be set as 5 percent lower than the design RPM. Multiple performance tests may be conducted to establish a range of parameter values. The owner or operator may establish replacement operating limits for the monitoring parameters during subsequent performance tests using the test methods in § 60.285a.

* * * * *

(d) * * *

(4) * * *

(ii) All 12-hour block average scrubber pressure drop (or fan amperage or RPM, if used as an alternative under paragraph (b)(2)(iii) of this section) measurements below the minimum site-specific limit established during performance testing during times when BLS or lime mud is fired (as applicable), except during startup and shutdown.

* * * * *

■ 3. Section 60.285a is amended by revising paragraphs (b)(1) and (d)(1) to read as follows:

§ 60.285a Test methods and procedures.

* * * * *

(b) * * *

(1) Method 5 of appendix A–3 of this part must be used to determine the filterable particulate matter concentration. The sampling time and sample volume for each run must be at least 60 minutes and 0.90 dscm (31.8 dscf). Water must be used as the cleanup solvent instead of acetone in the sample recovery procedure. The particulate concentration must be corrected to the appropriate oxygen concentration according to § 60.284a(c)(1)(iii).

* * * * *

(d) * * *

(1) Method 16 of appendix A–6 of this part must be used to determine the TRS concentration. The TRS concentration must be corrected to the appropriate oxygen concentration using the procedure in § 60.284a(c)(1)(iii). The sampling time must be at least 3 hours, but no longer than 6 hours.

* * * * *

■ 4. Section 60.287a is amended by revising paragraph (b)(4)(i) to read as follows:

* * * * *

(b) * * *

(4) * * *

(i) Records of the pressure drop of the gas stream through the control equipment (or smelt dissolving tank scrubber fan amperage or RPM), and

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

■ 5. The authority citation for part 63 continues to read as follows:

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

Subpart MM—National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills

■ 6. Section 63.861 is amended by revising the definition of ''modification'' and adding in alphabetical order the definition of ''no-load fan amperage'' to read as follows:

* * * * *

Modification means, for the purposes of § 63.862(a)(1)(ii)(D)(*1*), any physical change (excluding any routine part replacement or maintenance) or operational change that is made to the air pollution control device that could result in an increase in PM emissions.

No-load fan amperage means, for purposes of this subpart, the amperage pulled by the fan motor when the fan is operating under no-load, specifically the amperage value the motor would use if the fan belt was removed.

* * * * *

■ 7. Section 63.864 is amended by revising paragraphs (e)(10)(iii), (j)(1), (3), and (5) to read as follows:

§ 63.864 Monitoring requirements.

* * * * *

(e) * * *

(10) * * *

(iii) As an alternative to pressure drop measurement under paragraph (e)(10)(i) of this section, a monitoring device for measurement of fan amperage or fan revolutions per minute (RPM) may be used for smelt dissolving tank dynamic scrubbers that operate at ambient pressure or for low-energy entrainment scrubbers where the fan speed does not vary.

* * * * *

(j) * * *

(1) During the initial or periodic performance test required in § 63.865, the owner or operator of any affected source or process unit must establish operating limits for the monitoring parameters in paragraphs (e)(2) and (10)

through (14) of this section, as appropriate; or

* * * * *

(3) The owner or operator of an affected source or process unit may establish expanded or replacement operating limits for the monitoring parameters listed in paragraphs (e)(2) and (10) through (14) of this section and established in paragraph (j)(1) or (2) of this section during subsequent performance tests using the test methods in § 63.865.

* * * * *

(5) New, expanded, or replacement operating limits for the monitoring parameter values listed in paragraphs (e)(2) and (10) through (14) of this section should be determined as described in paragraphs (j)(5)(i) and (ii) of this section.

(i) The owner or operator of an affected source or process unit that uses a wet scrubber must set minimum operating limits as described in paragraph (j)(5)(i)(A) and (B) of this section.

(A) Set the minimum scrubbing liquid flow rate operating limit as the lowest of the 1-hour average scrubbing liquid flow rate values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862.

(B) Set the minimum scrubber pressure drop operating limit as the lowest of the 1-hour average pressure drop values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862; or for a smelt dissolving tank dynamic wet scrubber operating at ambient pressure or for low energy entrainment scrubbers where fan speed does not vary, set the minimum operating limit using one of the methods in paragraph (j)(5)(i)(B)(*1*) through (*3*) of this section.

(*1*) The minimum fan amperage operating limit must be set as the midpoint between the lowest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862 and the no-load amperage value. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber. It must be verified that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test; or

(*2*) The minimum percent full load amperage (PFLA) to the fan motor must be set as the percent of full load amps under no-load, plus 10 percent. The PFLA is calculated by dividing the no-load amperage value by the highest of the 1-hour average fan amperage values associated with each test run demonstrating compliance with the applicable emission limit in § 63.862 multiplied by 100. The no-load amperage value must be determined using manufacturers specifications, or by performing a no-load test of the fan motor for each smelt dissolving tank scrubber. It must be verified that the scrubber fan is operating within 5 percent of the design RPM during the emissions performance test; or

(*3*) The minimum RPM must be set as 95 percent of the design RPM.

* * * * *

■ 8. Section 63.867 is amended by revising paragraph (c)(3)(iii)(C)(*1*) to read as follows:

§ 63.867 Reporting requirements.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(C) * * *

(1) The operating limits established during the performance test for scrubbing liquid flow rate and pressure drop across the scrubber (or alternatively, fan amperage or RPM if used for smelt dissolving tank scrubbers).

* * * * *

[FR Doc. 2019–23616 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204 and 252

[Docket DARS–2019–0049]

RIN 0750–AK14

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause, ''Payment for Subline Items Not Separately Priced'' (DFARS Case 2018–D050)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to clarify its intent and conform its language to current DFARS terminology, pursuant to action taken by the Regulatory Reform Task Force.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 30, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018–D050, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2018–D050'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2018–D050.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2018–D050'' on your attached document.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D050 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting, except allow 30 days for posting of comments submitted by mail.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify the clause at DFARS 252.204–7002, Payment for Subline Items Not Separately Priced, to simplify the clause text and conform terminology used in the text to current Government contract line item structure terminology. This update will clarify the intent of the clause, as it pertains to payment on contracts that contain not separately priced (NSP) items, when applicable. The rule also adds a prescription for DFARS 252.204–7002 in the applicable DFARS subpart 204.7109, Contract Clauses.

II. Discussion and Analysis

DFARS clause 252.204–7002 is included in solicitations and contracts when the value of a NSP contract line or subline item is included in the price of another contract line or subline item, and it is necessary to withhold payment

on the priced contract line or subline item until the related NSP item has been delivered. The clause prohibits contractors from billing the Government for a priced item that contains the value of a NSP item until the related NSP items have also been delivered to and accepted by the Government. While use of the clause is discretionary, it is beneficial to DoD in situations when NSP items are individual deliverables on a contract, even though the NSP items are a part or component of a priced item on another contract line or subline item.

Currently, the clause text can be read as prohibiting the contractor from billing for any portion of a contract line or subline item that is associated with an NSP item until all of the NSP items have also been delivered to and accepted by the Government. It is not the intent of the Government to prohibit any and all payment on such contract line or subline items until all deliveries have been made and accepted for both the priced and NSP items. This rule simplifies the clause text to clarify that a contractor can bill the Government for the individual unit price of a delivered item, once the NSP item associated with the individually priced item has also been delivered and accepted by the Government.

The rule also conforms the text of the clause to the current contract line item structure terminology by replacing ''contract line item'' with ''contract line or subline item'' and adds a prescription for the DFARS clause in the applicable section of DFARS 204.71.

The modification of this DFARS text implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.204–7002 and determined that the clause should be revised.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule updates language used in the clause text to clarify its intent and conform with current contract line item structure terminology. This rule does not change the applicability of the affected clause.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.204–7002, Payment for Subline Items Not Separately Priced, to simplify and conform the clause text to current Government contract line item structure terminology, pursuant to action taken by the Regulatory Reform Task Force.

The objective of this proposed rule is to clarify the intent of the clause for contractors, when submitting invoices under contracts that contain items that are not separately priced (NSP). The modification of these DFARS clauses implements a recommendation from the DoD Regulatory Reform Task Force.

Based on an average of data for fiscal year 2016 through 2018 from the Federal Procurement Data System and Electronic Document Access, DoD awards annually approximately 12,435 contracts that include DFARS clause 252.204–7002 to 2,544 unique entities. Of the 12,435 awards, approximately 4,924 contracts (40 percent) are awarded to approximately 1,564 unique small business entities (60 percent). However, based on the available data and the objective of the rule, DoD does not anticipate that this proposed rule will significantly impact small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

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

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D050) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Amend section 204.7104–1 by—

■ a. In paragraph (b)(3)(iii), removing ''subsection'' and adding ''section'' in its place;
■ b. Revising paragraph (b)(3)(iv).
The revision reads as follows:

204.7104–1 Criteria for establishing.

* * * * *

(b) * * *

(3) * * *

(iv) When the price for items not separately priced is included in the price of another contract line or subline item, it may be necessary to withhold payment on the priced contract line or subline item until the included line or subline items that are not separately priced have been delivered. See the clause at 252.204–7002, Payment for Contract Line or Subline Items Not Separately Priced.

■ 3. Revise section 204.7109 to read as follows:

204.7109 Contract clauses.

(a) Use the clause at 252.204–7002, Payment for Contract Line or Subline Items Not Separately Priced, in solicitations and contracts when the price for items not separately priced is included in the price of another contract line or subline item.

(b) Use the clause at 252.204–7006, Billing Instructions, in solicitations and contracts if Section G includes—

(1) Any of the standard payment instructions at PGI 204.7108(b)(2); or

(2) Other payment instructions, in accordance with PGI 204.7108(d)(12), that require contractor identification of the contract line item(s) on the payment request.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Revise section 252.204–7002 to read as follows:

252.204–7002 Payment for Contract Line or Subline Items Not Separately Priced.

As prescribed in 204.7109(a), use the following clause:

Payment for Contract Line or Subline Items Not Separately Priced (Date)

(a) If the schedule in this contract contains any contract line or subline items identified as not separately priced (NSP), it means that the unit price for the NSP line or subline item is included in the unit price of another, related line or subline item.

(b) The Contractor shall not invoice the Government for an item that includes in its price an NSP item until—

(1) The Contractor has also delivered the NSP item included in the price of the item being invoiced; and

(2) The Government has accepted the NSP item.

(c) This clause does not apply to technical data.

(End of clause)

252.204–7006 [Amended]

■ 5. Amend section 252.204–7006 introductory text by removing ''204.7109'' and adding ''204.7109(b)'' in its place.

[FR Doc. 2019–23801 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 232 and 252

[Docket DARS–2019–0059]

RIN 0750–AK50

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause, ''Advanced Payment Pool'' (DFARS Case 2019–D013)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of an existing DFARS clause to include the text of another DFARS clause on the same subject in an effort to streamline contract terms and conditions for contractors.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 30, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D013, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2019–D013.'' Select ''Comment Now'' and follow the instructions to submit a comment. Please include ''DFARS Case 2019–D013'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D013 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to modify the clause at DFARS 252.232–7000, Advance Payment Pool, to incorporate the information currently included in DFARS clause 252.232–7001, Disposition of Payments, and make minor changes to simplify the clause text. Combining these clauses will result in 252.232–7001 being removed from the DFARS.

II. Discussion and Analysis

When applying for advance payments under a contract in accordance with Federal Acquisition Regulation (FAR) 32.408, contractors must provide the name and address of the financial institution, also referred to as the ''disbursing office,'' at which the contractor will establish a special account to serve as the depository for the advance payments. FAR 32.406(b) requires the Government to use either a letter of credit or a direct Treasury check to make advance payments to a contractor, unless a waiver is obtained from the Treasury Department.

A letter of credit is issued by the Government when the contract and the contractor meet certain criteria. The letter of credit enables the contractor to withdraw Government funds from the special account to cover the contractor's own disbursements of cash for contract performance. If the contract and/or contractor cannot meet the criteria, a letter of credit is not issued, and the contractor must submit a properly certified invoice or voucher to the Government for approval. Upon approval of the invoice or voucher, a dual Treasury check is issued to the disbursing office for dissemination to the contractor's special account.

Prior to contract award and in accordance with FAR 32.4, the Government executes a determination supported by a written findings, authorization for the use of advance payment, and an agreement identifying the terms and conditions for advance payment under the contract. FAR clause 52.232–12, Advanced Payments, is included in all solicitations and contracts under which the Government will provide advance payments. The FAR clause advises contractors that advance payment will be made via a letter of credit or submission of a properly certified and approved invoice.

DFARS clause 252.232–7000 is included in all contracts that will be subject to an advance payment pool agreement with a nonprofit organization or educational institution. The DFARS clause supplements the FAR clause by notifying contractors that advance payments will also be made in accordance with the findings, determinations, and authorization for advance payment and the terms and conditions of the advance payment pool agreement.

DFARS clause 252.232–7001, Disposition of Payments, is also included in contracts that will be subject to an advanced payment pool agreement with a nonprofit organization or educational institution, but only when advance payments will not be made by the disbursing office (*i.e.,* when a letter of credit has not been issued under the contract and the contractor must submit an invoice of voucher in accordance with the FAR clause). The DFARS clause supplements the FAR clause by clarifying for contractors that advance payments will be made via a dual Treasury check forwarded to the disbursing office for distribution to the contractor.

This rule proposes to combine both DFARS clauses, by adding text to DFARS clause 252.232–7000 to clarify for contractors when a dual Treasury check will be used to make payment under the contract. This information was previously included in DFARS clause 252.232–7001 and the associated prescription. By combining these clauses, DFARS clause 252.232–7001 may be removed from the DFARS.

This rule does not change any existing processes or add any new requirements for either DoD or the public. Both DFARS clauses supplement the FAR clause and clarify the terms and conditions that apply when advance payment pool agreements are authorized under the contract. As such, these DFARS clauses can be combined to streamline and consolidate the information provided to contractors regarding advanced payment pool agreements.

The modification of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on these clauses. Subsequently, the DoD Task Force reviewed the requirements of DFARS clauses 252.232–7000 and 252.232–7001 and determined that the clauses could be combined.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule combines two clauses on the same topic into a single clause and makes minor modifications to simplify clause text. This rule does not change the applicability of the affected clauses, which are not included in solicitations and contracts that are valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements or changing any existing requirements for contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to modify the DFARS clause 252.232–7000, Advance Payment Pool, to incorporate the information currently included in DFARS clause 252.232–7001, Disposition of Payments, and make minor changes to simplify the clause text. Combining these clauses will result in 252.232–7001 being removed from the DFARS. This rule is pursuant to action taken by the DoD Regulatory Reform Task Force.

The objective of this proposed rule is to streamline and consolidate the information provided to contractors regarding advanced payment pool agreements.

DoD does not collect data on the number of contracts awarded to small business entities that involve advanced payment pool agreements with a nonprofit organization or educational institution; therefore, DoD is unable to estimate the number of small entities that will be impacted by this rule. However, DoD does not expect small businesses entities to be significantly impacted by this rule, because the rule does not change any existing processes or impose any additional burdens. Instead, the rule streamlines and clarifies the information currently provided under the two clauses.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses.

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

There are no known significant alternative approaches to the proposed rule that would meet the proposed objectives.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D013) in correspondence.

VI. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 232 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 232—CONTRACT FINANCING

■ 2. Amend section 232.412–70 by—

■ a. Removing paragraph (b);

■ b. Redesignating paragraph (c) as (b); and

■ c. In the newly redesignated paragraph (b), removing ''(See subpart 219.71)'' and adding ''(see subpart 219.71)'' in its place.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.232–7000 by—

■ a. Removing the clause date of ''(DEC 1991)'' and adding ''(DATE)'' in its place;

■ b. In paragraph (b), removing ''(*insert the name of the contractor*)'' and adding ''*[insert the name of the Contractor]*'' in its place;

■ c. Adding paragraph (c).

The addition reads as follows:

252.232–7000 Advance payment pool.

* * * * *

(c) When a letter of credit has not been issued to the Contractor in conjunction with the contract, payment will be by a dual payee Treasury check made payable to the Contractor or the disbursing office in the Advance Payment Pool Agreement and will be forwarded to that disbursing office for appropriate disposition.

* * * * *

252.232–700 [Removed and Reserved]

■ 4. Remove and reserve section 252.232–7001.

252.232–7005 [Amended]

■ 5. Amend section 252.232–7005 in the introductory text by removing ''232.412–70(c)'' and adding ''232.412–70(b)'' in its place.

[FR Doc. 2019–23803 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 249 and 252

[Docket DARS–2019–0060]

RIN 0750–AK56

Defense Federal Acquisition Regulation Supplement: Modification of DFARS Clause ''Notification of Anticipated Contract Termination or Reduction'' (DFARS Case 2019–D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update legal and DFARS citations in an existing DFARS clause, conform the clause text to the current DFARS convention regarding the use of dollar thresholds in contract clauses, and remove clause text that is no longer needed to implement the underlying statutory language.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before December 30, 2019, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2019–D019, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Search for ''DFARS Case 2018–D019.'' Select ''Comment Now'' and follow the instructions to submit a comment. Please include ''DFARS Case 2019–D019'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2019–D019 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Carrie Moore, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Moore, telephone 571–372–6093.

SUPPLEMENTARY INFORMATION:

I. Background

Within the DFARS, statutory acquisition-related dollar thresholds that are subject to inflation adjustment under 41 U.S.C. 1908 are identified in the applicable DFARS policy section. Any clause that relies on such a threshold will reference the threshold in the applicable DFARS policy section, instead of citing the actual dollar value. This drafting convention ensures that inflation adjustments of statutory acquisition-related thresholds apply to existing contracts and subcontracts in effect on the date of the adjustment.

To conform to this drafting convention, this rule proposes to modify the DFARS subpart 249.70 to add the pertinent dollar thresholds of 10 U.S.C. 2501 note, Notice to Contractors and Employees Upon Proposed Termination or Substantial Reduction in Major Defense Programs, and modify DFARS clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, to add references to the statutory thresholds cited at DFARS subpart 249.70.

In addition, DFARS clause 252.249–7002 advises contractors of the benefits that may be available to affected employees through the Job Training Partnership Act (29 U.S.C. 1661 and 1662; Pub. L. 97–300). The Job Training and Partnership Act was repealed and superseded by the Workforce Investment Partnership Act (29 U.S.C. chapter 30; Pub. L. 105–220), which was later repealed and superseded by the Workforce Innovation and Opportunity Act (29 U.S.C. chapter 32; Pub. L. 113–128). This rule proposes to modify DFARS clause 252.249–7002 to reflect the current statute associated with the 10 U.S.C. 2501 note and make other conforming changes.

II. Discussion and Analysis

DFARS clause 252.249–7002 is included in all contracts under a major defense program and implements the requirements of 10 U.S.C. 2501 note. The 10 U.S.C. 2501 note requires contractors, upon receiving notice of contract termination or a substantial reduction in funding resulting from an appropriations act, to provide notice of the anticipated termination or substantial reduction to first-tier subcontractors with a subcontract of $700,000 or more, and flow down the notification to lower-tier subcontractors with a subcontract of $150,000 or more. To implement the dollar thresholds of the 10 U.S.C. 2501 note in accordance with the current DFARS drafting convention, the rule adds the relevant dollar thresholds in DFARS 249.7003,

and updates the clause text to refer to the thresholds added to DFARS 249.7003.

This rule also proposes to amend the DFARS clause to cite the Workforce Innovation and Opportunity Act, which is the current statute under which employee employment and training opportunities apply, and to conform the clause with the current requirements of 10 U.S.C. 2501 note. Public Law 103–160 amended 10 U.S.C. 2501 note to specify which services under title 29 of the U.S.C. an employee could be eligible for, depending on whether the termination or reduction will or will not result in plant closure or mass layoffs. This specification of available services based on results of the notification was removed from 10 U.S.C. 2501 note by Public Law 105–277; therefore, this rule removes this delineation from the DFARS clause. In addition, the thresholds for the subcontractor notification requirements is revised to state ''exceeds'' in lieu of ''equals or exceeds'' to align with the statute.

The revision of this DFARS clause implements a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, ''Enforcing the Regulatory Reform Agenda,'' which established a Federal policy ''to alleviate unnecessary regulatory burdens'' on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the **Federal Register** at 82 FR 35741 on August 1, 2017, and requested public input. One public comment was received on this clause. Subsequently, the DoD Task Force reviewed the requirements of DFARS clause 252.249–7002 and determined that the clause should be modified. A summary of the comment received and the response to the respondent is provided as follows:

Comment: The respondent advised that the clause imposes administrative burden on contractors and is difficult to manage at the multi-tier level.

Response: The clause is necessary to implement the requirements of 10 U.S.C. 2501 note, which identifies notification responsibilities for DoD, as well as certain DoD contractors and their subcontractors, when funding levels in an appropriation act may result in the termination or substantial reduction of funding for contracts under a major defense program. The clause ensures contractors and subcontractors comply with the law and are aware of the benefits potentially available to their employees that are adversely affected by the termination or reduction in funds.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new provisions or clauses. The rule simply updates legal and DFARS citations in the clause and removes unnecessary information. This rule does not change the applicability of the affected clause, which does not apply to contracts valued at or below the SAT, or for commercial or COTS items.

IV. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

VI. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule is not creating any new requirements for contractors or changing any existing policies and practices. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the text of DFARS clause 252.249–7002, Notification of Anticipated Contract Termination or Reduction, to: (1) Update legal and DFARS citations in the clause; (2) remove text that is no longer necessary to implement 10 U.S.C. 2501 note; and (3) conform the clause text to the current DFARS convention for referencing dollar thresholds in a clause. The update of legal and DFARS citations is pursuant to action taken by the DoD Regulatory Reform Task Force under Executive Order 13777, Enforcing the Regulatory Reform Agenda.

The objective of this proposed rule is to provide current information to contractors and maintain consistency within the DFARS clause text.

DoD does not collect data on the number of small businesses that have been awarded contracts under a major defense programs and have also received notice of contract termination or a substantial reduction in funding resulting from an appropriations act. Due to the complexity and magnitude of major defense program contracts, the prime contracts are generally awarded to major contractors, and not to small entities. Senior DoD program acquisition officials estimate that such notification of the termination or substantial reduction in a major defense program does not occur, on the average, more than once or twice per year. However, this rule is not expected to have a significant impact on small business entities, as it does not impose any new requirements or change any existing requirements for small business entities.

This proposed rule does not include any new reporting, recordkeeping, or other compliance requirements for small businesses. This rule does not duplicate, overlap, or conflict with any other Federal rules. There are no known alternatives to the rule that will meet the stated objectives of the statutes or minimize the impact on of the rule on small entities.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities. DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2019–D019) in correspondence.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does apply; however, the changes to DFARS 252.249–7002 do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 0704–0533, titled: DFARS Subpart 249—Termination of Contracts.

List of Subjects in 48 CFR Parts 249 and 252

Government procurement.

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 249 and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 249 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 249—TERMINATION OF CONTRACTS

■ 2. Amend section 249.7003 by—

■ a. In paragraph (a), removing ''Section 824'' and ''Job Training Partnership Act (29 U.S.C. 1661 and 1662)'' and adding ''section 824'' and ''Workforce Innovation and Opportunity Act (29 U.S.C. Chapter 32) (Pub. L. 113–128)'' respectively, in their places;

■ b. In paragraph (b) introductory text, removing ''to:'' and adding ''to—'' in its place;

■ c. In paragraph (b)(1), removing ''act.'' And adding ''act; and'' in its place;

■ d. Revising paragraph (c).

The revision reads as follows:

249.7003 Notification of anticipated contract terminations or reductions.

* * * * *

(c) When subcontracts have been issued, the prime contractor is responsible for—

(1) Providing notice of the termination or substantial reduction in funding to all first-tier subcontractors with a subcontract valued equal to or greater than $700,000; and

(2) Requiring that each subcontractor—

(i) Provide such notice to each of its subcontractors for subcontracts valued greater than $150,000; and

(ii) Impose a similar notice and flowdown requirement in subcontracts valued greater than $150,000 at all tiers.

■ 3. Add section 249.7004 to read as follows:

249.7004 Contract clause.

Use the clause at 252.249–7002, Notification of Anticipated Contract Termination or Reduction, in all contracts under a major defense program.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 252.249–7002 by—

■ a. In the introductory text, removing ''249.7003(c)'' and adding ''249.7004'' in its place;

■ b. Removing the clause date ''(MAY 2019)'' and adding ''(DATE)'' in its place;

■ c. Revising paragraph (b);

■ d. Redesignating the paragraph (c) introductory text and paragraphs (c)(1) through (c)(4) as paragraph (c)(1) and paragraphs (c)(1)(i) through (c)(1)(iv), respectively.

■ e. Revising newly redesignated paragraph (c)(1)(iii);

■ f. Adding paragraph (c)(2);

■ g. In paragraph (d)(1), removing ''225.870–4(c)(2)(i)(A)(*1*) and adding ''249.7003(c)(1)'' in its place;

■ h. Revising paragraphs (d)(2)(i) and (d)(2)(ii); and

■ i. Removing paragraph (e).

The revisions and additions read as follows:

252.249–7002 Notification of Anticipated Contract Termination or Reduction.

* * * * *

(b) *Scope.* This clause implements section 1372 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160) and section 824 of the National Defense Authorization Act for Fiscal Year 1997 (Pub. L. 104–201), which are intended to help establish benefit eligibility under the Workforce Innovation and Opportunity Act (29 U.S.C. chapter 32) (Pub. L. 113–128) for employees of DoD contractors and subcontractors adversely affected by contract terminations or substantial reductions under major defense programs.

(c) * * *

(1) * * *

(iii) The State or entity designated by the State to carry out rapid response activities described in section 134(a)(2)(A)(i) of the Workforce Innovation and Opportunity Act (29 U.S.C. 3174(a)(2)(A)(i)); and

* * * * *

(2) The notice provided an employee under paragraph (c) of this clause shall have the same effect as a notice of termination to the employee for the purposes of determining whether such employee is eligible for training, adjustment assistance, and employment services under section Workforce Innovation and Opportunity Act (29 U.S.C. chapter 3101) (Pub. L. 113–128).

(d) * * *

(2) * * *

(i) Provide notice to each of its subcontractors with a subcontract that exceeds the threshold specified in DFARS 249.7003(c)(2)(i) at the time of the notice; and

(ii) Impose a similar notice and flowdown requirement to subcontractors with subcontracts that exceed the threshold specified in DFARS 249.7003(c)(2)(ii) at the time of the notice.

* * * * *

[FR Doc. 2019–23807 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 84, No. 211

Thursday, October 31, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Advisory Committee on Voluntary Foreign Aid Meeting on November 1, 2019

AGENCY: U.S. Agency for International Development.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Friday, November 1, 2019.

Time: 10:00–11:30 a.m.

Location: Center for Strategic and International Studies (CSIS), 1616 Rhode Island Avenue NW, Washington, DC 20036.

SUPPLEMENTARY INFORMATION:

Purpose

The Advisory Committee on Voluntary Foreign Aid (ACVFA) brings together officials from the U.S. Agency for International Development (USAID) and private voluntary organizations (PVOs), representatives from universities, international non-governmental organizations (NGOs), U.S. businesses, and multilateral and private organizations to foster understanding, communication, and cooperation in the area of foreign aid.

Agenda

USAID leadership will make opening remarks, followed by a presentation and discussion on the principles, benchmarks, and programs that the Agency is considering to support countries along their development journey to self-reliance and long-term prosperity. The full meeting agenda will be forthcoming on the ACVFA website at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

Stakeholders

The meeting is free and open to the public. Persons wishing to attend should register online at *http://www.usaid.gov/who-we-are/organization/advisory-committee.*

FOR FURTHER INFORMATION CONTACT: Diana Leo, *acvfa@usaid.gov* or 202–712–0862.

Diana Leo,

Executive Director, U.S. Agency for International Development.

[FR Doc. 2019–23876 Filed 10–30–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Missouri River Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missouri River Resource Advisory Committee (RAC) will meet in Helena, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. RAC information can be found at the following website: *https://www.fs.usda.gov/hlcnf.*

DATES: The meeting will be held on Tuesday, November 12, 2019, at 7:00 p.m.

All meetings are subject to cancellation. For the updated status of the meeting prior to attendance, please contact Dave Cunningham, RAC Coordinator, by phone at 406–727–8733 or via email at *dave.cunningham@usda.gov.*

ADDRESSES: The meeting will be held at the Helena-Lewis and Clark National Forest, Helena Supervisor's Office, Elk/Tizer Meeting Room, 2880 Skyway Drive, Helena, Montana 59602.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and available for public inspection and copying. The public may inspect comments received at the Helena-Lewis and Clark National Forest, Helena Supervisor's Office. Please call ahead at 406–727–8733 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dave Cunningham, RAC Coordinator, by phone at 406–727–8733 or via email at *dave.cunningham@usda.gov.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

(1) Provide explanation of the provisions of the Federal Public Lands Recreation Enhancement Act (FLREA) provisions for Forest to retain a portion of fees collected at recreation fee sites and of the 2018 Farm Bill authorizing Forest Service SRS Title II RACs to review and make recommendations for Forest Service recreation fee sites,

(2) Review proposed fee changes for fee sites on the Rocky Mountain, Lincoln, Helena, and Townsend Ranger Districts of the Helena-Lewis and Clark National Forest, and

(3) Discuss the proposed fee changes followed by recommendations from the RAC regarding the proposed changes.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Forest Service will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. Individuals wishing to make an oral statement should request in writing by Tuesday, November 5, 2019, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee before or after the meeting.

Written comments and requests for time to make oral comments must be sent to Dave Cunningham, RAC Coordinator, 1220 38th Street, Great Falls, Montana 59805; by email to *dave.cunningham@usda.gov.*

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language

interpreting, assistive listening devices, or other reasonable accommodation. For access to the facility or proceedings, please contact Dave Cunningham, RAC Coordinator, by phone at 406–727–8733 or via email at *dave.cunningham@usda.gov.* All reasonable accommodation requests are managed on a case by case basis.

Dated: October 22, 2019.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2019–23723 Filed 10–30–19; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket ID: NRCS–2019–0014]

Johns Creek Watershed Dam No. 1, Craig County, Virginia

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: NRCS gives notice that an environmental impact statement is not being prepared for the rehabilitation of Johns Creek Watershed Dam No. 1, Craig County, Virginia and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John A. Bricker, Virginia State Conservationist, Natural Resources Conservation Service, 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229. Telephone: (804) 287–1691 or email: *Jack.Bricker@va.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500) and NRCS Regulations (7 CFR part 650), the Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the various Federal, State, and local agencies and interested parties. The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, NRCS State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure. A limited number of the FONSI and basic data developed during the environmental assessment may be obtained from John Bricker at the above telephone number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Catalog of Federal Domestic Assistance: Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and project is applicable.

John A. Bricker,

Virginia State Conservationist, Natural Resources Conservation Services.

[FR Doc. 2019–23795 Filed 10–30–19; 8:45 am]

BILLING CODE 3410–16–P

CIVIL RIGHTS COMMISSION

Sunshine Act Meetings

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of Commission public business meeting.

DATES: Friday, November 8, 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: 800–367–2403, conference ID 590–2592. 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. Discussion and vote on Commission Advisory Committee appointments
  • Maryland
  • West Virginia
  B. Discussion and Vote on the Commission's report, *Women in Prison: Seeking Justice Behind Bars*
  C. Management and Operations
  • Staff Director's Report
III. Adjourn Meeting.

Dated: October 29, 2019.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2019–23890 Filed 10–29–19; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 2087]

Approval of Subzone Status; Waterfront Enterprises, LLC; New Haven, Connecticut

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones (FTZ) Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Greater New Haven Chamber of Commerce, grantee of Foreign-Trade Zone 162, has made application to the Board for the establishment of a subzone at the facilities of Waterfront Enterprises, LLC, located in New Haven, Connecticut (FTZ Docket B–41–2019, docketed June 24, 2019);

Whereas, notice inviting public comment has been given in the **Federal Register** (84 FR 31022, June 28, 2019) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves subzone status at the facilities of Waterfront Enterprises, LLC, located in New Haven, Connecticut (Subzone 162B), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Dated: October 24, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 2019–23815 Filed 10–30–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that certain companies covered by the administrative review made sales of subject merchandise at prices below normal value for the period of review (POR) September 1, 2017 through August 31, 2018.

DATES: Applicable October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Andre Gziryan, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2201.

SUPPLEMENTARY INFORMATION:

Background

On July 18, 2019, Commerce published the preliminary results of the administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (China) covering the POR.[1] We gave interested parties an opportunity to comment on the *Preliminary Results.* On August 26, 2019, Yancheng Hi-King Agriculture Developing Co., Ltd. (Yancheng)[2] and China Kingdom (Beijing) Import & Export Co., Ltd. (China Kingdom), Deyan Aquatic Products and Food Co., Ltd. (Deyan Aquatic), Hubei Qianjiang Huashan Aquatic Food and Product Co., Ltd. (Hubei Qianjiang), Nanjing Gemsen International Co., Ltd. (Nanjing Gemsen), Xiping Opeck Food Co., Ltd. (Xiping Opeck), and Xuzhou Jinjiang Foodstuffs Co., Ltd. (Xuzhou Jinjiang) (collectively, Respondents)[3] timely submitted their case briefs. The Crawfish Processors Alliance[4] (the petitioner) did not comment, and we received no rebuttal briefs.

The final results are unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with section 751(a)(1), (2)(B) and (a)(3) of the Tariff Act of 1930, as amended (the Act). The deadline for the final results of this administrative review is November 15, 2019.

Scope of the Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or un-purged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS numbers 0306.19.00.10 and 0306.29.00.00, which are reserved for fish and crustaceans in general. On February 10, 2012, Commerce added HTSUS classification number 0306.29.01.00 to the scope description pursuant to a request by CBP. On September 21, 2018, Commerce added HTSUS classification numbers 0306.39.0000 and 0306.99.0000 to the scope description pursuant to a request by CBP. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in the case briefs by parties in this review are addressed in the Issues and Decision Memorandum.[5] A list of the issues raised is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Enforcement and Compliance website at *http://enforcement.trade.gov/frn/.*

Changes Since the Preliminary Results

We made no revisions to the *Preliminary Results.*

Final Determination of No Shipments

We preliminarily found that Anhui Luan Hongyuan Foodstuffs Co., Ltd., China Kingdom, Kunshan Xinrui Trading Co., Ltd., Nanjing Yinxiangchen International Trade Co., Ltd., Shanghai Ocean Flavor International Trading Co., Ltd., and Weihsan Hongda Aquatic Food Co., Ltd., which have been eligible for separate rates in previous segments of the proceeding and are subject to this review, did not have any reviewable entries of subject merchandise during the POR.[6] After the *Preliminary Results,* we received no comments or additional information with respect to these six companies. Therefore, for the final results, we continue to find that these six companies did not have any reviewable entries of subject merchandise during the POR. Consistent with our practice, we will issue appropriate instructions to U.S. Customs and Border Protection (CBP) based on our final results.

Separate Rate for Non-Selected Companies

Deyan Aquatic, Hubei Nature, Hubei Yuesheng, Xiping Opeck, Xuzhou Jinjian, and Yancheng are the exporters of crawfish tail meat from China that demonstrated their eligibility for a separate rate which were not selected for individual examination in this review. As in the *Preliminary Results,* Commerce has calculated a rate for the

[1] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 34339 (July 18, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Yancheng's Letter, ''Freshwater Crawfish Tail Meat from The People's Republic of China: Case Brief,'' dated August 26, 2019.

[3] *See* Respondents' Letter, ''Freshwater Crawfish Tail Meat from the PRC Respondents' Case Brief,'' dated August 26, 2019.

[4] The Crawfish Processors Alliance consists of the following firms: A&S Crawfish; Acadiana Fishermen's Cooperative; Arnaudville Seafood Plant; Atchafalaya Crawfish Processors; Atchafalaya Crawfish Processing, L.L.C.; Bayou Land Seafood, LLC; Bieber Farms Crawfish, Inc.; Blanchard's Seafood, Inc.; Bonanza Crawfish Farm, Inc.; CJL Enterprise, Inc. d/b/a C.J.'s; Cajun Central, Inc.; Cajun Seafood Distributor, Inc.; Catahoula Crawfish, Inc.; Choplin Seafood; Clearwater Crawfish; Crawfish Enterprises, Inc.; Dugas Seafood aka Carl's Seafood; Toups Crawfish, L.L.C.; Harvestime Seafood; Harvey's Seafood; Louisiana Seafood Co.; Louisiana Premium Seafood; L.T. West, Inc.; Phillips Seafood, L.L.C.; Prairie Cajun Wholesale Distributors; Randol, Inc. aka Randol's Seafood and Restaurant; Riceland Crawfish, Inc. aka Beaucoup Crawfish; Seafood International, Inc.; Sylvester's Crawfish; and Teche Valley Seafood.

[5] *See* Memorandum, ''Freshwater Crawfish Tail Meat from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; 2017–2018,'' issued concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Preliminary Results,* 84 FR at 34339–40.

mandatory respondent Hubei Qianjiang that is zero and a rate for the mandatory respondent Nanjing Gemsen that is not zero, *de minimis,* or based entirely on facts available. Therefore, in accordance with section 735(c)(5)(A) of the Act and its prior practice, Commerce has assigned Nanjing Gemsen's calculated rate (*i.e.,* 7.92 percent) as the separate rate for the non-examined separate rate exporters for these final results.[7]

China-Wide Entity

As stated in the *Preliminary Results,* because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate is not subject to change (*i.e.,* 223.01 percent).[8] Unchanged from the *Preliminary Results,* Commerce determines that Jingzhou Tianhe Aquatic Products Co., Ltd., which did not file a separate rate application, is part of the China-wide entity.

Final Results of Administrative Review

As a result of this administrative review, Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2017 through August 31, 2018:

Producer/exporter	Weighted-average margin (percent)
Deyan Aquatic Products and Food Co., Ltd	7.92
Hubei Nature Agriculture Industry Co., Ltd	7.92
Hubei Qianjiang Huashan Aquatic Food and Product Co., Ltd	0.00
Hubei Yuesheng Aquatic Products Co., Ltd	7.92
Nanjing Gemsen International Trade Co., Ltd	7.92
Xiping Opeck Food Co., Ltd	7.92
Xuzhou Jinjiang Foodstuffs Co., Ltd	7.92
Yancheng Hi-King Agricultural Developing Co., Ltd	7.92

Assessment

Pursuant to section 751(a)(2)(A) of the Act, and 19 CFR 351.212(b), Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer-specific (or customer-specific) assessment rates for merchandise subject to this review.

For these final results, we divided the total dumping margins (calculated as the difference between normal value and export price) for each of the respondents' importers or customers by the total number of kilograms the exporter sold to that importer or customer. We intend to direct CBP to assess the resulting per-kilogram dollar amount against each kilogram of merchandise in each of that importer's/customer's entries during the review period.

For entries that were not reported in the U.S. sales databases submitted by companies individually examined during the administrative review, Commerce intends to instruct CBP to liquidate such entries at the China-wide rate. We intend to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

On June 7, 2019, as a result of the five-year (sunset) review, Commerce revoked the antidumping duty order on imports of freshwater crawfish tail meat from China.[9] In the *Revocation Notice,* Commerce stated that it intends to issue instructions to CBP to terminate the suspension of liquidation and to discontinue the collection of cash deposits on entries of subject merchandise, entered or withdrawn from warehouse, on or after May 16, 2019.[10] Furthermore, because the antidumping duty order on freshwater crawfish tail meat from China has been revoked as a result of the *Revocation Notice,* Commerce will not issue cash deposit instructions at the conclusion of this administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

The final results of this administrative review are issued and published in accordance with sections 751(a)(1), 751(a)(3), and 777(i) of the Act and 19 CFR 351.213(h).

Dated: October 25, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Surrogate Country
V. Separate Rates
VI. Discussion of the Issues
Comment 1: Separate Rate for Non-Selected Respondents
Comment 2: Valuation of Live Crawfish
VII. Recommendation

[FR Doc. 2019–23771 Filed 10–30–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–858]

Certain Carbon and Alloy Steel Cut-to-Length Plate From Taiwan: Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding its administrative review of the antidumping duty (AD) order on certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan for the period of review (POR) May 1, 2018, through April 30, 2019.

DATES: Applicable October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua Tucker or Darla Brown, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

[7] For more details on our methodology in selecting a rate for a non-examined separate rate exporter, *see* Issues and Decision Memorandum at the ''Separate Rates'' section.

[8] *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19504 (April 21, 2003).

[9] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Final Results of Sunset Review and Revocation of Antidumping Duty Order,* 84 FR 26647 (June 7, 2019) (*Revocation Notice*).

[10] *See Revocation Notice,* 84 FR at 26647.

(202) 482–2044 or (202) 482–1791, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2019, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the AD order on CTL plate from Taiwan for the POR.[1] Commerce received a timely request from ArcelorMittal USA LLC, Nucor Corporation, and SSAB Enterprises, LLC (collectively, the petitioners), in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(b), to conduct an administrative review of this AD order for 19 companies.[2]

On July 15, 2019, Commerce published in the **Federal Register** a notice of initiation with respect to these companies.[3] On October 8, 2019, the petitioners timely withdrew their request for an administrative review for all 19 companies.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation of the requested review. The petitioners withdrew their request for review before the 90-day deadline, and no other party requested an administrative review of this order. Therefore, we are rescinding the administrative review of the AD order on CTL plate from Taiwan covering the period May 1, 2018, through April 30, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Because Commerce is rescinding this administrative review in its entirety, the entries to which this administrative review pertained shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers of their responsibility, under 19 CFR 351.402(f)(2), to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: October 24, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–23772 Filed 10–30–19; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 84 FR 18479 (May 1, 2019).

[2] *See* Petitioners' Letter, ''Carbon and Alloy Steel Cut-To-Length Plate from Taiwan—Petitioner's Request for 2018/2019 Administrative Review,'' dated May 31, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 33739 (July 15, 2019).

[4] *See* Petitioners' Letter, ''Carbon and Alloy Steel Cut-To-Length Plate from Taiwan—Petitioner's Withdrawal of Review Request for 2018/2019 Administrative Review,'' dated October 8, 2019.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 191016–0064]

Request for Comments on FIPS 186–5 and SP 800–186

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The National Institute of Standards and Technology (NIST) requests comments on Federal Information Processing Standard (FIPS) 186–5, Digital Signature Standard. FIPS 186–5 specifies four techniques for the generation and verification of digital signatures that can be used for the protection of data: The Rivest-Shamir Adelman Algorithm (RSA), the Digital Signature Algorithm (DSA), the Elliptic Curve Digital Signature Algorithm (ECDSA), and the Edwards curve Digital Signature Algorithm (EdDSA). Elliptic curves recommended for government use with ECDSA and EdDSA are specified in draft NIST Special Publication (SP) 800–186, Recommendations for Discrete-Logarithm Based Cryptography: Elliptic Curve Domain Parameters. We are also requesting comments on draft SP 800–186.

DATES: Comments on FIPS 186–5 and SP 800–186 must be received on or before January 29, 2020.

ADDRESSES: The drafts of FIPS 186–5 and SP 800–186 are available for review and comment on the NIST Computer Security Resource Center website at *http://csrc.nist.gov and at www.regulations.gov.* Comments on FIPS 186–5 may be sent electronically to *FIPS186-comments@nist.gov* with ''Comment on FIPS 186'' in the subject line or submitted via *www.regulations.gov.* Comments on SP 800–186 may be sent electronically to *SP800–186-comments@nist.gov* with ''Comment on SP 800–186'' in the subject line. Written comments may also be submitted by mail to Information Technology Laboratory, ATTN: FIPS 186–5 and SP 800-186 Comments, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930.

Relevant comments received by the deadline will be published electronically at *http://csrc.nist.gov/* and *www.regulations.gov* without change or redaction, so commenters should not include information they do not wish to be posted (*e.g.,* personal or confidential business information). Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be posted or considered.

FOR FURTHER INFORMATION CONTACT: Dr. Dustin Moody, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8930, Gaithersburg, MD 20899–8930, email: *Dustin.Moody@nist.gov,* phone: (301) 975–8136.

SUPPLEMENTARY INFORMATION: FIPS 186 was initially developed by NIST in collaboration with the National Security Agency (NSA), using the NSA-designed Digital Signature Algorithm (DSA). Later versions of the standard approved the

use of ECDSA, developed by Certicom, and RSA, developed by Ron Rivest, Adi Shamir and Len Adelman. The American Standards Committee (ASC) on Financial Services, X9, developed standards specifying the use of both ECDSA and RSA; the standards included methods for generating key pairs, which were used as the basis for the later versions of FIPS 186.

The ECDSA was included by reference in FIPS 186–2, the second revision to FIPS 186, which was announced in the **Federal Register** (65 FR 7507) on February 15, 2000. The FIPS was revised in order to align the standard with new digital signature algorithms included in ASC X9 standards. To facilitate testing and interoperability, NIST needed to specify elliptic curves that could be used with ECDSA. Working in collaboration with the NSA, NIST included three sets of recommended elliptic curves in FIPS 186–2 that were generated using the algorithms in the American National Standard (ANS) X9.62 standard and Institute of Electrical and Electronics Engineers (IEEE) P1363 standards. The provenance of the curves was not fully specified, leading to public concerns that there could be an unknown weakness in these curves. NIST is not aware of any vulnerabilities to attacks on these curves when they are implemented correctly and used as described in NIST standards and guidelines.

Advances in the understanding of elliptic curves within the cryptographic community have led to the development of new elliptic curves and algorithms, and their designers claim that they offer better performance and are easier to implement in a secure manner than previous versions. In 2014, NIST's Visiting Committee on Advanced Technology (VCAT) conducted a review of NIST's cryptographic standards program. As part of their review, the VCAT recommended that NIST ''generate a new set of elliptic curves for use with ECDSA in FIPS 186.'' *See https://www.nist.gov/sites/default/files/documents/2017/05/09/VCAT-Report-on-NIST-Cryptographic-Standards-and-Guidelines-Process.pdf.*

In June 2015, NIST hosted a technical workshop on Elliptic Curve Cryptography Standards to discuss possible approaches to promote the adoption of secure, interoperable and efficient elliptic curve mechanisms. Workshop participants expressed significant interest on the development, standardization, and adoption of new elliptic curves.

In October 2015, NIST solicited comments on the elliptic curves and signature algorithms specified in FIPS 186–4 (80 FR 63539). The comments noted the broad use of the NIST prime curves and ECDSA within industry, but many commenters called for the standardization of new elliptic curves and signature algorithms.

As a result of this input, NIST is proposing updates to its standards on digital signatures and elliptic curve cryptography to align with existing and emerging industry standards. As part of these updates, NIST is proposing to adopt two new elliptic curves, Ed25519 and Ed448, for use with EdDSA. EdDSA is a deterministic elliptic curve signature scheme currently specified in the Internet Research Task Force (IRTF) RFC 8032, Edwards-Curve Digital Signature Algorithm. NIST further proposes adopting a deterministic variant of ECDSA; this variant is currently specified in RFC 6979, Deterministic Usage of the Digital Signature Algorithm and Elliptic Curve Digital Signature Algorithm. Finally, based on feedback received on the adoption of the current elliptic curve standards, the draft standards deprecate curves over binary fields due to their limited use by industry.

The proposed digital signature algorithms are included in the draft FIPS 186–5, Digital Signature Standard. NIST-recommended elliptic curves, previously specified in FIPS 186–4 Appendix D, are now included in the draft SP 800–186, Recommendations for Discrete-Logarithm Based Cryptography: Elliptic Curve Domain Parameters. Both documents are available for review and comment on the NIST Computer Security Resource Center website at *http://csrc.nist.gov/* as well as *www.regulations.gov.*

Noting increased industry adoption of ECDSA within security products, the draft FIPS 186–5 proposes the removal of the DSA. DSA was initially the only approved signature algorithm in the Digital Signature Standard when FIPS 186 was originally published in 1994 (59 FR 26208). Industry adoption of DSA was limited, and subsequent versions of FIPS 186 added other signature algorithms that are in broad use within products and protocols, including ECDSA and RSA-based signature algorithms. At this time, NIST is not aware of any applications where DSA is currently broadly used. Furthermore, recent academic analysis observed that implementations of DSA may be vulnerable to attacks if domain parameters are not properly generated. These parameters are not commonly verified before use. The removal of DSA from FIPS 186–5 would prohibit use of DSA for generating digital signatures, while legacy use of DSA to verify existing signatures would be allowed.

Draft FIPS 186–5 includes other updates intended to maintain normative references within the standard, as well as updates to technical content based on current cryptographic research. RSA digital signature schemes based on ANS X9.31, *Digital Signatures Using Reversible Public Key Cryptographic for the Financial Services Industry,* are no longer referenced in FIPS 185–5, as that standard is no longer being maintained by the Accredited Standards Committee on Financial Services, X9. RSA digital signature schemes based on Public-Key Cryptography Standard (PKCS) #1, RSA Cryptography Standard, is also specified in IETF RFC 8017, and the draft FIPS 186–5 approves the use of implementations of either or both of these standards, along with some additional requirements.

Request for Comments

NIST is seeking public comments on the proposed revisions to the digital signature algorithms specified in draft FIPS 186–5. NIST further invites public comments on the related elliptic curve specifications in draft NIST SP 800–186.

As part of this request, NIST seeks public feedback on the variants and parameters specified for EdDSA in draft FIPS 186–5. The draft revisions include a variant known as Pre-hash EdDSA. NIST seeks input on the need for this variant in cryptographic products and protocols. Furthermore, NIST seeks input on the allowed hash functions specified for use with EdDSA.

In addition to EdDSA, Draft FIPS 186–5 includes a second deterministic signature algorithm which is a variant of ECDSA. As referenced in the draft FIPS 186–5, recent security research has found that implementations of these deterministic signature algorithms may be vulnerable to certain kinds of side-channel or fault injection attacks. NIST seeks comments on the suitability of these algorithms for broad use in security products and protocols, and comments on the need for any additional guidance for implementors.

NIST also requests comments on the set of recommended and allowed elliptic curves included in draft NIST SP 800–186. In particular, NIST requests feedback on the use of these curves by industry, and industry's need for additional elliptic curve specifications to meet security or customer requirements.

Finally, NIST requests comments on the proposal to remove DSA from FIPS 186–5. In particular, NIST seeks comments on applications where DSA is being used, security considerations

around its use, and the need for a deprecation plan rather than an immediate removal.

Authority: 44 U.S.C. 3553(f)(1), 15 U.S.C. 278g–3.

Kevin A. Kimball,

Chief of Staff.

[FR Doc. 2019–23742 Filed 10–30–19; 8:45 am]

BILLING CODE 3510–13–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before December 2, 2019.

ADDRESSES: Comments regarding the burden estimate or any other aspect of the information collection, including suggestions for reducing the burden, may be submitted directly to the Office of Information and Regulatory Affairs (OIRA) in OMB within 30 days of this notice's publication by either of the following methods. Please identify the comments by ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, Comparability Determinations With Margin Requirements, OMB Control No. 3038–0111.''

- *By email addressed to: OIRAsubmissions@omb.eop.gov* or
- *By mail addressed to:* the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Commodity Futures Trading Commission, 725 17th Street NW, Washington DC 20503.

A copy of all comments submitted to OIRA should be sent to the Commodity Futures Trading Commission (the ''Commission'') by either of the following methods. The copies should refer to ''OMB Control No. 3038–0111.''

- *By mail addressed to:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581;
- By Hand Delivery/Courier to the same address; or
- Through the Commission's website at *http://comments.cftc.gov.* Please follow the instructions for submitting comments through the website.

A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *http://RegInfo.gov.*

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Lauren Bennett, Special Counsel, Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, (202) 418–5290 or *lbennett@cftc.gov.*

SUPPLEMENTARY INFORMATION:

Title: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations With Margin Requirements (OMB Control No. 3038–0111). This is a request for an extension and revision of a currently approved information collection.

Abstract: Section 731 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[2] amended the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.,* to add, as section 4s(e) thereof, provisions concerning the setting of initial and variation margin requirements for swap dealers (''SDs'') and major swap participants (''MSPs'').[3] Each SD and MSP for which there is a Prudential Regulator, as defined in section 1a(39) of the CEA,[4] must meet margin requirements established by the applicable Prudential Regulator, and each SD and MSP for which there is no Prudential Regulator (''Covered Swap Entities'' or ''CSEs'') must comply with the Commission's regulations governing margin on all swaps that are not centrally cleared.

With regard to the cross-border application of the Commission's margin rules, section 2(i)[5] of the CEA provides the Commission with express authority over activities outside the United States relating to swaps when certain conditions are met. Section 2(i) of the CEA provides that the provisions of the CEA relating to swaps that were enacted by the Wall Street Transparency and Accountability Act of 2010 (including any rule prescribed or regulation promulgated under that Act), shall not apply to activities outside the United States unless those activities (1) have a direct and significant connection with activities in, or effect on, commerce of the United States or (2) contravene such rules or regulations as the Commission may prescribe or promulgate as are necessary or appropriate to prevent the evasion of any provision of the CEA that was enacted by the Wall Street Transparency and Accountability Act of 2010.

On May 31, 2016, the Commission published a final rule addressing the cross-border application of its margin requirements for uncleared swaps applicable to CSEs.[6] As described below, the adopting release for the Final Rule contained a collection of information regarding requests for comparability determinations, which was previously included in the proposing release, and for which the Office of Management and Budget (''OMB'') assigned OMB control number 3038–0111, titled ''Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations With Margin Requirements.'' In addition, the adopting release included two additional information collections regarding non-netting jurisdictions[7] and

[1] 17 CFR 145.9.

[2] Public Law 111–023, 124 Stat. 1376 (2010).

[3] 7 U.S.C. 6s(e).

[4] 7 U.S.C. 1a(39).

[5] 7 U.S.C. 2(i).

[6] 81 FR 34818 (May 31, 2016).

[7] As used in the adopting release, a ''non-netting jurisdiction'' is a jurisdiction in which a CSE cannot conclude, with a well-founded basis, that the netting agreement with a counterparty in that

Continued

non-segregation jurisdictions[8] that were not previously proposed. Subsequently, on August 2, 2016, the Commission requested a revision of the collection for Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants; Comparability Determinations With Margin Requirements (OMB control number 3038–0111) to include the burden estimates for the provisions regarding non-netting jurisdictions and non-segregation jurisdictions.[9]

Under section 23.160(c)(1) of the Final Rule, a CSE that is eligible for substituted compliance or a foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may request, individually or collectively, that the Commission make a determination that a CSE that complies with margin requirements in the relevant foreign jurisdiction would be deemed to be in compliance with the Commission's corresponding margin rule promulgated by the Commission (a ''comparability determination''). Once a comparability determination is made for a jurisdiction, it applies for all entities or transactions in that jurisdiction to the extent provided in the comparability determination, as approved by the Commission and subject to any conditions specified by the Commission. All CSEs, regardless of whether they rely on a comparability determination, remain subject to the Commission's examination and enforcement authority.

Section 23.160(c)(2) of the Final Rule requires that applicants for a comparability determination provide copies of the relevant foreign jurisdiction's margin requirements and descriptions of their objectives, how they differ from the BCBS/IOSCO international framework, and how they address the elements of the Commission's margin requirements. The applicant must identify the specific legal and regulatory provisions of the foreign jurisdiction's margin requirements that correspond to each element and, if necessary, whether the relevant foreign jurisdiction's margin requirements do not address a particular element.

Section 23.160(d) of the Final Rule includes a special provision for non-netting jurisdictions. This provision allows CSEs that cannot conclude after sufficient legal review with a well-founded basis that the netting agreement with a counterparty in a foreign jurisdiction meets the definition of an ''eligible master netting agreement'' set forth in the Final Rule to nevertheless net uncleared swaps in determining the amount of margin that they post, provided that certain conditions are met. In order to avail itself of this special provision, a CSE must treat the uncleared swaps covered by the agreement on a gross basis in determining the amount of initial and variation margin that it must collect, but may net those uncleared swaps in determining the amount of initial and variation margin it must post to the counterparty, in accordance with the netting provisions of the Final Rule. A CSE that enters into uncleared swaps in ''non-netting'' jurisdictions in reliance on this provision must have policies and procedures ensuring that it is in compliance with the special provision's requirements, and maintain books and records properly documenting that all of the requirements of this exception are satisfied.

Section 23.160(e) of the Final Rule includes a special provision for non-segregation jurisdictions that allows non-U.S. CSEs that are Foreign Consolidated Subsidiaries (as defined in the Final Rule) and foreign branches of U.S. CSEs to engage in swaps in foreign jurisdictions where inherent limitations in the legal or operational infrastructure make it impracticable for the CSE and its counterparty to post collateral in compliance with the custodial arrangement requirements of the Commission's margin rules, subject to certain conditions. In order to rely on this special provision, a Foreign Consolidated Subsidiary (''FCS'') or foreign branch of a U.S. CSE is required to satisfy all of the conditions of the rule, including that (1) inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post any form of eligible initial margin collateral for the uncleared swap pursuant to custodial arrangements that comply with the Commission's margin rules; (2) foreign regulatory restrictions require the CSE to transact in uncleared swaps with the counterparty through an establishment within the foreign jurisdiction and do not permit the posting of collateral for the swap in compliance with the custodial arrangements of section 23.157 of the Final Rule in the United States or a jurisdiction for which the Commission has issued a comparability determination under the Final Rule with respect to section 23.157; (3) the CSE's counterparty is not a U.S. person and is not a CSE, and the counterparty's obligations under the uncleared swap are not guaranteed by a U.S. person; (4) the CSE collects initial margin in cash on a gross basis, in cash, and posts and collects variation margin in cash, for the uncleared swap in accordance with the Final Rule; (5) for each broad risk category, as set out in § 23.154(b)(2)(v) of the Final Rule, the total outstanding notional value of all uncleared swaps in that broad risk category, as to which the CSE is relying on § 23.160 (e), may not exceed 5 percent of the CSE's total outstanding notional value for all uncleared swaps in the same broad risk category; (6) the CSE has policies and procedures ensuring that it is in compliance with the requirements of this provision; and (7) the CSE maintains books and records properly documenting that all of the requirements of this provision are satisfied.

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. On August 21, 2019, the Commission published in the **Federal Register** notice of the proposed extension and revision of this information collection and provided 60 days for public comment on the proposed extension and revision, 84 FR 43589 (''60-Day Notice''). The Commission did not receive any relevant substantive comments on the 60-Day Notice.

Burden Statement—Information Collection for Comparability Determinations: The Commission is revising its estimate of the burden for this collection to reflect the current number of registrants subject to the Commission's margin requirements for uncleared swaps and the Commission's implementation experience. Specifically, the Commission estimates that approximately 54 CSEs may request a comparability determination pursuant to section 23.160(c) of the Final Rule.[10]

foreign jurisdiction meets the definition of an ''eligible master netting agreement'' set forth in the Final Rule, as described in section II.B.5.b of the adopting release.

[8] As used in the adopting release, a ''non-segregation jurisdiction'' is a jurisdiction where inherent limitations in the legal or operational infrastructure of the foreign jurisdiction make it impracticable for the CSE and its counterparty to post initial margin pursuant to custodial arrangements that comply with the Commission's margin rules, as further described in section II.B.4.b of the adopting release.

[9] 81 FR 50690 (Aug. 2, 2016).

[10] Currently, there are approximately 107 swap entities provisionally registered with the Commission. The Commission estimates that of the approximately 107 swap entities that are provisionally registered, approximately 54 are CSEs for which there is no Prudential Regulator, and are therefore subject to the Commission's margin rules. Since the publication of the 60-Day Notice, the

The Commission notes that any foreign regulatory agency that has direct supervisory authority over one or more CSEs and that is responsible for administering the relevant foreign jurisdiction's margin requirements may also apply for a comparability determination. Further, once a comparability determination is made for a jurisdiction, it will apply for all entities or transactions in that jurisdiction to the extent provided in the determination, as approved by the Commission. To date, the Commission has issued a comparability determination for 3 jurisdictions.[11] Accordingly, the Commission estimates that it will receive requests from the 13 remaining jurisdictions within the G20, in addition to Switzerland. In light of its experience in evaluating requests for comparability determinations, the Commission is revising its estimate for the number of burden hours associated with such requests from 10 hours to 40 hours. Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 14.

Estimated Average Burden Hours per Respondent: 40.

Estimated Total Annual Burden Hours: 560.

Frequency of Collection: Once.

There are no capital costs or operating and maintenance costs associated with this collection.

Burden Statement—Information Collection for Non-Netting Jurisdictions: The Commission estimates that approximately 54 CSEs may rely on section 23.160(d) of the Final Rule.[12] Furthermore, the Commission estimates that these CSEs would incur an average of 10 annual burden hours to maintain books and records properly documenting that all of the requirements of this exception are satisfied (including policies and procedures ensuring compliance). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 54.

Estimated Average Burden Hours per Respondent: 10.

Estimated Total Annual Burden Hours: 540.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

Burden Statement—Information Collection for Non-Segregation Jurisdictions: The Commission estimates that there are eight jurisdictions for which the first two conditions specified above for non-segregation jurisdictions are satisfied and where FCSs and foreign branches of U.S. CSEs that are subject to the Commission's margin rules may engage in swaps. The Commission estimates that approximately 12 FCSs and foreign branches of U.S. CSEs may rely on section 23.160(e) of the Final Rule in some or all of these jurisdictions. The Commission estimates that each FCS or foreign branch of a U.S. CSE relying on this provision would incur an average of 20 annual burden hours to maintain books and records properly documenting that all of the requirements of this provision are satisfied (including policies and procedures for ensuring compliance) with respect to each jurisdiction as to which they rely on the special provision. Thus, based on the estimate of eight non-segregation jurisdictions, the Commission estimates that each of the approximately 12 FCSs and foreign branches of U.S. CSEs that may rely on this provision will incur an estimated 160 average burden hours per year (*i.e.,* 20 average burden hours per jurisdiction multiplied by 8). Accordingly, the respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 12.

Estimated Average Burden Hours per Respondent: 160.

Estimated Total Annual Burden Hours: 1,920.

Frequency of Collection: Once; As needed.

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: October 28, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–23796 Filed 10–30–19; 8:45 am]

BILLING CODE 6351–01–P

number of CSEs subject to the Commission's margin rules decreased from 55 to 54.

[11] *See* Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 81 FR 63376 (Sep. 15, 2016); Comparability Determination for the European Union: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 82 FR 48394 (Oct. 13, 2017) (''Margin Comparability Determination for the European Union''); and Comparability Determination for Australia: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12908 (Apr. 3, 2019). The Commission subsequently amended its comparability determination for Japan. *See* Amendment to Comparability Determination for Japan: Margin Requirements for Uncleared Swaps for Swap Dealers and Major Swap Participants, 84 FR 12074 (Apr. 1, 2019).

[12] Currently, there are approximately 107 swap entities provisionally registered with the Commission. The Commission estimates that of the approximately 107 swap entities that are provisionally registered, approximately 54 are CSEs for which there is no Prudential Regulator, and are therefore subject to the Commission's margin rules. Because all of these CSEs are eligible to use the special provision for non-netting jurisdictions, the Commission estimates that 54 CSEs may rely on section 23.160(d) of the Final Rule. Since the publication of the 60-Day Notice, the number of CSEs subject to the Commission's margin rules decreased from 55 to 54.

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2019–0057]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement (DFARS); Rights in Technical Data and Computer Software; Submission for OMB Review; Comment Request

AGENCY: Defense Acquisition Regulations System; Department of Defense (DoD).

ACTION: Notice.

SUMMARY: The Defense Acquisition Regulations System has submitted to the Office of Management and Budget (OMB) for clearance the following proposed extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 2, 2019.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 227.71, Rights in Technical Data, and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses of the Defense Federal Acquisition Regulation Supplement (DFARS); OMB Control Number 0704–0369.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Reporting Frequency: On occasion.

Type of Request: Extension.

Number of Respondents: 75,250.

Responses per Respondent: 13, approximately.

Annual Responses: 959,602.

Average Burden per Response: 1 hour, approximately.

Annual Response Burden Hours: 904,574.

Annual Recordkeeping Burden Hours: 90,600.

Total Annual Burden Hours: 995,174.

Needs and Uses: DFARS subparts 227.71 and 227.72 prescribe the use of solicitation provisions and contract clauses containing information collection requirements that are associated with rights in technical data and computer software. DoD needs this information to implement 10 U.S.C. 2320, Rights in technical data, and 10 U.S.C. 2321, Validation of proprietary data restrictions. DoD uses the information to recognize and protect contractor rights in technical data and computer software that are associated with privately funded developments; and to ensure that technical data delivered under a contract are complete and accurate and satisfy contract requirements.

Comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela James. Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer Lee Hawes,

Regulatory Control Officer, Defense Acquisition Regulations System.

[FR Doc. 2019–23814 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, Department of Defense.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Science Board (DSB) will take place.

DATES: Closed to the public Wednesday, November 6, 2019 from 8:00 a.m. to 3:45 p.m. and Thursday, November 7, 2019 from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The address of the closed meeting is the Nunn-Lugar Conference Room, 3E863 at the Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a), concerning the meeting on November 6, 2019 and November 7, 2019 of the Defense Science Board. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) (Title 5 United States Code (U.S.C), Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and Title 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

Purpose of the Meeting: The mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet with DoD Leadership to discuss classified current and future national security challenges within the DoD.

Agenda: The DSB Fall Quarterly Meeting will begin on November 6, 2019 at 8:00 a.m. with opening remarks by Mr. Kevin Doxey, the Designated Federal Officer, and Dr. Craig Fields, DSB Chairman. The first presentation will be from Mr. James Carlini and Mr. Mark Maybury, Co-Chairs of the DSB Task Force on Counter Autonomy, who will provide a classified brief on the Task Force on Counter Autonomy's findings and recommendations and engage in classified discussion with the DSB. The DSB will vote on the Task Force's findings and recommendations. Next, Dr. Michael Griffin and Dr. Lisa Porter will provide a classified brief on their view of the defense challenges and issues the DoD faces. Following break, Dr. Ruth David and Mr. Bill LaPlante, Co-Chairs of the DSB Task Force on Gaming, Exercising, Modeling, and Simulation (GEMS) will brief the DSB on the Task Force on GEMS's findings and recommendations and engage in classified discussion with the DSB. The DSB will vote on the Task Force's findings and recommendations. Next, General John Raymond, Commander of Air Force Space Command, will provide a classified brief on his view of the defense challenges and issues Air Force Space Command faces. Following break, Mr. Alan Shaffer, Deputy Under Secretary of Defense for Acquisition and Sustainment, will provide a classified brief on his view of the defense challenges and issues the DoD faces. The meeting will adjourn at 3:45 p.m.

On November 7, 2019, the meeting will begin at 8:00 a.m. with Mr. David Van Buren, Co-Chair of the DSB Task Force on Multi-Domain Effects, who will provide a classified briefing on the Task Force on Multi-Domain Effects' findings and recommendations and engage in classified discussion with the DSB. The DSB will vote on the Task Force's findings and recommendations. Next, Mr. Bob Nesbit and Dr. William Schneider, Co-Chairs of the DSB Task Force on Strengthening Counter Intelligence Capabilities Against the ''Insider Threat,'' will provide a classified briefing on the Task Force on Strengthening Counter Intelligence Capabilities Against the ''Insider Threat'' findings and recommendations and engage in classified discussion with the DSB. The DSB will vote on the Task Force's findings and recommendations. Following break, Dr. Christopher Scolese, Director of the National Reconnaissance Office, will provide a classified brief on view of the defense challenges and issues the NRO faces. The meeting will adjourn at 4:00 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense (Research and Engineering), in consultation with the DoD Office of General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into

separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense (Research and Engineering).

Written Statements: In accordance with Section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided in the **FOR FURTHER INFORMATION CONTACT** section at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: October 28, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–23780 Filed 10–30–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2490–030]

Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process: Green Mountain Power Corporation

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2490–030.

c. *Date Filed:* August 28, 2019.

d. *Submitted By:* Green Mountain Power Corporation (Green Mountain).

e. *Name of Project:* Taftsville Hydroelectric Project.

f. *Location:* On the Ottauquechee River in the Village of Taftsville, in Windsor County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* John Greenan, Green Mountain Power Corporation, 2152 Post Road, Rutland, VT 05701; (802) 770–2195; email at *John.Greenan@greenmountainpower.com.*

i. *FERC Contact:* Erin Kimsey at (202) 502–8621; or email at *erin.kimsey@ferc.gov.*

j. Green Mountain filed its request to use the Traditional Licensing Process on August 28, 2019, and provided public notice of the request on August 23, 2019. In a letter dated October 24, 2019, the Director of the Division of Hydropower Licensing approved Green Mountain's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Green Mountain as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Green Mountain filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 2490. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by August 31, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: October 24, 2019.

Kimberly D. Bose,

Secretary.

[FR Doc. 2019–23695 Filed 10–30–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2004–0060; FRL–10001–77–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (Renewal)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (EPA ICR Number 1695.13, OMB Control Number 2060–0338) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This notice is a proposed extension of the ICR, which is currently approved through October 31, 2019. Public comments were previously requested via the **Federal Register** on July 2, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments must be submitted on or before December 2, 2019.

ADDRESSES: Submit your comments, referencing the Docket ID No. EPA–HQ–OAR–2004–0060, to the EPA: Online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental

Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Julian Davis, Attorney Adviser, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4029; fax number 734–214–4869; email address: *davis.julian@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket, EPA–HQ–OAR–2004–0060, for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: As required by the Clean Air Act, EPA has regulations establishing emission standards and other requirements for various classes of vehicles, engines, and evaporative emissions. These regulations require that compliance be demonstrated prior to EPA granting a ''Certificate of Conformity.'' EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. The emission values achieved during certification testing may also be used in the Averaging, Banking, and Trading (ABT) Program. The program allows manufacturers to bank credits for engine families that emit below the standard and use the credits for families that emit above the standard. They may also trade banked credits with other manufacturers. Participation in the ABT program is voluntary. Different categories of spark-ignition engines may also be required to comply with production-line testing (PLT) and in-use testing. There are also recordkeeping and labeling requirements. This information is collected electronically by the Gasoline Engine Compliance Center (GECC) at the U.S. Environmental Protection Agency. GECC uses this information to ensure that manufacturers comply with applicable regulations and the Clean Air Act (CAA). It may also be used by the Office of Enforcement and Compliance Assurance (OECA) and the Department of Justice for enforcement purposes. Non-CBI may be disclosed on OTAQ's website or upon request under the Freedom of Information Act (FOIA) to trade associations, environmental groups, and the public. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

Form Numbers: NR Small SI Bond Worksheet (5900–450); NR Small SI Small Volume Bond Worksheet (5900–451); Altitude Worksheet (5900–452); Annual Production Worksheet (5900–90); NR Small SI Production Line Testing Report (5900–133); NR Small SI Averaging, Banking, and Trading Report (5900–131); Evaporative Fuel Cap Test Data (5900–453); Evaporative Fuel Line Test Data (5900–454); Evaporative Fuel Tank Data Worksheet (5900–455); Marine and Large SI Diurnal System Data Worksheet (5900–456); NR Small SI Equipment Worksheet (5900–457); Marine SI Vessel Worksheet (5900–458); Marine SI Engine Data Map Sheet (5900–459); Marine SI Averaging, Banking, and Trading Report (5900–92); Marine SI Production Line Testing Report (5900–91); Large SI Production Line Testing Report (5900–130); Large SI In-Use Testing Report (5900–93); Marine SI In-Use Testing Report (5900–93); Snowmobile Production Line Testing Report (5900–460); Rec Vehicle and ATV Production Line Testing Report (5900–461); Rec Vehicle Averaging, Banking and Trading Report (5900–462); Snowmobile Certification Template (5900–463); Rec Vehicle Catalytic Converter Checklist (5900–464); Snowmobile Averaging, Banking, and Trading Template (5900–465); Rec Vehicle Fuel Line Test Data Worksheet (5900–466); Rec Vehicle Fuel Tank Test Data Worksheet (5900–467).

Respondents/affected entities: Manufacturers of nonroad engines and evaporative components.

Estimated number of respondents: 620 (total).

Frequency of response: Yearly for certification, production, ABT, and warranty reports.

Total estimated burden: 281,351 hours (per year). Burden is defined at 5 CFR 1320.3(b)

Total estimated cost: $34,342,007 (per year), includes $12,374,111 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 15,876 hours (from 265,475 hours to 281,351) in the total estimated burden in this collection from the burden currently identified in the OMB Inventory of Approved ICRs. This increase in hours is primarily attributed to an increase in the total number of respondents, though primarily from evaporative components, and an adjustment in the hours required to file a complete application for certification and conduct compliance activities throughout a calendar year.

Courtney Kerwin,

Director, Collection Strategies Division.

[FR Doc. 2019–23721 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10001–82–Region 10]

Reissuance of NPDES General Permits for Aquaculture Facilities in Idaho Excluding Facilities Discharging into the Upper Snake-Rock Subbasin (IDG131000) and Aquaculture Facilities Located in Indian Country in Idaho (IDG133000)

AGENCY: Region 10, Environmental Protection Agency.

ACTION: Reissuance of NPDES General Permits.

SUMMARY: The Director of the Water Division, EPA Region 10, is reissuing two National Pollutant Discharge Elimination System (NPDES) General Permits for: (1) Aquaculture Facilities in Idaho Excluding Facilities Discharging into the Upper Snake-Rock Subbasin, and (2) Aquaculture Facilities Located in Indian Country in Idaho. The General Permits will authorize discharges of wastewater from cold and warm water Concentrated Aquatic Animal Production facilities, (also referred to as CAAPs or ''hatcheries''). The permits will largely replace and combine IDG131000, the NPDES General Permit for Cold Water Aquaculture Facilities in Idaho (not subject to Wasteload Allocations) and IDG130000, the NPDES General Permit for Aquaculture Facilities in Idaho (subject to Wasteload Allocations). Facilities covered under IDG130000 that are *not* within the Upper Snake-Rock Subbasin will be

terminated once coverage under IDG131000 or IDG133000 is available. Facilities covered under IDG130000 that discharge *within* the Upper Snake-Rock Subbasin are not affected by this action and will remain covered under IDG130000. By separating out discharges from aquaculture facilities located in Indian County in Idaho, where the EPA is the permitting authority, under a separate General Permit (IDG133000), this action will facilitate the transfer of IDG131000 to the State of Idaho in 2020 as part of the phased implementation of Idaho's administration of the NPDES Program.

DATES: The issuance date of the General Permit is October 31, 2019, the date of publication of this notice. The General Permits will be effective December 1, 2019.

ADDRESSES: Copies of the general permits, Fact Sheet, and Response to Comments are available upon request. Written requests may be submitted to: Water Division; USEPA Region 10; 1200 Sixth Avenue, Suite 155, WD19–C04, Seattle, WA 98101–3188. Electronic requests may be sent to: *washington.audrey@epa.gov.* For requests by phone, call Audrey Washington at (206) 553–0523. These documents can also be accessed online on the EPA Region 10 website at: *www.epa.gov/npdes-permits/draft-npdes-general-permits-aquaculture-facilities-idaho.*

SUPPLEMENTARY INFORMATION:

I. General Information

There are approximately 25 facilities eligible for coverage under the two General Permits. Aquaculture facilities may use one of several types of production systems, including ponds, flow-through systems, and recirculating systems. Most of the facilities eligible for coverage under the General Permits use flow-through systems. Most facilities have a quiescent zone at the bottom of their raceways to allow solids and debris to settle out (where they can be vacuumed and removed) and use a full-flow settling basin or offline settling basin to remove sediment and associated pollutants prior to discharge.

The General Permits include numeric effluent limits for total phosphorus and total suspended solids for all facilities and temperature limits for some facilities, as well as prohibitions on certain discharges and practices. Numeric limitations for facilities may differ depending on applicable Total Maximum Daily Load (TMDL) Wasteload Allocations. The Permit includes reporting requirements for usage of drugs and chemicals and the development of a Best Management Practices Plan. Major changes from the 2007 General Permit include: Removal of the percent total suspended solids removal requirement for offline settling basins; prohibition on copper usage; the addition of continuous temperature monitoring for some facilities; and miscellaneous monitoring revisions.

Facilities will receive a written notification from the EPA whether permit coverage and authorization to discharge under one of the General Permits is approved.

The EPA received 30 comments from 5 entities during the public comment period which extended from June 6, 2019 through July 22, 2019. The EPA also received tribal and state CWA 401 certifications, which can be found in Appendix D of the Fact Sheet. A Response to Comments document was prepared, which explains any changes made to Permit between proposal and final issuance.

The EPA has completed a Biological Evaluation for these Permit actions. Consultation under the Endangered Species Act between the EPA and the National Marine Fisheries Service and the U.S. Fish and Wildlife Service has been completed. The Services concurred on the EPA's determination that the Permit actions are not likely to adversely affect species listed under the Endangered Species Act or designated critical habitat.

II. Other Legal Requirements

This action was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866, *Regulatory Planning and Review,* and 13563, *Improving Regulation and Regulatory Review,* and was determined to be not significant.

Compliance with Endangered Species Act, Essential Fish Habitat, Paperwork Reduction Act, and other requirements are discussed in the Fact Sheet to the permits.

Appeal of Permit: Any interested person may appeal the final permit action within 120 days of October 31, 2019 (*i.e.,* the issuance date of this permit) in the Federal Court of Appeals in accordance with Section 509(b)(1) of the CWA, 33 U.S.C. 1369(b)(1).

Dated: October 23, 2019.

Daniel D. Opalski,

Director, Water Division, Region 10.

[FR Doc. 2019–23831 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2018–0241; FRL–10001–73–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Contaminant Occurrence Data in Support of the EPA's Fourth Six-Year Review of National Primary Drinking Water Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR) for Contaminant Occurrence Data in Support of the EPA's Fourth Six-Year Review of National Primary Drinking Water Regulations (EPA ICR Number 2574.01, OMB Control Number 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on October 5, 2018, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is below including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before December 2, 2019.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OW–2018–0241, to: (1) The EPA online, using *https://www.regulations.gov/* (our preferred method), by email to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460; and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for the EPA.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Jini Mohanty at (202) 564–5269 or Nicole Tucker at (202) 564–1946, Office of Ground Water and Drinking Water, Standards and Risk Management Division, 4607M, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov/* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The telephone number for the Docket Center is 202–566–1744. For additional information about the EPA's public docket, visit *https://www.epa.gov/dockets.*

Abstract: The EPA is required by the Safe Drinking Water Act (SDWA), as amended in 1996, to review existing National Primary Drinking Water Regulations (NPDWRs) no less often than every six years. This routine evaluation is referred to as the ''Six-Year Review of National Primary Drinking Water Regulations'' or simply, the ''Six-Year Review.'' Throughout the Six-Year Review process, the EPA assesses new data to determine risks to human health posed by regulated drinking water contaminants and identifies NPDWRs that may be appropriate for revision.

The EPA completed and published review results for the first Six-Year Review cycle (1996–2002) on July 18, 2003 (68 FR 42908). The occurrence assessments for the first Six-Year Review were based on compliance monitoring from a cross-section of 16 States, collected from 1993 to 1997, which were voluntarily provided by the States.

The EPA completed and published review results for the second Six-Year Review cycle (2003–2009) on March 29, 2010 (75 FR 15500). The occurrence assessments conducted for the second Six-Year Review are based on data collected between 1998 and 2005, voluntarily submitted by States and other drinking water primary enforcement (primacy) agencies (*i.e.,* the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, or an eligible Indian tribe).

The EPA completed and published review results for the third Six-Year Review cycle (2010–2016) on January 11, 2017 (82 FR 3518). The occurrence assessments conducted for the third Six-Year Review are based on contaminant occurrence and treatment techniques data collected between 2006 and 2011, voluntarily submitted by States and other drinking water primacy agencies.

The EPA created this new ICR to continue to engage States and other drinking water primacy agencies in data collection efforts. For this ICR, the EPA is soliciting States and other primacy agencies to (voluntarily) provide historical, compliance monitoring (contaminant occurrence) data for community water systems (CWSs) and non-transient non-community water systems (NTNCWSs) to the Agency in support of the fourth Six-Year Review. The EPA is requesting contaminant occurrence and treatment technique data collected from 2012 to 2019 for all regulated chemical, radiological, and microbial contaminants, including data collected for the Revised Total Coliform Rule, newly promulgated since the third Six-Year Review information collection.

The compliance monitoring records for this information collection (including all results for analytical detections and non-detections) provide the data needed to conduct statistical estimates of national occurrence for regulated contaminants and evaluate treatment technique information associated with the control of pathogens, disinfectants, and disinfection byproducts. The national occurrence estimates and information on treatment techniques will support the EPA's review of existing NPDWRs as required by the SDWA, section 1412(b)(9). In addition, the SDWA, section 1445(g), requires the EPA to maintain a national drinking water contaminant occurrence database (*i.e.,* the National Contaminant Occurrence Database (NCOD)), using occurrence data for both regulated and unregulated contaminants in public water systems (PWSs). This data collection will provide new occurrence data on regulated contaminants to maintain the NCOD.

Form Numbers: None.

Respondents/affected entities: States and other drinking water primacy agencies.

Respondent's obligation to respond: Voluntarily.

Estimated number of respondents: 56 (total).

Frequency of response: One-time only.

Total estimated burden: 765 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $43,021 (per year), includes $0 annualized capital or operations and maintenance costs.

Changes in the estimates: The new burden under this ICR is for a one-time data collection effort in support of the fourth six-year review of national primary drinking water regulations.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–23720 Filed 10–30–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

[Notice 2019–15]

Filing Dates for the Wisconsin Special Election in the 7th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Wisconsin has scheduled special elections on December 30, 2019, and January 27, 2020, to fill the U.S. House of Representatives seat in the 7th Congressional District vacated by Representative Sean Duffy.

Committees required to file reports in connection with the Special Primary Election on December 30, 2019, shall file a 12-day Pre-Primary Report. Committees required to file reports in connection with both the Special Primary and Special General Election on January 27, 2020, shall file a 12-day Pre-Primary, a consolidated 12-day Pre-General Report and Year-End Report, and a 30-day Post-General Report.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 1050 First Street NE, Washington, DC 20463; Telephone: (202) 694–1100; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Wisconsin Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on December 18, 2019; a consolidated 12-day Pre-General and Year-End Report on January 15, 2020; and a 30-day Post-General Report on February 26, 2020. (See charts below for the closing date for each report.)

All principal campaign committees of candidates participating *only* in the Special Primary Election shall file a 12-day Pre-Primary Report on December 18, 2019. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2019 or 2020 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Wisconsin Special Primary or Special General Elections by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Since disclosing financial activity from two different calendar years on one report would conflict with the calendar year aggregation requirements stated in the Commission's disclosure rules, unauthorized committees that trigger the filing of the consolidated Pre-General & Year-End Report will be required to file this report on two separate forms: One form to cover 2019 activity, labeled as the Year-End Report; and the other form to cover only 2020 activity, labeled as the Pre-General Report. Both forms must be filed by January 15, 2020.

Committees filing monthly that make contributions or expenditures in connection with the Wisconsin Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Wisconsin Special Elections may be found on the FEC website at *https://www.fec.gov/help-candidates-and-committees/dates-and-deadlines/.*

Disclosure of Lobbyist Bundling Activity

Principal campaign committees, party committees and leadership PACs that are otherwise required to file reports in connection with the special elections must simultaneously file FEC Form 3L if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of the lobbyist bundling disclosure threshold during the special election reporting periods. (See charts below for closing date of each period.) 11 CFR 104.22(a)(5)(v), (b), 110.17(e)(2), (f).

The lobbyist bundling disclosure threshold for calendar year 2019 is $18,700. This threshold amount may change in 2020 based upon the annual cost of living adjustment (COLA). As soon as the adjusted threshold amount is available, the Commission will publish it in the **Federal Register** and post it on its website. 11 CFR 104.22(g) and 110.17(e)(2). For more information on these requirements, see **Federal Register** Notice 2009–03, 74 FR 7285 (February 17, 2009).

CALENDAR OF REPORTING DATES FOR WISCONSIN SPECIAL ELECTIONS

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
Committees Involved in Only the Special Primary (12/30/19) Must File			
Pre-Primary	12/10/19	[2] 12/15/19	12/18/19
Year-End	12/31/19	01/31/20	01/31/20
Committees Involved in Both the Special Primary (12/30/19) and Special General (01/27/20) Must File			
Pre-Primary	12/10/19	[2] 12/15/19	12/18/19
Pre-General & Year-End [3]	01/07/20	[2] 01/12/20	01/15/20
Post-General	02/16/20	02/26/20	02/26/20
April Quarterly	03/31/20	04/15/20	04/15/20
Committees Involved in Only the Special General (01/27/20) Must File			
Pre-General & Year-End [3]	01/07/20	[2] 01/12/20	01/15/20
Post-General	02/16/20	02/26/20	02/26/20
April Quarterly	03/31/20	04/15/20	04/15/20

[1] The reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered as a political committee up through the close of books for the first report due.

[2] Notice that the registered/certified & overnight mailing deadline falls on a weekend. The report should be postmarked on or before that date.

[3] Committees should file a consolidated Pre-General & Year-End Report by the filing deadline of the Pre-General Report.

Dated: October 25, 2019.

On behalf of the Commission.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019–23764 Filed 10–30–19; 8:45 am]

BILLING CODE 6715–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

[Docket No. OP–1681]

RIN 3064–ZA08

Request for Information on Application of the Uniform Financial Institutions Rating System

AGENCY: Federal Deposit Insurance Corporation and Board of Governors of the Federal Reserve System

ACTION: Notice and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (FRB) and the Federal Deposit Insurance Corporation (FDIC) and (collectively, the agencies) are seeking information and comments from interested parties regarding the consistency of ratings assigned by the agencies under the Uniform Financial Institutions Rating System (UFIRS). The assigned ratings are commonly known as CAMELS ratings. The agencies also are interested in receiving feedback concerning the current use of CAMELS ratings by the agencies in their bank application and enforcement action processes.

DATES: Comments must be received by December 30, 2019

ADDRESSES: *Board:* You may submit comments, identified by Docket No. OP–1681, by any of the following methods:

- *Agency Website: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Email: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC

You may submit comments, identified by RIN 3064–ZA08, by any of the following methods:

- *Agency Website: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the Agency website.
- *Email: Comments@fdic.gov.* Include the RIN 3064–ZA08 in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.
- *Public Inspection:* All comments received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/*—including any personal information provided—for public inspection. Paper copies of public comments may be ordered from the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226 by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: *Board:* Alex Kobulsky, Senior Financial Institution Policy Analyst II, (202) 452–2031, and Catherine Piché, Deputy Associate Director, (202) 452–3793, Division of Supervision and Regulation; or Patricia Yeh, Senior Counsel, (202) 452–3089, Legal Division, Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263–4869.

FDIC: Rae-Ann Miller, Associate Director, Risk Management Policy; Samuel B. Lutz, Counsel Supervision and Legislation Branch, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Background Information

Section 10(d) of the Federal Deposit Insurance Act (FDI Act) generally requires the appropriate federal banking agency for an insured depository institution to conduct a full-scope, on-site examination at least once every 12 months, but permits a longer cycle—at least once every 18 months—for insured depository institutions that meet certain criteria, including the requirement that the insured depository institution must have total assets below a specified size limit.[1] At the conclusion of an examination, examination staff develop findings and conclusions, which serve as the primary basis for assessing the condition of an insured depository institution under the UFIRS.[2] The UFIRS is commonly called the CAMELS rating system, which is an acronym of the six evaluation components: Capital, Asset Quality, Management, Earnings, Liquidity, and Sensitivity to Market Risk. In addition, the CAMELS rating system contains an overall composite rating.

The Federal Financial Institutions Examination Council (FFIEC)[3] first adopted the UFIRS in 1979 to provide supervisors with a methodology for evaluating the soundness of depository institutions on a uniform basis. In addition, the UFIRS promotes uniform supervisory practices, and provides a consistent mechanism for identifying problem institutions.[4] In December 1996, the UFIRS was revised after public notice and comment.[5] The updated UFIRS added a component for rating sensitivity to market risk. The rating system was revised to clarify that the component rating assessments should consider an institution's size, the nature and complexity of its business activities, and its risk profile; increase emphasis on risk management; and address additional complexities associated with on- and off-balance sheet investments of financial institutions.

CAMELS Rating System

The UFIRS describes each rating component, and includes a list of factors that examiners evaluate when assigning a rating to the institution. Examiners assign CAMELS components and composite ratings on a scale of ''1'' to ''5.'' A rating of ''1'' indicates the highest rating, strongest performance and risk management practices, and the least degree of supervisory concern, whereas a ''5'' indicates the lowest rating, weakest performance, inadequate risk management practices, and therefore, the highest degree of supervisory concern. Each component rating contains risk management considerations that emphasize the ability of management to respond to changing circumstances and to address the risks that may arise from changing business conditions or the initiation of new activities or products and are an important factor in evaluating a financial institution's overall risk profile and the level of supervisory attention warranted. Institutions are rated individually based on their primary Federal or state regulator's assessment of how each institution's risk profile fits the CAMELS definitions.

The agencies also conduct reviews and examinations of institutions'

[1] *See* Section 10(b) and 10(d) of the Federal Deposit Insurance Act. 12 U.S.C. 1820(d). *See also* 83 FR 67033 (December 28, 2018).

[2] Additional details on the conduct and rationale of FDIC bank examinations can be found in the Risk Management Manual of Examination Policies and FRB examinations can be found in the *Commercial Bank Examination Manual,* which is available at: *https://www.federalreserve.gov/publications/files/cbem.pdf.*

[3] Federal Financial Institutions Examination Council Act of 1978 (Pub. L. 95–630) (Nov. 10, 1978). Currently, the Director of the Consumer Financial Protection Bureau, the Chair of the Board of the FDIC, a governor of the Board of Governors of the Federal Reserve System, the Chairman of the National Credit Union Administration, the Comptroller of the Currency, and a representative state regulator are voting members of the FFIEC. The functions of the FFIEC Council include establishing principals and standards, making recommendations regarding supervisory matters and adequacy of supervisory tools, and developing a uniform reporting system.

[4] *See https://www.gao.gov/assets/100/98389.pdf.*

[5] *See* 61 FR 37472 (July, 18, 1996) and 61 FR 67021 (Dec. 19, 1996). *See also* SR letter 96–38, ''Uniform Financial Institutions Rating System,'' available at: *https://www.federalreserve.gov/boarddocs/srletters/1996/sr9638.htm.*

compliance with laws and regulations related to anti-money laundering and consumer protection. Examiners consider the results and findings from these and other types of examinations and reviews, as appropriate, when assigning component and composite ratings under CAMELS.

The composite CAMELS rating bears a close relationship to the assigned component ratings. However, examiners do not assign a composite rating by computing an arithmetic average of the component ratings. When assigning a composite rating, examiners may give some components more weight than others depending on the situation and risk of the institution. Assignment of a composite rating may incorporate any factor that bears significantly on the overall condition and soundness of the institution.

The agencies also conduct examinations and reviews of certain specialty areas, outside of the CAMELS ratings, such as information technology,[6] asset management/trust,[7] and government securities dealers or clearing agencies.[8] For the aforementioned specialty areas, agencies assign unique ratings to institutions. These rating systems are excluded from this RFI.

In addition to the regularly scheduled examinations, the agencies conduct off-site institution surveillance and monitoring that rely on relevant financial regulatory reports (for example, the Call Report) and supervisory information. The purpose of this monitoring is to identify institutions exhibiting increased risk profiles or financial deterioration between examinations. The surveillance process promotes timely supervisory attention to these institutions and directs examination resources to them.

Communication and Confidentiality of CAMELS Ratings

Agencies typically communicate the CAMELS ratings to an institution through a formal, written report of examination or other official agency correspondence. The CAMELS ratings and the report of examination or other official agency correspondence are property of the agencies and are provided to the institution's board of directors and management for their confidential use. The report of examination and official correspondence are strictly privileged and confidential under applicable law, and the agencies prohibit disclosure of an institution's CAMELS rating or report of examination in any manner without the primary federal regulator's permission, except in limited circumstances specified in the law (12 U.S.C. 1817(a) and 1831m) and in the agencies' regulations.[9]

Implications of CAMELS Ratings

The CAMELS ratings have a number of supervisory implications for institutions. For instance, the agencies increase supervisory activities, which may include targeted examinations between regularly scheduled examinations, if an institution's CAMELS ratings are less than satisfactory.

The agencies take CAMELS ratings into account when evaluating institutions' filings, such as merging with or acquiring another institution, opening new branches, or engaging in new activities.[10] The agencies generally expect an institution to be in satisfactory condition, as reflected in its CAMELS ratings, before effecting expansion plans. The agencies expect an institution in less-than-satisfactory condition, or that has a less-than-satisfactory record of consumer compliance or performance under the Community Reinvestment Act to concentrate their managerial and financial resources on remediating their deficiencies. An institution in less-than-satisfactory condition may seek approval for an expansionary proposal; however the agencies would consider whether any proposed expansion would compromise management's efforts to address the current deficiencies of the institution.

Supervisors issue formal enforcement actions to institutions to address practices that the supervisors believe to be unlawful, unsafe, or unsound.[11] The initial determination of whether formal action is required usually results from examination findings. As such, composite and component ratings assigned under CAMELS are significant indicators of the need for heightened supervisory attention including enforcement actions for more problematic issues.[12] The UFIRS states that with respect to an institution with a ''4'' composite rating, ''close supervisory attention is required, which means, in most cases, formal enforcement action is necessary to address the problems.'' The agencies also utilize ratings in the implementation of certain laws and regulations.[13]

Request for Comments From Interested Parties

The agencies are issuing this RFI to seek public input regarding how CAMELS ratings are assigned to supervised institutions, and the implications of such ratings in the application and enforcement action processes. This effort to seek comments and information is consistent with the agencies' commitment to increase transparency, improve efficiency, support innovation, and provide opportunities for public feedback. This request for information is not a proposal to modify the CAMELS rating definitions. Such definitions were issued through the FFIEC.

The agencies encourage comments from interested members of the public, including, but not limited to, insured depository institutions, other financial institutions or companies, individual depositors and consumers, consumer groups, trade associations, and other members of the financial services industry. Given confidentiality requirements[14] applicable to financial institutions' CAMELS ratings and other report of examination findings and conclusions, the agencies realize there are limitations on responses regarding the consistency of how CAMELS ratings are assigned. The agencies, however, welcome general comments that do not breach these confidentiality requirements.

Topics for Commenters

CAMELS Rating System

1. To what extent does each agency assign composite and component ratings

[6] 64 FR 3109 (Jan. 20, 1999).

[7] 63 FR 54704 (Oct. 13, 1998).

[8] 17 CFR 450.3.

[9] *See* 12 CFR part 261. Any unauthorized disclosure of the report may subject the person or persons disclosing or receiving such information to the penalties of Section 641 of the U.S. Criminal Code (18 U.S.C. 641).

[10] For the FRB see 12 CFR 208.3(b). See also SR letter 14–2/CA letter 14–1, ''Enhancing Transparency in the Federal Reserve's Applications Process,'' available at: *https://www.federalreserve.gov/supervisionreg/srletters/sr1402.htm,* and SR letter 13–7 CA letter 13–4, ''State Member Bank Branching Considerations,'' available at *https://www.federalreserve.gov/supervisionreg/srletters/sr1307.htm.* For the FDIC, see 12 CFR part 303 of the FDIC Rules and Regulations—Filing Procedures and the FDIC Statement of Policy on Bank Merger Transactions.

[11] The Interagency Guidelines Establishing Standards for Safety and Soundness are found in 12 CFR 208 appendix D–1 for the FRB and in 12 CFR part 364 of the FDIC Rules and Regulations.

[12] Enforcement actions may be informal, such as a Memorandum of Understanding, or formal, such as an Order issued under Section 8(b) of the Federal Deposit Insurance Act (FDI Act).

[13] *See, for example,* section 10(d) of the FDI Act, 12 U.S.C. 1820(d); 12 CFR 337.12.

[14] For the FRB, *see* 12 CFR 261 subpart C—Confidential Information Made Available to Supervised Financial Institutions and Financial Institution Supervisory Agencies, Law Enforcement Agencies, and Others in Certain Circumstances. For the FDIC, see 12 CFR part 309—Disclosure of Information.

in a manner that is consistent with the CAMELS rating system?

2. To what extent do the agencies appropriately communicate and support each rating after an on-site examination or at the end of an examination cycle, including communicating the effect of each rating or finding on the composite rating?

3. Does the agencies' use of the CAMELS rating system vary from one examination, or examination cycle, to the next? Please explain.

4. Are the agencies generally consistent in their approach to assigning CAMELS ratings to institutions when compared to each other and across other supervisory agencies? What practices, if any, should the agencies consider implementing to enhance the consistent assignment of CAMELS ratings?

5. To what extent do the agencies apply the CAMELS rating system in a manner that is sufficiently flexible to reflect differences between financial institutions such as size, business models, risks, and internal and external operating environments, as well as overall technological developments and emerging risks?

6. To what extent does the scope of supervisory work performed during an examination cycle align with the components of the CAMELS rating system? Which areas, if any, should receive more or less emphasis in order to assign a CAMELS rating appropriately?

7. What steps, if any, should the agencies take to promote the consistent application of the CAMELS framework in the supervisory process?

Implications of CAMELS Ratings

8. To what extent does an institution's condition, as reflected in its CAMELS ratings, affect the agencies' actions on applications, particularly for new or expanded business activities? To what extent, if any, should the agencies modify or clarify their approach?

9. To what extent do the CAMELS ratings impact the issuance of enforcement actions? To what extent does the issuance of enforcement actions impact CAMELS ratings? To what extent, if any, should the agencies modify or clarify their approach?

10. What steps, if any, should the agencies take to promote the consistent use of CAMELS ratings in applications and enforcement matters?

By order of the Board of Governors of the Federal Reserve System, October 17, 2019.

Ann E. Misback,

Secretary of the Board.

Dated at Washington, DC on October 17, 2019.

Federal Deposit Insurance Corporation.

Annmarie Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23739 Filed 10–30–19; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 172 3118]

Retina-X Studios, LLC; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: Interested parties may file comments online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write: ''Retina-X Studios, LLC; File No. 172 3118'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jacqueline Connor (202–326–2844), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 22, 2019), on the World Wide Web, at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 2, 2019. Write ''Retina-X Studios, LLC; File No. 172 3118'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Retina-X Studios, LLC; File No. 172 3118'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section

6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from the FTC website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 2, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Retina-X Studios, LLC (''Retina-X'') and individual Respondent James N. Johns, Jr. (collectively, ''Respondents'').

The proposed consent order (''proposed order'') has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

From 2007 to 2018 Retina-X developed and sold various products and services, each with the means to allow a purchaser to monitor, often surreptitiously, another person's activities on that person's mobile device. James N. Johns, Jr. is the registered agent and sole member of Retina-X. Individually or in concert with others, Mr. Johns controlled or had the authority to control, or participated in the acts and practices alleged in the proposed complaint.

Respondents' mobile device monitoring products and services included MobileSpy, PhoneSheriff, and TeenShield. These monitoring products and services had varying capabilities and costs. Purchasers were often required to jailbreak or root (*i.e.,* actions to bypass various restrictions implemented by the operating system on and/or the manufacturer of mobile devices) the device user's mobile device prior to installing Respondents' monitoring products and services. Jailbreaking or rooting a mobile device exposes a mobile device to various security vulnerabilities and likely invalidates any warranty that a mobile device manufacturer or carrier provides.

All of Respondents' monitoring products and services required that the purchaser have physical access to the device user's mobile device, and could remotely monitor the device user's activities from an online dashboard. By default, Respondents' monitoring products and services disclosed to the device user that they were being monitored (*e.g.,* an icon on a monitored mobile device). However, purchasers could turn off this feature so that the monitoring products and services could run surreptitiously, meaning that the device user was unaware that he or she was being monitored. Respondents provided purchasers with instructions on how to remove the icon that would confirm that monitoring products and services were installed on a particular mobile device.

Device users surreptitiously monitored by Respondents' monitoring products and services could not uninstall or remove Respondents' monitoring products and services because they did not know that they were being monitored. Device users often had no way of knowing that Respondents' monitoring products and services were being used on their phone. Respondents did not take any steps to ensure that purchasers would use Respondents' monitoring products and services for legitimate purposes, such as to monitor employees or children.

Moreover, Respondents did not take steps to secure the personal information collected from purchasers and device users being monitored. Respondents outsourced most of their product development and maintenance to a service provider. Respondents engaged in a number of practices that, taken together, failed to provide reasonable data security to protect the personal information collected from consumers. As a result of these unreasonable data security practices, Respondents were breached twice.

The Commission proposed 5-count complaint alleges that Respondents violated Section 5(a) of the Federal Trade Commission Act and the Children's Online Privacy Protection Rule. The first count alleges that Respondents unfairly sold monitoring products and services that required jailbreaking or rooting, without taking reasonable steps to ensure that the monitoring products and services would only be used for legitimate and lawful purposes by the purchaser.

The second to fourth counts allege that Respondents deceived consumers about Respondents' data security practices by falsely representing that consumers' personal information collected through MobileSpy, PhoneSheriff, and TeenShield, and stored in Respondents' databases was confidential, private, and safe. The fifth count alleges that Respondents violated the Children's Online Privacy Protection Rule by failing to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children through the TeenShield product. Respondents failed to implement appropriate security procedures to protect the personal information collected from consumers, including children, such as by: (1) Failing to adopt, implement, or maintain security standards, policies, procedures or practices; (2) failing to conduct security testing of mobile applications that could be exploited to gain unauthorized access to consumers' sensitive personal information for well-known and reasonably foreseeable vulnerabilities; (3) failing to contractually require their service providers to adopt and implement information security standards, policies, procedures or practices; (4) failing to perform adequate oversight of service providers; and (5) failing to adopt and implement written information security standards, policies, procedures, or practices that would apply to the oversight of their service providers.

The proposed order contains provisions designed to prevent

Respondents from engaging in the same or similar acts or practices in the future.

Part I of the proposed order prohibits Respondents from selling a monitoring product unless: (1) The monitoring product does not circumvent security protections implemented by the mobile device operating system or manufacturer; (2) prior to the sale of the monitoring product, express written attestation is obtained from the purchaser that the monitoring product stating that the monitoring product will be used for legitimate and lawful purposes; and (3) documentation is obtained proving that the purchaser is an authorized user on the monitored mobile device's service carrier account. The proposed order also requires that Respondents display an application icon, including the name of the monitoring product, when the monitoring product is on the mobile device. Moreover, a clear and conspicuous notice must be presented when the application icon is clicked.

Part II of the order restrains Respondents from distributing monitoring products unless Respondents have: (1) A home page notice stating that the monitoring product may only be used for legitimate and lawful purposes by authorized users; and (2) a purchase page notice stating that the monitoring product may only be used for legitimate and lawful purposes by authorized users, and that installing or using the monitoring product for any other purpose may violate local, state, and/or federal law.

Part III of the proposed order prohibits Respondents from violating the Children's Online Privacy Protection Rule. Part IV of the proposed order prohibits Respondents from misrepresenting the extent to which Respondents maintain and protect the privacy, security, confidentiality, or integrity of consumers' personal information. Part V requires that Respondents' delete all personal information collected from a monitoring product prior to entry of the proposed order within 120 days.

Part VI of the proposed order prohibits Respondents, and any business that a Respondent controls, directly, or indirectly, from transferring, selling, sharing, collecting, maintaining, or storing personal information unless Respondents establish and implement, and thereafter maintain, a comprehensive information security program that protects the security confidentiality, and integrity of such personal information. Part VII requires Respondents to obtain initial and biennial data security assessments for twenty years. Part VIII of the proposed order requires Respondents to disclose all material facts to the assessor and prohibits Respondents from misrepresenting any fact material to the assessments required by Part VII. Part IX requires Respondents to submit an annual certification from a senior corporate manager (or senior officer responsible for its information security program), that Respondents have implemented the requirements of the proposed order, are not aware of any material noncompliance that has not been corrected or disclosed to the Commission, and includes a brief description of any covered incident involving unauthorized access to or acquisition of personal information. Part X requires Respondents to submit a report to the Commission of their discovery of any covered incident.

Parts XI through XIV of the proposed order are reporting and compliance provisions, which including recordkeeping requirements and provisions requiring Respondents to provide information or documents necessary for the Commission to monitor compliance. Part XV states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2019–23809 Filed 10–30–19; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years, the current PRA clearance for its shared enforcement authority with the Consumer Financial Protection Bureau (''CFPB'') for information collection requirements contained in the CFPB's Regulation O. That clearance expires on February 29, 2020.

DATES: Comments must be filed by December 30, 2019.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''MARS (Regulation O) PRA Comment, FTC File No. P134812'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Stephanie Rosenthal, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326–3332.

SUPPLEMENTARY INFORMATION: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), Public Law 111–203, 124 Stat. 1376 (2010), transferred the Commission's rulemaking authority under the mortgage provisions in section 626 of the 2009 Omnibus Appropriations Act, as amended,[1] to the CFPB.[2] On December 16, 2011, the CFPB republished the Mortgage Assistance Relief Services (''MARS'') Rule as Regulation O (12 CFR 1015).[3] As a result, the Commission subsequently rescinded its MARS Rule (16 CFR part 322).[4] Nonetheless, under the Dodd-Frank Act, the FTC retains its authority to bring law enforcement actions to enforce Regulation O.[5]

Regulation O contains information collection requirements that have been approved by OMB under the PRA, 44 U.S.C. 3501 *et seq.* (OMB Control Number 3084–0157). The FTC, as a co-enforcer, seeks OMB clearance for its share of the estimated PRA burden for the information collection requirements of Regulation O. The Rule includes disclosure requirements to assist purchasers of mortgage assistance relief services in making well-informed decisions and avoiding unfair or

[1] Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009).

[2] Dodd-Frank Act, § 1061, 12 U.S.C. 5581 (2010).

[3] 76 FR 78130.

[4] 77 FR 22200 (April 13, 2012).

[5] Dodd-Frank Act, § 1061(b)(5), 12 U.S.C. 5581(b)(5).

deceptive acts and practices. The information that must be retained under Regulation O's recordkeeping requirements is used by the CFPB and the FTC for enforcement purposes and to ensure compliance by MARS providers with Regulation O.

Burden Statement

Because the FTC and CFPB share enforcement authority for this rule, the FTC is seeking clearance for one-half of the following burden estimates. These estimates are based on the agencies' law enforcement experience and the recent analysis conducted as part of the CFPB's clearance renewal for the information collections associated with Regulation O.[6] The FTC and CFPB estimate that there are approximately 120 for-profit, non-attorney entities offering MARS services and subject to Regulation O's requirements.[7]

Estimated annual hours burden: 360 (FTC share).

FTC staff estimates that compliance with Regulation O's disclosure requirements for MARS providers requires 6 hours of labor annually.[8] Multiplying this figure by 120 entities yields a total burden for covered providers of 720 hours annually.[9] For PRA purposes, the FTC and CFPB share enforcement authority and split the information collection burden associated with the Rule equally. As a result, the FTC assumes 360 hours of this total annual hours burden.

Estimated associated labor cost: $11,747 (FTC share).

In calculating the associated labor costs, FTC staff estimates that a compliance officer or equivalent will prepare the required disclosures at an hourly rate of $32.63/hr.[10] Thus, the estimated annual labor cost is $23,494 (120 providers × 6 hours × $33.26) of which the FTC assumes half, or $11,747.

Information collection	Number of respondents	Annual burden hours per respondent	Total burden hours	Associated hourly labor cost	Total respondent costs
	120	6	720	$32.63	$23,494
FTC 50% Share			360		11,747

Request for Comment

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (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.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before December 30, 2019. Write ''MARS (Regulation O) PRA Comment, FTC File No. P134812'' on your comment. Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it through the *https://www.regulations.gov* website by following the instructions on the web-based form provided. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website. As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the *regulations.gov* site.

If you file your comment on paper, write ''MARS (Regulation O) PRA Comment, FTC File No. P134812'' on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at *www.regulations.gov,* we cannot redact

[6] Consumer Financial Protection Bureau, *Agency Information Collection Activities: Comment Request,* 83 FR 45,111 (Nov. 5, 2018).

[7] *See* CFPB Supporting Statement, *Mortgage Assistance Relief Services (Regulation O) 12 CFR 1015,* OMB Control No: 3170–0007 (Nov. 28, 2018), *available at https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201808-3170-003;* clearance expires on July 31, 2022.

[8] *Id.*

[9] *Id.*

[10] This estimate is based on the median hourly wage for a Compliance Officer (occupation code 13–1041) of $32.63 provided by the Bureau of Labor Statistics. *See* BLS Occupational Employment and Wages estimate of the median hourly wage for a Compliance Officer (occupation code 13–1041) of $32.63, *available at https://www.bls.gov/oes/current/oes131041.htm.*

or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 30, 2019. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Heather Hippsley,

Deputy General Counsel.

[FR Doc. 2019–23797 Filed 10–30–19; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–416]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by December 30, 2019.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–416 Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Participation Report

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Annual Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Participation Report; *Use:* The collected baseline data is used to assess the effectiveness of state early and periodic screening, diagnostic and treatment (EPSDT) programs in reaching eligible children (by age group and basis of Medicaid eligibility) who are provided initial and periodic child health screening services, referred for corrective treatment, and receiving dental, hearing, and vision services. This assessment is coupled with the state's results in attaining the participation goals set for the state. The information gathered from this report, permits federal and state managers to evaluate the effectiveness of the EPSDT law on the basic aspects of the program. *Form Number:* CMS–416 (OMB control number 0938–0354); *Frequency:* Yearly and on occasion; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 1,512. (For policy questions regarding this collection contact Karen Matsuoka at 410–786–9726.)

Dated: October 25, 2019.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2019–23733 Filed 10–30–19; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the National Advisory Council on Nurse Education and Practice

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this

notice announces that the National Advisory Council on Nurse Education and Practice (NACNEP) has scheduled public meetings for the 2020 calendar year (CY). Information about NACNEP, agendas, and materials for these meetings can be found on the NACNEP website at *https://www.hrsa.gov/advisory-committees/nursing/index.html.*

DATES: NACNEP meetings will be held (all in Eastern Time) on

- February 4, 2020, 8:30 a.m.–5:00 p.m., via webinar;
- May 12, 2020, 8:30 a.m.–5:00 p.m. and May 13, 2020, 8:30 a.m.–2:00 p.m., via in-person and webinar;
- August 11, 2020, 8:30 a.m.–5:00 p.m., via webinar; and
- December 2, 2020, 8:30 a.m.–5:00 p.m. and December 3, 2020, 8:30 a.m.–2:00 p.m., via in-person and webinar.

ADDRESSES: Meetings may be held in-person, by teleconference, and/or Adobe Connect webinar. In-person NACNEP meetings will be held at 5600 Fishers Lane, Rockville, Maryland 20857. Instructions for joining the meetings either in person or remotely will be posted on the NACNEP website listed above 30 business days before the date of the meeting. For meeting information updates, go to the NACNEP website meeting page at *https://www.hrsa.gov/advisory-committees/nursing/index.html.*

FOR FURTHER INFORMATION CONTACT: Camillus Ezeike, Ph.D., JD, LLM, RN, CHC, CPHRM, Senior Advisor, Division of Nursing and Public Health, Bureau of Health Workforce, HRSA, 5600 Fishers Lane, 11N–120, Rockville, Maryland 20857; 301–443–2866; or *BHWNACNEP@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACNEP provides advice and recommendations to the Secretary of HHS and Congress on policy issues related to the activities carried out under Title VIII of the Public Health Service (PHS) Act, including the range of issues relating to the nurse workforce, education, and practice improvement. NACNEP also prepares and submits an annual report to the Secretary of HHS and Congress describing its activities, including NACNEP's findings and recommendations concerning activities under Title VIII, as required by the PHS Act.

Since priorities dictate meeting times, be advised that times and agenda items are subject to change. For CY 2020 meetings, agenda items may include, but are not limited to, updates from experts on nursing workforce, nursing education, and nursing practice improvement in the development, review, and adoption of the Council's 17th Report to the Secretary of HHS and Congress. More general items may include presentations and discussions on the current and emerging needs of the nursing profession and nurse education; public health priorities that nursing can address; healthcare access, evaluation, and financing; and HRSA and other federal health workforce and education programs that impact nurses. Refer to the NACNEP website listed above for all current and updated information concerning the CY 2020 NACNEP meetings, including draft agendas and meeting materials that will be posted at least 14 calendar days before the meeting.

Members of the public will have the opportunity to provide comments. Public participants may submit written statements in advance of the scheduled meeting(s). Oral comments will be honored in the order they are requested and may be limited as time allows. Requests to submit a written statement or make oral comments to NACNEP should be sent to Camillus Ezeike using the contact information above at least 5 business days before the meeting date(s).

Individuals who need special assistance or another reasonable accommodation should notify Camillus Ezeike using the contact information listed above at least 10 business days before the meeting(s) they wish to attend. Since all in-person meetings occur in a federal government building, attendees must go through a security check to enter the building. Non-U.S. citizen attendees must notify HRSA of their planned attendance at least 20 business days prior to the meeting in order to facilitate their entry into the building. All attendees are required to present government-issued identification prior to entry.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–23728 Filed 10–30–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Charter Renewal for the National Advisory Committee on Rural Health and Human Services

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (FACA), HHS is hereby giving notice that the National Advisory Committee on Rural Health and Human Services (NACRHHS or Committee) has been renewed. The effective date of the renewed charter is October 29, 2019.

FOR FURTHER INFORMATION CONTACT: Contact Paul Moore, Designate Federal Official, NACRHHS, HRSA, 5600 Fishers Lane, Room 17W59D, Rockville, Maryland 20857, telephone (301) 443–0835, fax (301) 443–2803 or by email at *pmoore2@hrsa.gov.*

SUPPLEMENTARY INFORMATION: NACRHHS provides advice to the Secretary of HHS (Secretary) concerning the provision and financing of health care and human services in rural areas. The current committee was established under Section 222 of the Public Health Service Act, as amended, 42 U.S.C. 217a. Each year, NACRHHS selects one or more topics upon which to focus during the year. By the end of the calendar year, the Committee produces a report with recommendations on that issue for the Secretary. In addition to the report, the Committee may also produce white papers on select policy issues. The charter renewal for NACRHHS was approved on October 29, 2019, which will also stands as the filing date. Renewal of the NACRHHS charter gives authorization for the committee to operate until October 29, 2021.

A copy of the NACRHHS charter is available on the NACRHHS website at *https://www.hrsa.gov/advisory-committees/rural-health.* A copy of the charter is also available on the FACA database maintained by the Committee Management Secretariat under the General Services Administration. The website for the FACA database is *http://www.facadatabase.gov/.*

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–23729 Filed 10–30–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: November 17–19, 2019.

Closed: November 17, 2019, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Place, 7840 NC 751 Highway, Durham, NC 27713.

Open: November 18, 2019, 8:30 a.m. to 11:50 a.m.

Agenda: Scientific Presentation.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 18, 2019, 11:50 a.m. to 1:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Open: November 18, 2019, 1:30 p.m. to 3:00 p.m.

Agenda: Poster Session.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 18, 2019, 3:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Open: November 18, 2019, 3:45 p.m. to 4:35 p.m.

Agenda: Scientific Presentation.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 18, 2019, 4:35 p.m. to 4:55 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 18, 2019, 7:00 p.m. to 10:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Place, 7840 NC 751 Highway, Durham, NC 27713.

Open: November 19, 2019, 8:30 a.m. to 10:10 a.m.

Agenda: Scientific Presentation.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 19, 2019, 10:10 a.m. to 10:40 a.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Open: November 19, 2019, 10:55 a.m. to 12:35 p.m.

Agenda: Scientific Presentation.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 19, 2019, 12:35 p.m. to 2:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Open: November 19, 2019, 2:00 p.m. to 2:30 p.m.

Agenda: Poster Session.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Closed: November 19, 2019, 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Research Triangle Foundation Headquarters, 12 Davis Drive, Durham, NC 27709.

Contact Person: Darryl C. Zeldin, Scientific Director & Principal Investigator, Division of Intramural Research, National Institute of Environmental Health Sciences, NIH, 111 T. W. Alexander Drive, Mail drop A2–09, Research Triangle Park, NC, 919–541–1169, *zeldin@neihs.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS).

Dated: October 25, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23747 Filed 10–30–19; 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; Small Business: HIV/AIDS Innovative Research Applications.

Date: November 26, 2019.

Time: 9:30 a.m. to 2:30 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.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–19–267: K01/AIDS Research/Career Development Applications.

Date: November 26, 2019.

Time: 1:00 p.m. to 3:00 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: Jingsheng Tuo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, Bethesda, MD 20892, 301–451–8754, *tuoj@nei.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Vision Biology.

Date: November 26, 2019.

Time: 1:00 p.m. to 3:00 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: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1102, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; HIV/AIDS and related Point-of-Care Applications.

Date: November 26, 2019.

Time: 2:30 p.m. to 5:30 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 25, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23744 Filed 10–30–19; 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; NIH Research Enhancement Award (R15).

Date: November 25, 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.

Contact Person: Svetlana Kotliarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, Bethesda, MD 20892, 301–594–7945, *kotliars@mail.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Social Development.

Date: November 25, 2019.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HM and HT Member SEP.

Date: November 25, 2019.

Time: 2:00 p.m. to 4:30 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: Larry Pinkus, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214, *pinkusl@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Biology.

Date: November 25, 2019.

Time: 12:30 p.m. to 3:00 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: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@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 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23743 Filed 10–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON DRUG ABUSE, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: November 21, 2019.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, NIH, Johns Hopkins Bayview Campus, Baltimore, MD 21223.

Contact Person: Joshua Kysiak, Program Specialist, Biomedical Research Center, Intramural Research Program, National Institute on Drug Abuse, NIH, DHHS, 251 Bayview Boulevard, Baltimore, MD 21224, 443–740–2465, *kysiakjo@nida.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: October 25, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23746 Filed 10–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; eMERGE.

Date: December 3, 2019.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Pentagon City, 550 Army Navy Drive, Arlington, VA 22202.

Contact Person: Rudy Pozzatti, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *pozzattr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 25, 2019.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–23745 Filed 10–30–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4464–DR; Docket ID FEMA–2019–0001]

South Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4464–DR), dated September 30, 2019, and related determinations.

DATES: The declaration was issued September 30, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 30, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Carolina resulting from Hurricane Dorian during the period of August 31 to September 6, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of South Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Allan Jarvis, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Carolina have been designated as adversely affected by this major disaster:

Beaufort, Berkeley, Charleston, Colleton, Dillon, Dorchester, Georgetown, Horry, Jasper, Marion, and Williamsburg Counties for Public Assistance.

All areas within the State of South Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23835 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4460–DR; Docket ID FEMA–2019–0001]

Arkansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Arkansas (FEMA–4460–DR), dated September 13, 2019, and related determinations.

DATES: This change occurred on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandra Eslinger, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Jerry S. Thomas as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23844 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4399–DR; Docket ID FEMA–2019–0001]

Florida; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Florida (FEMA–4399–DR), dated October 11, 2018, and related determinations.

DATES: This change occurred on September 28, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Thomas J. Dargan as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23852 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3424–EM; Docket ID FEMA–2019–0001]

Commonwealth of the Northern Mariana Islands; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of the Northern Mariana Islands (FEMA–3424–EM), dated October 7, 2019, and related determinations.

DATES: The declaration was issued October 7, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 7, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of the Northern Mariana Islands resulting from Typhoon Hagibis beginning on October 7, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of the Northern Mariana Islands.

You are authorized to provide appropriate assistance for required emergency measures, authorized under title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Teresa Serata, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of the Northern Mariana Islands have been designated as adversely affected by this declared emergency:

The municipalities of Rota, Saipan, Tinian, and the Northern Islands for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23853 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4463–DR; Docket ID FEMA–2019–0001]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–4463–DR), dated September 23, 2019, and related determinations.

DATES: The declaration was issued September 23, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 23, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from severe storms and flooding during the period of May 26 to June 7, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, James R. Stephenson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Aurora, Bennett, Brule, Butte, Campbell, Custer, Deuel, Fall River, Gregory, Haakon, Hamlin, Hanson, Jackson, Jones, Lyman, Meade, Mellette, Pennington, Sanborn, Todd, Tripp, Turner, Union, Walworth, and Ziebach Counties and the Cheyenne River Sioux Reservation and the Rosebud Reservation for Public Assistance.

All areas within the State of South Dakota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23826 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4466–DR; Docket ID FEMA–2019–0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–4466–DR), dated October 4, 2019, and related determinations.

DATES: The declaration was issued October 4, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from Tropical Storm Imelda during the period of September 17 to September 23, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Jerry S. Thomas, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Chambers, Harris, Jefferson, Liberty, Montgomery, and Orange Counties for Individual Assistance.

All areas within the State of Texas are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23822 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4465–DR; Docket ID FEMA–2019–0001]

North Carolina; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Carolina (FEMA–4465–DR), dated October 4, 2019, and related determinations.

DATES: This amendment was issued October 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Carolina is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of October 4, 2019.

Beaufort, Camden, Columbus, Greene, Hoke, Lenoir, Onslow, Pasquotank, Perquimans, Pitt, Robeson, and Wayne Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23842 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4458–DR; Docket ID FEMA–2019–0001]

Louisiana; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4458–DR), dated August 27, 2019, and related determinations.

DATES: This amendment was issued October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 27, 2019.

St. Landry Parish for Public Assistance.

Cameron Parish for debris removal and emergency protective measures (Categories A and B), including direct federal assistance.

Pointe Coupee and St. Martin Parishes for permanent work [Categories C–G] (already designated for debris removal and emergency protective measures [Categories A and B], including direct federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23846 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4429–DR; Docket ID FEMA–2019–0001]

Mississippi; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–4429–DR), dated April 23, 2019, and related determinations.

DATES: The amendment was issued October 16, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now February 22, 2019, through and including August 23, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23848 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4465–DR; Docket ID FEMA–2019–0001]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–4465–DR), dated October 4, 2019, and related determinations.

DATES: The declaration was issued October 4, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 4, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Carolina resulting from Hurricane Dorian during the period of September 1 to September 9, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Carolina have been designated as adversely affected by this major disaster:

Brunswick, Carteret, Craven, Currituck, Dare, Duplin, Hyde, Jones, New Hanover, Pamlico, Pender, Sampson, Tyrrell, and Washington Counties for Public Assistance.

All areas within the State of North Carolina are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23824 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4459–DR; Docket ID FEMA–2019–0001]

Wisconsin; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Wisconsin (FEMA–4459–DR), dated August 27, 2019, and related determinations.

DATES: This amendment was issued October 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Wisconsin is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 27, 2019.

Marinette County for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23845 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3423–EM; Docket ID FEMA–2019–0001]

North Carolina; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Carolina (FEMA–3423–EM), dated September 3, 2019, and related determinations.

DATES: The declaration was issued September 3, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 3, 2019, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Carolina resulting from Hurricane

Dorian beginning on September 1, 2019, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of North Carolina.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in all North Carolina counties and to the Easter Band of the Cherokee Indians. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Carolina have been designated as adversely affected by this declared emergency:

All 100 counties and the Eastern Band of the Cherokee Indians for emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23863 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3422–EM; Docket ID FEMA–2019–0001]

Georgia; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of Georgia (FEMA–3422–EM), dated September 1, 2019, and related determinations.

DATES: This amendment was issued October 9, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this emergency is closed effective September 7, 2019.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23865 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4420–DR; Docket ID FEMA–2019–0001]

Nebraska; Amendment No. 12 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Nebraska (FEMA–4420–DR), dated March 21, 2019, and related determinations.

DATES: This amendment was issued October 10, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Nebraska is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 21, 2019.

Arthur, Grant, and Hooker Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23851 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4441–DR; Docket ID FEMA–2019–0001]

Arkansas; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for State of Arkansas (FEMA–4441–DR), dated June 8, 2019, and related determinations.

DATES: This change occurred on October 18, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Sandra Eslinger, of FEMA is appointed to act as the Federal Coordinating Officer for this disaster.

This action terminates the appointment of Jerry S. Thomas as Federal Coordinating Officer for this disaster.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23847 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4462–DR; Docket ID FEMA–2019–0001]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4462–DR), dated September 19, 2019, and related determinations.

DATES: This amendment was issued October 17, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of September 19, 2019.

St. Mary Parish for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2019–23843 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Starr County, Texas, Hidalgo County, Texas, and Cameron County, Texas.

DATES: This determination takes effect on October 31, 2019.

SUPPLEMENTARY INFORMATION: Important missions of the Department of Homeland Security (''DHS'') include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation's national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109–367, 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1701 note). Congress defined ''operational control'' as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, and instruments of terrorism, narcotics, and other contraband. *Id.* Consistent with that mandate from Congress, the President's Executive Order on Border Security and Immigration Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended (''IIRIRA''). Public Law 104–208, Div. C, 110 Stat. 3009–546,

3009–554 (Sept. 30, 1996) (8 U.S.C. 1103 note), as amended by the REAL ID Act of 2005, Public Law 109–13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109–367, 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110–161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

Determination and Waiver

Section 1

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. Between October 1, 2018, and August 31, 2019, the Border Patrol apprehended over 325,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, the Border Patrol had over 900 separate drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 112,000 pounds of marijuana, over 2,300 pounds of cocaine, over 90 pounds of heroin, and over 1,600 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will take immediate action to construct barriers and roads. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in sections 231 and 232(c) of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116–6, Div. A, Title II, §§ 231–232.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the ''project areas''):

- In Starr County, starting at the Falcon Dam Lake Spillway that is situated south of Falcon Dam and extending south and east to the western boundary of the census designated place of Salineno, Texas.
- In Starr County, starting at the southeast boundary of the census designated place of Salineno, Texas, and extending south to the northern boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- In Starr County, starting at the southern boundary of the Las Ruinas Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending south and east to the western boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- In Starr County, starting at the northeast boundary of the Arroyo Ramirez Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending east and south for approximately one (1) mile.
- In Starr County, starting at the eastern boundary of the city limits of Escobares, Texas, and moving east and south to the western boundary of the city limits of Rio Grande City, Texas.
- In Starr County, starting approximately one-half (0.5) of a mile southwest of the intersection of Los Velas Road and U.S. Highway 83 and extending east and south for approximately 11 miles.
- In Starr County and Hidalgo County, starting approximately one and two-tenths (1.2) of a mile northwest of the Starr County and Hidalgo County line and extending east to the eastern boundary of the Penitas West Tract of the Lower Rio Grande Valley National Wildlife Refuge.
- In Hidalgo County, starting at the eastern boundary of the Marinoff Tract of the Lower Rio Grande National Wildlife Refuge and extending west for approximately one-half (0.5) of a mile.
- In Hidalgo County, starting immediately north of the northeast boundary of the Santa Ana National Wildlife Refuge and extending west for approximately three-tenths (0.3) of a mile.
- In Hidalgo County and Cameron County, starting at the eastern boundary of the Mercedes Settling Basin and extending north and east in proximity to the International Boundary and Water Commission (IBWC) levee to approximately two-tenths (0.2) of a mile southeast of the point at which Torres Road intersects with the IBWC levee.
- In Cameron County, starting at the southwest boundary of the Philip Banco Tract of the Lower Rio Grande Valley National Wildlife Refuge and extending south and east approximately three (3) miles.
- In Cameron County starting approximately a one-quarter (0.25) of a mile southwest of the Brownsville and Matamoros International Bridge and extending northeast along the Rio Grande River for approximately one-half (0.5) of a mile.
- In Cameron County, starting approximately two-tenths (0.2) of a mile north and west of the point at which International Boulevard crosses the Rio Grande River and extending south and east in proximity to the IBWC levee for approximately three (3) miles.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended:

The National Environmental Policy Act (Pub. L. 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*)); the Endangered Species Act (Pub. L. 93–205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 *et seq.*)); the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act (33

U.S.C. 1251 *et seq.*)); the National Historic Preservation Act (Pub. L. 89–665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 *et seq.,* now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 *et seq.*)); the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*); the Migratory Bird Conservation Act (16 U.S.C. 715 *et seq.*); the Clean Air Act (42 U.S.C. 7401 *et seq.*); the Archeological Resources Protection Act (Pub. L. 96–95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa *et seq.*)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa *et seq.*); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 *et seq.*); the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*); the Noise Control Act (42 U.S.C. 4901 *et seq.*); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 *et seq.*); the Archaeological and Historic Preservation Act (Pub. L. 86–523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113–287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 *et seq.,* now codified at 54 U.S.C. 312502 *et seq.*)); the Antiquities Act (formerly codified at 16 U.S.C. 431 *et seq.,* now codified 54 U.S.C. 320301 *et seq.*); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 *et seq.,* now codified at 54 U.S.C. 3201–320303 & 320101–320106); the Farmland Protection Policy Act (7 U.S.C. 4201 *et seq.*); the Federal Land Policy and Management Act (Pub L. 94–579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 *et seq.*)); the National Wildlife Refuge System Administration Act (Pub. L. 89–669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd–668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84–1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, *et seq.*)); the Fish and Wildlife Coordination Act (Pub. L. 73–121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 *et seq.*)); the National Trails System Act (16 U.S.C. 1241 *et seq.*); the Administrative Procedure Act (5 U.S.C. 551 *et seq.*); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451 *et seq.*)); the Eagle Protection Act (16 U.S.C. 668 *et seq.*); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 *et seq.*); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waivers published in the **Federal Register** on April 8, 2008 (73 FR 19077 and 73 FR 19078), October 10, 2018 (83 FR 50949), October 11, 2018 (83 FR 51472), July 1, 2019 (84 FR 31328), August 30, 2019 (84 FR 45787), and October 1, 2019 (84 FR 52118), which shall remain in full force and effect in accordance with their respective terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Dated: October 23, 2019.

Kevin K. McAleenan,

Acting Secretary of Homeland Security.

[FR Doc. 2019–23725 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2019–0014]

Notice of President's National Security Telecommunications Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of Federal Advisory Committee Act (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting will be partially closed to the public.

DATES: *Meeting Registration:* Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on November 7, 2019. Due to limited seating, requests to attend in person will be accepted and processed in the order in which they are received.

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on November 7, 2019.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on November 7, 2019.

Meeting Date: The NSTAC will meet on November 14, 2019 from 9:30 a.m. to 3:45 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The November 2019 NSTAC Meeting's open session will be held at the Eisenhower Executive Office Building, 1650 Pennsylvania Ave NW, Washington, DC.

Meeting Registration: To register, for information on services for individuals with disabilities, or to request special assistance to participate, please email *NSTAC@hq.dhs.gov* by 5:00 p.m. ET on November 7, 2019. *Include ''November 2019 NSTAC Meeting Registration''* in the subject line of the message.

Comments: Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that participants may discuss during the meeting will be available at *www.dhs.gov/cisa/national-security-telecommunications-advisory-committee* for review as of October 30, 2019. Comments may be submitted by 5:00 p.m. ET on November 7, 2019 and must be identified by Docket Number CISA–2019–0014. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: NSTAC@hq.dhs.gov.* Include the Docket Number CISA–2019–0014 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration at *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the NSTAC, please go to *www.regulations.gov* and enter docket number CISA–2019–0014.

A public comment period will be held during the meeting from 3:00 p.m.-3:30 p.m. ET. Speakers who wish to participate in the public comment period must register by emailing *NSTAC@hq.dhs.gov.* Speakers are requested to limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, 703–705–6276, *helen.jackson@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The NSTAC was established by E.O. 12382, 47 FR 40531 (September 13, 1982), as amended and continued under the authority of E.O. 13889, dated September 27, 2019. Notice of this meeting is given under the Federal

Advisory Committee Act (FACA), 5 U.S.C. Appendix (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

Agenda: The NSTAC will meet in an open session on Thursday, November 14, 2019, to discuss current priorities related to NS/EP communications as well as cybersecurity. Specifically, discussions with senior-level Government Stakeholders will focus on the importance of software defined networking as well as the challenges industry faces with regards to the Information and Communications Technology (ICT) supply chain. Additionally, members will receive an update regarding government progress towards recent NSTAC recommendations.

The committee will also meet in a closed session from 9:30 a.m. to 12:00 p.m. to receive a classified briefing on cybersecurity threats related to 5G and ICT supply chain and discuss future studies based on the Government's NS/EP priorities and perceived vulnerabilities.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(1) and (9)(B), *The Government in the Sunshine Act,* it has been determined that two agenda items require closure, as the disclosure of the information that will be discussed would not be in the public interest.

The first item is a classified threat briefing, which will provide NSTAC members with issues and concerns surrounding 5G and ICT supply chain. Disclosure of potential vulnerabilities and mitigation techniques is a threat to the Nation's cybersecurity posture since adversaries could use this information to compromise commercial and Government networks. This briefing will be classified at the top secret/sensitive compartmented information level, thereby exempting disclosure of the content by statute. The second agenda item, the discussion of potential NSTAC study topics, will address areas of critical cybersecurity vulnerabilities and priorities for Government. Government officials will share data with NSTAC members on initiatives, assessments, and future security requirements across public and private sector networks. The information will include specific vulnerabilities within cyberspace that affect the United States' ICT infrastructures and proposed mitigation strategies. The premature disclosure of this information to the public would be likely to significantly frustrate implementation of a proposed agency action. Therefore, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(l) and (9)(B).

Dated: October 24, 2019.

Helen Jackson,

Designated Federal Officer, National Security Telecommunications Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2019–23779 Filed 10–30–19; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[OMB Control Number 1653–0022]

Agency Information Collection Activities: Revision of a Currently Approved Collection: Immigration Bond

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on August 27, 2019, allowing for a 60-day comment period. ICE received one comment in connection with the 60-day notice. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until December 2, 2019.

ADDRESSES: Interested persons are invited to submit written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for U.S. Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov* or faxed to (202) 395–5806. All submissions must include the words ''Department of Homeland Security'' and the OMB Control Number 1653–0022.

FOR FURTHER INFORMATION CONTACT: For specific question related to collection activities, please contact: Justin Gellert, 202–732–5462, *justin.c.gellert@ice.dhs.gov,* Enforcement and Removal Operations, Bond Management Unit, ICE.

SUPPLEMENTARY INFORMATION:

Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Bond.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–352; ICE.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other nonprofit. The data collected on this collection instrument is used by ICE to ensure that the person or company posting the bond is aware of the duties and responsibilities associated with the bond. The collection instrument serves the purpose of instruction in the completion of the form, together with an explanation of the terms and conditions of the bond. Sureties have the capability of accessing, completing and submitting delivery, voluntary departure, and order of supervision bonds electronically through ICE's eBonds system which encompasses the I–352, while

individuals are still required to complete the bond form manually and sureties will be required to submit maintenance of status and departure bonds manually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 61,722 responses at 30 minutes (.50 hours) per response. ICE calculated the number of estimated responses by adding together the number of bonds that were posted using Form I–352 in Fiscal Year 2018 (58,734) with the maximum number of maintenance of status and departure bonds the Department of State expects may be required for non-immigrants in the next fiscal year (2,988). The burden estimate includes the time required to review instructions, gather and maintain data needed, to complete, and to file the collection of information.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 30,861 annual burden hours, estimated by multiplying the total number of responses, 61,722, by the average response burden of .50 hours. This estimate is composed of 8,689 responses from surety companies, and 53,033 aliens posting cash bonds resulting in a total of 61,722 responses.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost is $743,670. This cost is composed of the burden to surety companies estimated using the average wage for insurance sales agents and the burden to aliens using the average wage of unskilled workers and production works plus fringe benefits estimated to be $47.58 per hour and $20.25 per hour respectively.[1]

(8) *The estimated cost to the Government associated with the collection:* The total estimated cost is $10,422,995, which includes printing costs and the collection and processing burden for each form. The total printing costs equate to $46,292 which is estimated by multiplying the number of responses (61,722) by the cost of printing two forms per response for $0.75. The collection and processing of each form takes an average of 6 hours, and will be conducted by a government employee with an average hourly wage plus overhead estimated to be $28.02.[2] The total cost of collecting and processing for the government is $10,376,703.

Overview of Proposed Revisions to the Bond Form and to Bond Procedures

Form No. I–352, Immigration Bond, has not been substantively revised since 2008. Changes to the form are now necessary because U.S. Citizenship and Immigration Services (USCIS) intends to issue a different form for public charge bonds and Form I–352 will no longer be used for that type of bond. Additionally, ICE is adding language to explain the terms and conditions of maintenance of status and departure bonds. Maintenance of status and departure bonds were previously accepted by the former Immigration and Naturalization Service (INS) on earlier versions of the Form I–352, and ICE may accept this type of bond when required for non-immigrants visiting the United States. The proposed revisions to the bond form also seek to clarify when a bond obligor's liability attaches and the events that trigger cancellation of a bond, and to notify the public that ICE will no longer issue receipts on Form I–305 for bonds secured by a cash deposit.

Cash Bond Deposit: ICE has revised the Instructions to state that it will accept a certified check, a cashier's check, or a money order (a ''cash equivalent'') as a deposit from a cash bond obligor.

eBONDS Power of Attorney: Based on the development of the eBONDS system, ICE has revised the Instructions to state that surety bonds issued using the eBONDS system may be accompanied by a power of attorney executed by a surety company for use in the eBONDS system.

General Terms and Conditions: Because certain jurisdictions do not honor ICE detainers, the General Terms and Conditions governing the bond have been revised to reflect that a bond will not be cancelled simply because ICE is on notice of the detention of the bonded alien for 30 or more days pursuant, or prior, to a conviction by local, state, or federal authorities. The revised General Terms and Conditions clarify that a delivery bond may not be breached when the bonded alien is in local, state, or federal custody on the date the obligor is scheduled to produce the alien. The bond will remain in effect in this situation unless ICE later takes the bonded alien into its custody directly from local, state, or federal authorities, in which case the bond will be cancelled.

Address to Use for Notice Purposes: Part A of Form I–352 has been revised to delete the boxes indicating the address to use for notice purposes.

Liability Attaches Upon Execution of the Bond: Part C of Form I–352 has been revised to reflect that the surety's liability attaches upon execution of the bond form. References to the alien becoming a public charge have been omitted and the revisions clarify that the face amount of the bond is forfeited or becomes due when the breach determination is administratively final.

Form I–352 No Longer Used for Public Charge Bonds: Previous Paragraph G(2) has been omitted from Form I–352 in anticipation of USCIS using a different form for issuance of public charge bonds.

Maintenance of Status and Departure Bonds: Paragraph G(4) has been added to explain the terms and conditions for Maintenance of Status and Departure Bonds. The former INS accepted maintenance of status and departure bonds using prior versions of Form I–352 when a bond was required for a non-immigrant traveling to the United States.

Deletion of Paragraphs H–J: Because U.S. bonds, notes and cash are no longer accepted as deposits to secure cash bonds, ICE has eliminated Paragraphs H–J of Form I–352 and any references to those paragraphs because they are no longer necessary.

Forms I–305 and I–395 No Longer Used in Conjunction with Cash Bonds: Before the advent of electronic signatures, ICE issued a receipt on Form I–305 to the cash bond obligor documenting the amount of the bond deposit. ICE required the obligor to submit the original of Form I–305 with the bond cancellation notice before obtaining a refund of the cash bond deposit. If the obligor lost the receipt, the obligor could submit an affidavit on Form I–395 in lieu of the receipt to claim the cash bond deposit. ICE has

[1] The hourly wage rate for an insurance sales agent is $32.64 as reported by the Bureau of Labor Statistics (BLS) in the May 2018 National Occupational Employment and Wage Estimates United States, *https://www.bls.gov/oes/current/oes_nat.htm#41-3021.*

The hourly wage rate for unskilled labor is represented by the national average of state minimum wage rates, $8.94. See Consolidated Minimum Wage Table, June 1, 2019, *https://www.dol.gov/whd/minwage/mw-consolidated.htm.* The hourly wage rate for manufacturing labor is represented by the average hourly wage for production occupations, $18.84. See All Production Occupations, May 2018 National Occupational Employment and Wage Estimates United States, *https://www.bls.gov/oes/current/oes_nat.htm#51-0000.* Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, All workers, *https://www.bls.gov/news.release/ecec.t01.htm.* Wages and salaries are 68.6 percent of total compensation.

[2] The hourly rate is an average of a General Schedule Grade 7 Step 5, and a Grade 9 Step 1, plus the average national locality adjustment of 21.48 percent. *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/saltbl.pdf.* An overhead rate of 12 percent was added to reflect the indirect expenses as reported in OMB Circular A76, *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A76/a76_incl_tech_correction.pdf.*

now determined that issuance of Form I–305 is unnecessary and is unduly burdensome. For bonds posted on the newly revised bond form, ICE will no longer require cash bond obligors to submit Form I–305 or Form I–395 after a bond has been cancelled and will issue refunds of bond deposits to the individual or entity identified in ICE records as the individual or entity entitled to receive the refund without requiring Form I–305 or Form I–395 to be submitted.

Dated: October 28, 2019.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2019–23793 Filed 10–30–19; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6166–N–02]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This Notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under Section 221(g)(4) of the Act during the 6-month period beginning July 1, 2019, is 2⅜ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning July 1, 2019, is 2¾ percent.

FOR FURTHER INFORMATION CONTACT: Elizabeth Olazabal, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5146, Washington, DC 20410–8000; telephone (202) 402–4608 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of Section 224, that the statutory maximum interest rate for the period beginning July 1, 2019, is 2¾ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 2¾ percent for the 6-month period beginning July 1, 2019. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to Section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the last 6 months of 2019).

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1, 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.
3⅜	Jan. 1, 2019	July 1, 2019.
2¾	July 1, 2019	Jan 1, 2020.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended Section 224 of the Act, to change the debenture interest rate for

purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under Section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Similarly, Section 520(a) of the National Housing Act (12 U.S.C. 1735d) provides for the payment of an insurance claim in cash on a mortgage or loan insured under any section of the National Housing Act before or after the enactment of the Housing and Urban Development Act of 1965. The amount of such payment shall be equivalent to the face amount of the debentures that would otherwise be issued, plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary. The implementing HUD regulations for multifamily insured mortgages at 24 CFR 207.259(e)(1) and (e)(6), when read together, provide that debenture interest on an multifamily insurance claim that is paid is cash is paid from the date of the loan default at the debenture rate in effect at the time of commitment or endorsement (or initial endorsement if there are two or more endorsements) of the loan, whichever is higher.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to Section 221(g)(4) during the 6-month period beginning July 1, 2019, is 2⅜ percent.

The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Dated: October 25, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–23789 Filed 10–30–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–29]

60-Day Notice of Proposed Information Collection: HUD-Owned Real Estate Sales Contract and Addendums

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 30, 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, Washington, DC 20410; 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-Owned Real Estate Sales Contract and Addendums.

OMB Approval Number: 2502–0306.

Type of Request: Extension of currently approved collection.

Form Number: HUD–9544, HUD–9548, HUD–9548–B, HUD–9548–C, HUD–9548–G, HUD–9548–H, HUD–9545–Y, HUD–9545–Z, SAMS–1101, SAMS–1103, SAMS–1110, SAMS–1110, SAMS–1111, SAMS–111–A, SAMS–1117, SAMS–1120, SAMS–1204.

Description of the need for the information and proposed use: The collection of information consists of the sales contracts and addenda that will be used in binding contracts between the purchasers of acquired and owned single-family properties and HUD. The Department must also meet the requirements of the Lead Disclosure Rule relative to the disclosure of known lead-based paint and lead-based paint hazards in HUD sales of its real estate owned (REO) properties built before 1978. Furthermore, the automated Single Family Acquired Asset Management System (SAMS) and the Asset Disposition and Management System (ADAMS–P–260) tracks the activity of an REO property from HUD's acquisition through its final sale. The forms used are part of the collection effort.

Respondents: Business or other for profit.

Estimated Number of Respondents: 7,476.

Estimated Number of Responses: 110,136.

Frequency of Response: On occasion.

Average Hours per Response: 5–30 minutes.

Total Estimated Burdens: 31,186.

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.

C. 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. 2019–23790 Filed 10–30–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7012–N–06]

60-Day Notice of Proposed Information Collection: OneCPD Technical Assistance Needs Assessment Tool

AGENCY: Office of Community Planning and Development, 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 30, 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 4186, 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: Stephanie Stone, Director, Department of Housing and Urban Development, 451 7th Street SW, Room 7218, Washington, DC 20410–5000; email me at *stephanie.v.stone@hud.gov* or telephone (202) 402–4121. 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: OneCPD Technical Assistance Needs Assessment.

OMB Approval Number: 2506–0198.

Type of Request: Extension.

Form Number: N/A.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, *i.e.,* the technical assistance providers best able to develop efficient and effective programs and projects that increase the supply of affordable housing units prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

Note: Preparer of this notice may substitute the chart for everything beginning with estimated number of respondents above:

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Targeted Needs Assessment	120	1	120	52	6,240	$64.16	$400,358.40
Total	120			52	6,240	64.16	400,358.40

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.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Dated: October 24, 2019.

John Bravacos,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2019–23792 Filed 10–30–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7014–N–28]

60-Day Notice of Proposed Information Collection: Mortgage Insurance Termination Application for Premium Refund or Distributive Share Payment

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 30, 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, Washington, DC 20410; 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:

A. Overview of Information Collection

Title of Information Collection: Mortgage Insurance Termination Application for Premium Refund or Distributive Share Payment.

OMB Approval Number: OMB–2502–0414.

Type of Request: Extension.

Form Number: Mortgage Insurance Termination is submitted electronically. Application for Premium Refund or Distributive Share Form HUD–27050–B.

Description of the need for the information and proposed use: Mortgage Insurance Termination is used by servicing mortgagees to comply with HUD requirements for reporting termination of FHA mortgage insurance. This information is used whenever FHA mortgage insurance is terminated and no claim for insurance benefits will be filed. This information is submitted on via the internet or EDI and is used to directly pay eligible homeowners. This condition occurs when the form passes the criteria of certain system edits.

As the result the system generates a disbursement to the eligible homeowner for the refund consisting of the unused portion of the paid premium. The collection information required is used to update HUD's Single Family Insurance System. The billing of mortgage insurance premiums is discontinued as a result of the transaction. Without this information the premium collection/monitoring function would be severely impeded and program data would be unreliable. Under streamline III when the form is processed and but does not pass the series of edits the system generates in these cases the Application for Premium Refund or Distributive Share Payment to the homeowner to be completed and returned to HUD for further processing for the refund. In general, a Premium Refund is the difference between the amount of prepaid premium and the amount of the premium that has been earned by HUD up to the time the mortgage is terminated.

Information collection	Number of respondents	Frequency of response	Total annual responses	Hours per response	Total annual hours
Mortgage Insurance Termination HUD–27050–A	6,000	Varies	675,000	.08	54,000
Application for Premium Refund or Distributive Share HUD–27050–B.	20,000	1	20,000	.25	5,000
Totals	26,000		695,000		59,000

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 2 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Dated: September 27, 2019.

John L. Garvin,

General Deputy Assistant Secretary for Housing.

[FR Doc. 2019–23791 Filed 10–30–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX20DK40GUK0100; OMB Control Number 1028–0097 Renewal]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; State Water Resources Research Institute Program Annual Application, National Competitive Grants, and Reporting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Geological Survey (USGS) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 2, 2019.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0097 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Earl Greene by email at *eagreene@usgs.gov* or by telephone at 571–332–4184. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 5, 2019 (84 FR 38039). No comments were received.

We are again 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 USGS; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

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

Abstract: The U.S. Geological Survey (USGS) Water Resources Research Act (WRRA) program issues an annual announcement to solicit applications for the noncompetitive State Water Resources Research Program annual grants authorized by section 104(c) and for the national competitive grant program authorized by section 104(g) of the Water Resources Research Act of 1984 (Pub. L. 98–242), as amended [42 U.S.C. 10303(c)].

Annual grants (104c) may contain research and information transfer projects as well as an administration project describing the Institute's overall administration and objectives. The research projects are generally selected in a competitive statewide solicitation, peer review, and selection process designed and conducted by each Institute. National competitive grants (104g) will focus on water problems and issues of a regional or interstate nature beyond those of concern only to a single state and which relate to specific program priorities identified jointly by the Secretary (of the Interior) and the Institutes.

The State Water Resources Research Institutes were established under Section 104(a) of the Act [42 U.S.C. 10303(a)]. There are 54 Water Resources Research Institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The Institutes are organized as the National Institutes for Water Resources (NIWR). The NIWR cooperates with the USGS in establishing total programmatic direction, reporting on the activities of the Institutes, coordinating and facilitating regional research, and information and technology transfer.

Title of Collection: State Water Resources Research Institute Program Annual Application, National Competitive Grants, and Reporting.

OMB Control Number: 1028–0097.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Universities.

Total Estimated Number of Annual Respondents: 54.

Total Estimated Number of Annual Responses: 173.

Estimated Completion Time per Response: 180 hours.

Total Estimated Number of Annual Burden Hours: 10,160 hours.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: Annually.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Earl Greene,

USGS, Program Coordinator, Water Resources Research Act.

[FR Doc. 2019–23774 Filed 10–30–19; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[201A2100DD/AAKC001030/A0A501010.999900 253G; OMB Control Number 1076–0180]

Agency Information Collection Activities; Leasing of Osage Reservation Lands for Oil and Gas Mining

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, Bureau of Indian Affairs (BIA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before December 30, 2019.

ADDRESSES: Send your comments on this information collection request (ICR) to Ms. Robin Phillips, Osage Agency, P.O. Box 1539, Pawhuska, OK 74056, or by email to *robin.phillips@bia.gov.* Please reference OMB Control Number 1076–0180 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mr. Richard Winlock, Deputy Superintendent, Osage Agency, by email at *richard.winlock@bia.gov* or by telephone at (918) 287–5700.

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 BIA; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the BIA enhance the quality, utility, and clarity of the information to be collected; and (5) how might the BIA 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: In 1906, Congress passed ''An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory, and for other purposes,'' providing for the allotment of the Osage Nation's lands. *See* Act of June 28, 1906, Public Law 59–321, 34 Stat. 539, as amended (1906 Act). Section 3 of the 1906 Act severed the surface estate from the subsurface mineral estate (Osage Mineral Estate), reserving all oil, gas, coal, and other minerals to the Osage Nation. In accordance with the 1906 Act, the Osage Mineral Estate is held in trust by the United States for the benefit of the Osage Nation.

The 1906 Act authorizes the Osage Nation to lease the Osage Mineral Estate for oil and gas mining, subject to the approval of the Secretary of the Interior and under such rules and regulations as he may prescribe. The regulations governing leasing of the Osage Mineral Estate for oil and gas mining are set forth in 25 CFR part 226. The information collections in 25 CFR part 226 specify what information lessees, operators, and others must provide to BIA regarding oil and gas leasing, exploration, development operations, and production. These information collections are necessary in order for BIA to administer leasing and development of the Osage Mineral Estate, collect and account for royalty revenues, and ensure the protection of resource values.

Title of Collection: Leasing of Osage Reservation lands for Oil and Gas Mining.

OMB Control Number: 1076–0180.

Form Number: N/A.

Type of Review: Renewal of a currently approved collection.

Respondents/Affected Public: Businesses, Tribal government.

Total Estimated Number of Annual Respondents: 965.

Total Estimated Number of Annual Responses: 14,436.

Estimated Completion Time per Response: Varies from 15 minutes to eight hours.

Total Estimated Number of Annual Burden Hours: 21,954.

Respondent's Obligation: Required to Obtain a Benefit.

Frequency of Collection: Varies from yearly to monthly.

Total Estimated Annual Nonhour Burden Cost: $496.

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*).

Elizabeth K. Appel,

Director, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2019–23765 Filed 10–30–19; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Nonmonetary Determination Activity Report

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Nonmonetary Determination Activity Report.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by December 30, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Ed Medlin by telephone at (202)–693–3259 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *medlin.edward@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance; 200 Constitution Avenue NW, Washington, DC, 20210; by email at *medlin.edward@dol.gov* ; or by fax (202) 693–3975.

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The ETA Nonmonetary Determination Activity Report collects state data on the number and types of issues that are adjudicated when unemployment insurance (UI) claims are filed. It also collects data on the number of disqualifications that are issued for reasons associated with a claimant's separation from employment and for reasons related to a claimant's continuing eligibility for benefits. ETA uses this data to determine workload counts for allocation of administrative funds, to analyze the ratio of disqualifications to determinations, and to examine and evaluate the program effect of nonmonetary activities. 42 U.S.C. 503(a)(6) of the Social Security Act authorizes this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. See 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB control number 1205–0150.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension without changes.

Title of Collection: Nonmonetary Determination Activity Report.

Form: ETA 207.

OMB Control Number: 1205–0150.

Affected Public: State Workforce Agencies.

Estimated Number of Respondents: 53.

Frequency: Quarterly.

Total Estimated Annual Responses: 424.

Estimated Average Time per Response: 4 hours per response.

Estimated Total Annual Burden Hours: 1,696 hours.

Total Estimated Annual Other Cost Burden: $0.

Authority: 44 U.S.C. 3506(c)(2)(A).

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–23777 Filed 10–30–19; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0041]

Proposed Extension of Information Collection; Program To Prevent Smoking in Hazardous Areas

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Program to Prevent Smoking in Hazardous Areas.

DATES: All comments must be received on or before December 30, 2019.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0041.
- *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.
- *Hand Delivery:* USDOL-Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

Section 317(c) of the Mine Act, 30 U.S.C. 877(c), and 30 CFR 75.1702 prohibit persons from smoking or carrying smoking materials underground or in places where there is a fire or explosion hazard. Under the Mine Act, 30 U.S.C. 877(c) and 75.1702, coal mine operators are required to develop programs to prevent persons from carrying smoking materials, matches, or lighters underground and to prevent smoking in hazardous areas, such as in or around oil houses, explosives magazines or other areas where such practice may cause a fire or explosion.

Section 75.1702–1 requires a mine operator to submit a smoking prevention plan to MSHA for approval under section 75.1702 to MSHA for approval. Section 103(h) of the Mine Act, 30 U.S.C. 813, authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. These information collection requirements help to ensure that a fire or explosion hazard does not occur.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Program to Prevent Smoking in Hazardous Areas. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper

performance of the functions of the Agency, including whether the information has practical utility;

• Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

• Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL-Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Program to Prevent Smoking in Hazardous Areas. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration

OMB Number: 1219–0041.

Affected Public: Business or other for-profit.

Number of Respondents: 9.

Frequency: On occasion.

Number of Responses: 9.

Annual Burden Hours: 5 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019–23775 Filed 10–30–19; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Extension of Information Collection; Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course To Ventilate Working Sections and Areas Where Mechanized Mining Equipment Is Being Installed or Removed

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed.

DATES: All comments must be received on or before December 30, 2019.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

• *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2019–0042.

• *Regular Mail:* Send comments to USDOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452.

• *Hand Delivery:* USDOL—Mine Safety and Health Administration, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

FOR FURTHER INFORMATION CONTACT: Sheila McConnell, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA allows operators to use air from a belt air course to ventilate a working section, or an area where mechanized mining equipment is being installed or removed, only under certain conditions. The belt air use must be evaluated and approved by the district manager in the mine ventilation plan and operators must follow a number of other requirements that provide additional protection.

Section 75.350(b) requires that the mine operator must include in a ventilation plan a justification that the use of air from a belt entry would afford at least the same measure of protection as where belt haulage entries are not used. The plan also must include information regarding point feeds and regulators and designated areas for dust and air velocity measurements.

Section 75.351(b)(3) and 75.351(b)(4) require a mine operator to post a map or schematic, at a designated surface location, which shows the locations and type of Atmospheric Monitoring System (AMS) sensors at each location and the intended air flow direction at these locations. This map or schematic must be updated within 24 hours of any change in this information. Contact information for AMS and other appropriate personnel also must be posted at this location.

Section 75.351(j) requires approval of the CO ambient levels, and the means to determine those levels, in the mine ventilation plan.

Section 75.351(m) permits a mine to incorporate time delays into the AMS,

or to use other methods for reducing non-fire alerts and alarm levels, provided they are specified and approved in the mine ventilation plan. Permission for such time delays, or other methods of reducing non-fire alerts and alarms, would be granted based on associated documentation that justifies these changes.

Sections 75.351(n)(2) and 75.351(n)(3) require that alarms for AMS be tested every seven days and CO, smoke, or methane sensors be calibrated, every 31 days, respectively.

Section 75.351(o)(1)(i) requires that a record be made if the AMS emits an alert or alarm signal. The record would consist of the date, time, location, and type of sensor, and the reason for its activation.

Section 75.351(o)(1)(ii) requires that, if an AMS malfunctions, a record be made of the date, the extent and cause of the malfunction, and the corrective action taken to return the system to proper operating condition.

Section 75.351(o)(1)(iii) requires that the persons doing the weekly test of alert and alarm signals, the monthly calibration, or maintenance of the system make a record of these tests, calibrations, or maintenance.

Section 75.351(o)(3) requires that all records concerning the AMS be kept in a book or electronically in a computer system that is secure and not susceptible to alteration.

Section 75.351(p) requires the mine operator to keep these records for at least one year at a surface location and to make them available for inspection by authorized representatives of the Secretary and representatives of miners.

Section 75.351(q)(3) requires that a record of annual AMS operator training be kept. The record will include the content of training, the person conducting the training, and the date the training is conducted. The record needs to be maintained at the mine site by the mine operator for at least one year.

Sections 75.352(a), 75.352(b) and 75.352(c) require the designated AMS operator or other appropriate personnel to notify, investigate, or evacuate when malfunction, alert, or alarm signals are received.

Section 75.371(hh) requires reporting within the mine ventilation plan of the ''ambient level in parts per million of carbon monoxide, and the method for determining the ambient level, in all areas where carbon monoxide sensors are installed.'' This provision is impacted by section 75.351(j).

Section 75.371(kk) requires the locations where air quantities are measured as set forth in section 75.350(b)(6) be included in the mine ventilation plan.

Section 75.371(ll) requires the locations and use of point feed regulators, in accordance with Sections 75.350(c) and 75.350(d)(5),to be in the mine ventilation plan.

Section 75.371(mm) requires the location of any diesel-discriminating sensor and additional carbon monoxide or smoke sensors installed in the belt air course to be included in the mine ventilation plan.

Sections 75.371(nn), 75.371(oo), and 75.371(pp) require modification of the mine ventilation plan to show the length of the time delay or any other method used for reducing the number of non-fire related alert and alarm signals from CO sensors, the lower alert and alarm setting for CO sensors, and the alternate instrument and the alert and alarm levels associated with the instrument, respectively.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at USDOL—Mine Safety and Health Administration, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Safety Standards for Underground Coal Mine Ventilation—Belt Entry Used as an Intake Air Course to Ventilate Working Sections and Areas Where Mechanized Mining Equipment is Being Installed or Removed. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0138.

Affected Public: Business or other for-profit.

Number of Respondents: 12.

Frequency: On occasion.

Number of Responses: 161.

Annual Burden Hours: 2,478 hours.

Annual Respondent or Recordkeeper Cost: $38,640.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Sheila McConnell,

Certifying Officer.

[FR Doc. 2019–23776 Filed 10–30–19; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Wage and Hour Division

Agency Information Collection Activities: Comment Request; Information Collections: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the

general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Wage and Hour Division is soliciting comments concerning the revision and extension to Office of Management and Budget (OMB) approval of the Information Collections: Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before December 30, 2019.

ADDRESSES: You may submit comments, identified by Control Number 1235–0016, by either one of the following methods:

Email: WHDPRAComments@dol.gov.

Mail, Hand Delivery, Courier: Regulatory Analysis Branch, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20001.

Instructions: Please submit one copy of your comments by only one method. All submissions received must include the agency name and Control Number identified above for this information collection. Because we continue to experience delays in receiving mail in the Washington, DC area, commenters are strongly encouraged to transmit their comments electronically via email or to submit them by mail early. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for Office of Management and Budget approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20001; telephone: (202) 693–0406 (this is not a toll-free number). 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/TDD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

SUPPLEMENTARY INFORMATION:

I. Background: The Migrant and Seasonal Agricultural Worker Protection Act (MSPA) provides that no person shall engage in any farm labor contracting activity for any money or valuable consideration paid or promised to be paid, unless such person has a certificate of registration from the Secretary of Labor specifying which farm labor contracting activities such person is authorized to perform. *See* 29 U.S.C. 1802(7), 1811(a); 29 CFR 500.1(c), –.20(i), –.40. MSPA also provides that a Farm Labor Contractor (FLC) shall not hire, employ, or use any individual to perform farm labor contracting activities unless such individual has a certificate of registration as a FLC or a certificate of registration as a Farm Labor Contractor Employee (FLCE) of the FLC that authorizes the activity for which such individual is hired, employed or used. 29 U.S.C. 1811(b); 29 CFR 500.1(c). Form WH–530 is an application used to obtain a Farm Labor Contractor License. This information collection is currently approved for use through March 31, 2020.

MSPA section 401 (29 U.S.C. 1841) requires, subject to certain exceptions, all Farm Labor Contractors (FLCs), Agricultural Employers (AGERs), and Agricultural Associations (AGASs) to ensure that any vehicle they use or cause to be used to transport or drive any migrant or seasonal agricultural worker conforms to safety and health standards prescribed by the Secretary of Labor under the MSPA and with other applicable Federal and State safety standards. These MSPA safety standards address the vehicle, driver, and insurance. The Wage and Hour Division (WHD) has created Forms WH–514, WH–514a, and WH–515, which allow FLC applicants to verify to the WHD that the vehicles used to transport migrant/seasonal agricultural workers meet the MSPA vehicle safety standards and that anyone who drives such workers meets the Act's minimum physical requirements. The WHD uses the information in deciding whether to authorize the FLC/FLC Employee applicant to transport/drive any migrant/seasonal agricultural worker(s) or to cause such transportation. Form WH–514 is used to verify that any vehicle used or caused to be used to transport any migrant/seasonal agricultural worker(s) meets the Department of Transportation (DOT) safety standards. When the adopted DOT rules do not apply, FLC applicants seeking authorization to transport any migrant/seasonal agricultural workers use Form WH–514a to verify that the vehicles meet the DOL safety standards and, upon the vehicle meeting the required safety standards, the form is completed. Form WH–515 is a doctor's certificate used to document that a motor vehicle driver or operator meets the minimum DOT physical requirements that the DOL has adopted. This information collection is currently approved for use through March 31, 2020.

II. Review Focus: The DOL is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
* enhance the quality, utility, and clarity of the information to be collected; and
* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions: The DOL seeks to revise and extend the information collection requests for the Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration.

Type of Review: Revision.

Agency: Wage and Hour Division.

Titles: Application for a Farm Labor Contractor or a Farm Labor Contractor Employee Certificate of Registration.

OMB Number: 1235–0016.

Agency Numbers: Forms WH–514, WH–514a, WH–515, WH–530.

Affected Public: Businesses or other for-profits, Farms.

Respondents: 19,364.

Total Annual Responses: 23,466.

Estimated Total Burden Hours: 9,334.

Estimated Time per Response: 5 minutes for the vehicle mechanical inspection reports (WH–514 or WH–514a) and 20 minutes for MSPA Doctor's Certification (WH–515) and 30 minutes for the Farm Labor Contractor Application (WH–530).

Frequency: On Occasion, but no more often than annual.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $527,442.

Dated: October 24, 2019.

Amy DeBisschop,

Director, Division of Regulations, Legislation & Interpretation.

[FR Doc. 2019–23782 Filed 10–30–19; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Advisory Board on Toxic Substances and Worker Health

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Announcement of meeting of the Advisory Board on toxic substances and worker health (Advisory Board) for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA).

SUMMARY: The Advisory Board will meet November 20–21, 2019, in Paducah, Kentucky, near the Paducah Gaseous Diffusion Plant covered facility.

Comments, requests to speak, submissions of materials for the record, and requests for special accommodations: You must submit (postmark, send, transmit) comments, requests to address the Advisory Board, speaker presentations, and requests for special accommodations for the meetings by November 13, 2019.

ADDRESSES: The Advisory Board will meet at the Holiday Inn Paducah Riverfront, 600 N Fourth Street, Paducah, KY 42001. Telephone 270–366–7614.

Submission of comments, requests to speak and submissions of materials for the record: You may submit comments, materials, and requests to speak at the Advisory Board meeting, identified by the Advisory Board name and the meeting date of November 20–21, 2019, by any of the following methods:

- *Electronically:* Send to: *EnergyAdvisoryBoard@dol.gov* (specify in the email subject line, for example ''Request to Speak: Advisory Board on Toxic Substances and Worker Health'').
- *Mail, express delivery, hand delivery, messenger, or courier service:* Submit one copy to the following address: U.S. Department of Labor, Office of Workers' Compensation Programs, Advisory Board on Toxic Substances and Worker Health, Room S–3522, 200 Constitution Ave. NW, Washington, DC 20210.

Requests for special accommodations: Please submit requests for special accommodations to attend the Advisory Board meeting by email, telephone, or hard copy to Ms. Carrie Rhoads, OWCP, Room S–3524, U.S. Department of Labor, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 343–5580; email *EnergyAdvisoryBoard@dol.gov.*

Instructions: Your submissions must include the Agency name (OWCP), the committee name (the Advisory Board), and the meeting date (November 20–21, 2019). Due to security-related procedures, receipt of submissions by regular mail may experience significant delays. For additional information about submissions, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OWCP will make available publicly, without change, any comments, requests to speak, and speaker presentations, including any personal information that you provide. Therefore, OWCP cautions interested parties against submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: For press inquiries: Ms. Laura McGinnis, Office of Public Affairs, U.S. Department of Labor, Room S–1028, 200 Constitution Ave. NW, Washington, DC 20210; telephone (202) 693–4672; email *Mcginnis.Laura@DOL.GOV.*

SUPPLEMENTARY INFORMATION: The Advisory Board will meet: Tuesday, November 19, 2019, for a fact-finding site visit to the Paducah Gaseous Diffusion Plant, accompanied by the Designated Federal Officer; Wednesday, November 20, 2019, from 9:00 a.m. to 6:00 p.m. Central time; and Thursday, April 24, 2019, from 8:00 a.m. to 11:00 a.m. Central time in Paducah, Kentucky. Some Advisory Board members may attend the meeting by teleconference. The teleconference number and other details for participating remotely will be posted on the Advisory Board's website, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* 72 hours prior to the commencement of the first meeting date. Advisory Board meetings are open to the public.

Public comment session: Wednesday, November 20, 2019, from 4:30 p.m. to 6:00 p.m. Central time. Please note that the public comment session ends at the time indicated or following the last call for comments, whichever is earlier. Members of the public who wish to provide public comments should plan to attend the public comment session (in person or remotely) at the start time listed.

The Advisory Board is mandated by Section 3687 of EEOICPA. The Secretary of Labor established the Board under this authority and Executive Order 13699 (June 26, 2015). The purpose of the Advisory Board is to advise the Secretary with respect to: (1) The Site Exposure Matrices (SEM) of the Department of Labor; (2) medical guidance for claims examiners for claims with the EEOICPA program, with respect to the weighing of the medical evidence of claimants; (3) evidentiary requirements for claims under Part B of EEOICPA related to lung disease; and (4) the work of industrial hygienists and staff physicians and consulting physicians of the Department of Labor and reports of such hygienists and physicians to ensure quality, objectivity, and consistency. The Advisory Board sunsets on December 19, 2024.

The Advisory Board operates in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) and its implementing regulations (41 CFR part 102–3).

Agenda: The tentative agenda for the Advisory Board meeting includes:

- Review and follow-up on Advisory Board's previous recommendations, data requests, and action items;
- Discussions from Advisory Board working groups;
- Review of claims;
- Review of public comments;
- Review of Board tasks, structure and work agenda;
- Consideration of any new issues; and
- Public comments.

OWCP transcribes and prepares detailed minutes of Advisory Board meetings. OWCP posts the transcripts and minutes on the Advisory Board web page, *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm,* along with written comments, speaker presentations, and other materials submitted to the Advisory Board or presented at Advisory Board meetings.

Public Participation, Submissions and Access to Public Record

Advisory Board meetings: All Advisory Board meetings are open to the public. Information on how to participate in the meeting remotely will be posted on the Advisory Board's website. Individuals requesting special accommodations to attend the Advisory Board meeting should contact Ms. Rhoads.

Submission of comments: You may submit comments using one of the methods listed in the **ADDRESSES** section. Your submission must include the Agency name (OWCP) and date for this Advisory Board meeting (November 20–21, 2019). OWCP will post your comments on the Advisory Board

website and provide your submissions to Advisory Board members.

Because of security-related procedures, receipt of submissions by regular mail may experience significant delays.

Requests to speak and speaker presentations: If you want to address the Advisory Board at the meeting you must submit a request to speak, as well as any written or electronic presentation, by November 13, 2019, using one of the methods listed in the **ADDRESSES** section. Your request may include:

- The amount of time requested to speak;
- The interest you represent (*e.g.,* business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2010 and other Microsoft Office 2010 formats. The Advisory Board Chair may grant requests to address the Board as time and circumstances permit.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, are also available on the Advisory Board's web page at *http://www.dol.gov/owcp/energy/regs/compliance/AdvisoryBoard.htm.*

For further information regarding this meeting, you may contact Douglas Fitzgerald, Designated Federal Officer, at *fitzgerald.douglas@dol.gov,* or Carrie Rhoads, Alternate Designated Federal Officer, at *rhoads.carrie@dol.gov,* U.S. Department of Labor, 200 Constitution Avenue NW, Suite S–3524, Washington, DC 20210, telephone (202) 343–5580.

This is not a toll-free number.

Signed at Washington, DC, this 24th day of October 2019.

Julia K. Hearthway,

Director, Office of Workers' Compensation Programs.

[FR Doc. 2019–23821 Filed 10–30–19; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2019–0215]

Exelon Generation Company, LLC; Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has granted the request of Exelon Generation Company, LLC (Exelon) to withdraw its application dated August 13, 2018, as supplemented by letters dated October 10, 2018, March 25, 2019, June 7, 2019, and October 3, 2019, for proposed amendments to Renewed Facility Operating License Nos. DPR–53 and DPR–69 issued to Exelon for operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 (Calvert Cliffs). The proposed amendment would have modified the Calvert Cliffs' licensing bases, including the affected portions of the Technical Specifications and Updated Final Safety Analysis Report to use a risk-informed approach to address issues described in NRC Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors.''

DATES: The effective date of the withdrawal of the license amendment application is October 31, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0215 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–2019–0215. Address questions about dockets IDs in *Regulations.gov* to *Jennifer.Borges@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.* 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 01–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Michael L. Marshall, Jr., Office of Nuclear Reactor Regulation, U.S. Nuclear Regulation Commission, Washington, DC 20555–0001; telephone: 301–415–2871, email: *Michael.Marshall@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC has granted the request of Exelon (the licensee) to withdraw its August 13, 2018 application (ADAMS Accession No. ML18226A189), as supplemented by letters dated October 10, 2018, March 25, 2019, June 7, 2019, and October 3, 2019 (ADAMS Accession Nos. ML18283A034, ML19084A078, ML19158A075, and ML19277D103, respectively) for proposed amendments to Renewed Facility Operating License Nos. DPR–53 and DPR–69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed change would have modified the Calvert Cliffs' licensing bases, including the affected portions of the Technical Specifications and Updated Final Safety Analysis Report to use a risk-informed approach to address issues described in NRC Generic Letter 2004–02, ''Potential Impact of Debris Blockage on Emergency Recirculation During Design Basis Accidents at Pressurized-Water Reactors'' (ADAMS Accession No. ML042360586).

Exelon's August 13, 2018, request was noticed in the **Federal Register** on December 18, 2018 (83 FR 64895). Exelon requested to withdraw the request by letter dated October 21, 2019 (ADAMS Accession No. ML19294A056).

Dated at Rockville, Maryland, this 28th day of October 2019.

For the Nuclear Regulatory Commission.

Michael L. Marshall,

Senior Project Manager, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2019–23781 Filed 10–30–19; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2018–0101]

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: Final supplemental environmental impact statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final plant-specific supplement, Supplement 5, Second Renewal, to the Generic

Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants, NUREG–1437, regarding the subsequent renewal of Facility Operating License Nos. DPR–31 and DPR–41 for an additional 20 years of operation for Turkey Point Nuclear Generating Unit Nos. 3 and 4 (Turkey Point). The Turkey Point facility is located in Miami-Dade County, Florida. Possible alternatives to the proposed action (subsequent license renewal) include no action and reasonable replacement power and cooling water alternatives.

DATES: Final Supplement 5, Second Renewal to the GEIS is available as of October 31, 2019.

ADDRESSES: Please refer to Docket ID NRC–2018–0101 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–2018–0101. Address questions about NRC docket IDs to Anne Frost; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access 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 final Supplement 5, Second Renewal is in ADAMS under Accession No. ML19290H346.

- *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.
- *Library:* The final Supplement 5, Second Renewal is available for public inspection at the following libraries:

Homestead Branch Library, 700 N Homestead Blvd., Homestead, FL 33030;

Naranja Branch Library, 14850 SW 280th St., Homestead, FL 33032;

South Dade Regional Library, 10750 SW 211th St., Miami, FL 33189; and

Downtown Miami Branch, 101 West Flagler St., Miami, FL 33130.

FOR FURTHER INFORMATION CONTACT: Robert Schaaf, Office of Nuclear Reactor Regulation, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6020, email: *Robert.Schaaf@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 51.118 of title 10 of the *Code of Federal Regulations* (10 CFR), the NRC is making available final Supplement 5, Second Renewal to NUREG–1437, regarding the renewal of Florida Power and Light Company's operating licenses DPR–31 and DPR–41 for an additional 20 years of operation for Turkey Point Nuclear Generating Unit Nos. 3 and 4. A Notice of Availability of Draft Supplement 5, Second Renewal to NUREG–1437 was published in the **Federal Register** on April 5, 2019 (84 FR 13662), by the Environmental Protection Agency. The public comment period on draft Supplement 5, Second Renewal to NUREG–1437 ended on May 20, 2019, and the comments received are addressed in final Supplement 5, Second Renewal to NUREG–1437.

II. Discussion

As discussed in Chapter 5 of final Supplement 5, Second Renewal to NUREG–1437, the NRC staff determined that the adverse environmental impacts of subsequent license renewal for Turkey Point are not so great that preserving the option of subsequent license renewal for energy-planning decisionmakers would be unreasonable. This recommendation is based on: (1) The analysis and findings in the GEIS; (2) information provided in the environmental report and other documents submitted by Florida Power and Light; (3) consultation with Federal, State, local, and Tribal agencies; (4) the NRC staff's independent environmental review; and (5) consideration of public comments received during the scoping process and on the Draft Supplemental Environmental Impact Statement.

Dated at Rockville, Maryland, this 25th day of October, 2019.

For the Nuclear Regulatory Commission.

Robert B. Elliott,

Chief, Environmental Review License Renewal Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–23730 Filed 10–30–19; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service-Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carmen Garcia, OPM Human Resources, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415, (202) 606–1048.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

Stephen Hickman,

Regulatory Affairs Analyst.

The following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management:

Michael Rigas, Deputy Director, Chair
Jonathan Blyth, Acting Chief of Staff
Mark Robbins, General Counsel
Kathleen McGettigan, Chief Management Officer
Mark Reinhold, Associate Director for Employee Services
Dennis Coleman, Chief Financial Officer
Charles Phalen, National Background Investigations Bureau Director
Kenneth Zawodny, Associate Director for Retirement Services
Laurie Bodenheimer, Healthcare and Insurance Director
Tyshawn Thomas, Acting Chief Human Capital Officer

[FR Doc. 2019–23727 Filed 10–30–19; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 12:00 p.m. on Tuesday, November 5, 2019.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: October 29, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–23935 Filed 10–29–19; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33677]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

October 25, 2019.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of October 2019. A copy of each application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090. An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 19, 2019, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: The Commission: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

FOR FURTHER INFORMATION CONTACT: Shawn Davis, Assistant Director, at (202) 551–6413 or Chief Counsel's Office at (202) 551–6821; SEC, Division of Investment Management, Chief Counsel's Office, 100 F Street NE, Washington, DC 20549–8010.

Church Capital Fund [File No. 811–21662]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. On September 25, 2019, applicant made a liquidating distribution to its shareholders based on net asset value. Expenses of $165,679 incurred in connection with the liquidation were paid by the applicant.

Filing Date: The application was filed on October 1, 2019.

Applicant's Address: 3375 Westpark Drive, #472, Houston, Texas 77005.

Eaton Vance California Municipal Bond Fund Merger Subsidiary, LLC [File No. 811–23397]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance California Municipal Bond Fund, and on December 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $57,661 incurred in connection with the reorganization were paid by Eaton Vance California Municipal Bond Fund II, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Massachusetts Municipal Income Trust [File No. 811–09147]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $51,683 incurred in connection with the reorganization were paid by the applicant.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Bond Fund II Merger Subsidiary, LLC [File No. 811–23432]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on March 22, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $138,760 incurred in connection with the reorganization were paid by the applicant's investment adviser and Eaton Vance Municipal Bond Fund II, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Bond Fund Michigan Merger Subsidiary, LLC [File No. 811–23400]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on December 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $25,986 incurred in connection with the reorganization were paid by Eaton Vance Michigan

Municipal Bond Fund, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Bond Fund New Jersey Merger Subsidiary, LLC [File No. 811–23411]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $47,903 incurred in connection with the reorganization were paid by the applicant's investment adviser and Eaton Vance New Jersey Municipal Bond Fund, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Bond Fund Ohio Merger Subsidiary, LLC [File No. 811–23412]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $50,663 incurred in connection with the reorganization were paid by the applicant's investment adviser and Eaton Vance Ohio Municipal Bond Fund, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Bond Fund Pennsylvania Merger Subsidiary, LLC [File No. 811–23413]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Bond Fund, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $53,978 incurred in connection with the reorganization were paid by the applicant's investment adviser and Eaton Vance Pennsylvania Municipal Bond Fund, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Income Trust Massachusetts Merger Subsidiary, LLC [File No. 811–23414]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $51,683 incurred in connection with the reorganization were paid by Eaton Vance Massachusetts Municipal Income Trust, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Income Trust Michigan Merger Subsidiary, LLC [File No. 811–23401]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on December 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $38,001 incurred in connection with the reorganization were paid by Eaton Vance Michigan Municipal Income Trust, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Income Trust New Jersey Merger Subsidiary, LLC [File No. 811–23424]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on February 22, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $75,157 incurred in connection with the reorganization were paid by Eaton Vance New Jersey Municipal Income Trust, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Income Trust Ohio Merger Subsidiary, LLC [File No. 811–23415]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $53,456 incurred in connection with the reorganization were paid by Eaton Vance Ohio Municipal Income Trust, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance Municipal Income Trust Pennsylvania Merger Subsidiary, LLC [File No. 811–23416]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance Municipal Income Trust, and on January 18, 2019, made a final distribution to its shareholders based on net asset value. Expenses of approximately $48,323 incurred in connection with the reorganization were paid by Eaton Vance Pennsylvania Municipal Income Trust, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

Eaton Vance New York Municipal Bond Fund Merger Subsidiary, LLC [File No. 811–23399]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. The applicant has transferred its assets to Eaton Vance New York Municipal Bond Fund, and on December 14, 2018, made a final distribution to its shareholders based on net asset value. Expenses of approximately $45,123 incurred in connection with the reorganization were paid by Eaton Vance New York Municipal Bond Fund II, the acquired fund.

Filing Date: The application was filed on August 14, 2019.

Applicant's Address: Two International Place, Boston, Massachusetts 02110.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23706 Filed 10–30–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87403; File No. SR–Phlx–2019–46]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx Rule 1097

October 25, 2019.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 22, 2019, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 1097, ''Limitations on Order Entry.''

The text of the proposed rule change is available on the Exchange's website at *http://nasdaqphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 an amendment to Phlx Rule 1097, ''Limitations on Order Entry'' to add additional rule text concerning limitations on solicited orders. Specifically, the Exchange proposes to reinstate a paragraph that was recently removed from Rule 1080. The Exchange recently filed a rule change[3] which, among other thing, removed a paragraph from Phlx Rule 1080(c)(ii)(C)(2) and (3) which provided,

Solicitation Orders. Order Entry Firms must expose orders they represent as agent for at least one (1) second before such orders may be automatically executed, in whole or in part, against orders solicited from members and non-member broker-dealers to transact with such orders, except for: (a) Orders entered into PIXL pursuant to Rule 1087, (b) orders entered into COLA pursuant to Rule 1080, Commentary .02(c)(ii)(e), or (c) orders entered into the QCC mechanism pursuant to Rules 1080(o).

(3) It shall be a violation of Rule 1080(c)(ii)(C) for any Exchange member or member organization to be a party to any arrangement designed to circumvent Rule 1080(c)(ii)(C) by providing an opportunity for a customer, member, member organization, or non-member broker-dealer to execute immediately against agency orders delivered to the Exchange, whether such orders are delivered via AUTOM or represented in the trading crowd by a member or a member organization, except for: (a) Orders entered into PIXL pursuant to Rule 1087, (b) orders entered into COLA pursuant to Rule 1080, Commentary .02(c)(ii)(e), or (c) orders entered into the QCC mechanism pursuant to Rules 1080(o).

In its July Filing, the Exchange noted that the above language was repetitive of language within current Rule 1080(c)(ii)(C)(1), which text was relocated to Rule 1097(b) and requires exposure similar to of one second and describes the same behavior as current Rule 1080(c)(ii)(C)(2) and (3) and lists the same exceptions. At this time, the Exchange desires to reinstate the rule text of Rule 1080(c)(ii)(C)(2) and (3) because while some circumstances are covered by current Rule 1097(b), after further consideration, there are circumstances which are specific to the text that was previously within Rule 1080(c)(ii)(C)(2) and (3), such as certain crossing transactions.

Specifically, the Exchange proposes to adopt rule text similar to previous Rule 1080(c)(ii)(C)(2) and (3) within Rule 1097(c) which conforms to rule text currently within Nasdaq ISE, LLC, Nasdaq GEMX, LLC and Nasdaq MRX, LLC Options 3, Section 22(c). The Exchange proposes to similarly title the new section ''Limitations on Solicitation Orders.'' The Exchange proposes to state,

Limitations on Solicitation Orders. Members may not execute orders they represent as agent on the Exchange against orders solicited from Members and non-Member broker-dealers to transact with such orders unless (i) the unsolicited order is first exposed on the Exchange for at least one (1) second; (ii) the member has been bidding or offering on the Exchange for at least 1 second prior to receiving an agency order that is executable against such order; (iii) the orders are entered into Price Improvement XL or ''PIXL'' pursuant to Rule 1087; (iv) the orders are entered into the Complex Order Live Auction or ''COLA'' pursuant to Rule 1098(e); or (v) the orders are entered into the Qualified Contingent Cross or ''QCC'' mechanism pursuant to Rules 1088 or Options 8, Section 30(e).

The Exchange proposes the same exceptions to order entry for orders represented as agent as specified within Rule 1097(b) for principal transactions, with one exception. Rule 1097(b) currently contains an exception which provides, ''the member proceeds in accordance with the crossing rules contained in Rule 1064.'' Rule 1064 was recently relocated to Options 8, Section 30, ''Crossing, Facilitation and Solicited Orders.'' This rule describes certain crossing orders, including facilitation and solicited orders which are available on the Exchange's Trading Floor. The Exchange notes that, today, these orders are exposed in the trading crowd for at least 1 second in accordance with the general provision of Rule 1097 and therefore is not an exception to Rule 1097(b) or proposed (c). The Exchange proposes to remove this exception from Rule 1097(b) and not include the exception within proposed Rule 1097(c), with the exception of noting the Floor Qualified Contingent Cross exception within Options 8, Section 30(e). Similar to Qualified Contingent Cross Orders that execute electronically, the Floor Qualified Contingent Cross Orders is an exception to both Rule 1097(b) and (c).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 86286 (July 2, 2019), 84 FR 32794 (July 9, 2019) (SR–Phlx–2019–25) (''July Filing'').

The Exchange does not believe the proposed rule text within Rule 1097(c) is substantively different than the rule text within former Rule 1080(c)(ii)(C)(2) and (3). The Exchange desires to conform the rule text with Nasdaq affiliated exchanges, where applicable. Today, the behavior specified within proposed Rule 1097(c) would be a violation of Phlx Rule 707, ''Conduct Inconsistent with Just and Equitable Principles of Trade.'' The Exchange proposes to specifically note the prohibition within proposed Rule 1097(c) so that members are aware when they execute orders they represent as agent on the Exchange against orders solicited from members and non-member broker-dealers that certain limitations exist. The Exchange believes the proposed rule will assist members in understanding the type of behavior that would violate Exchange rules when executing agency orders, namely executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on Phlx an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. The Exchange proposes to make clear with this Rule that members may not gain by failing to expose orders submitted on an agency basis. The Exchange is promoting transparency of orders to prevent members from seeking price discovery and potentially preventing price improvement which may result from exposing an order.

The Exchange proposes to amend the lettering to numbering within Rule 1097(b) for consistency and update a rule reference. Finally, the Exchange proposes to renumber Rule 1097(c) as ''(d)''.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Section 6(b)(5) of the Act,[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest as provided for within the purpose section.

The Exchange's proposal to adopt rule text related to solicited orders similar to other Nasdaq affiliated markets[6] will bring greater clarity to current limitations that exist when entering orders. Proposed Rule 1097(c) is consistent with the Act because it will promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system because it will continue to make clear the requirement to expose orders as well as present more specific limitations on order entry which would violate Phlx Rules. Specifically, the proposed rule will assist members in understanding the type of behavior that would violate Exchange rules when executing agency orders, namely executing agency orders to increase its economic gain from trading against the order without first giving other trading interest on Phlx an opportunity to either trade with the agency order or to trade at the execution price when the member was already bidding or offering on the book. The Exchange proposes to make clear with this Rule that members may not gain by failing to expose orders submitted on an agency basis. The Exchange is promoting transparency of orders to prevent members from seeking price discovery and potentially preventing price improvement which may result from exposing an order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that proposed Rule 1097(c) will apply uniformly to all members. Until recently rule text describing limitations on solicitation orders was described within the Rulebook. Despite the removal of the rule text, the behavior was prohibited pursuant to Phlx Rule 707. There is no impact to market participants as a result of adding the new rule text, rather the new rule text will provide specificity on the type of behavior that is prohibited.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of the filing. However, Rule 19b–4(f)(6)(iii)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. In its filing, Phlx requested that the Commission waive the 30-day operative delay so that the Exchange can implement the proposed rule change promptly after filing. The Exchange explained that the behavior prohibited by the proposed rule change is currently also prohibited by Phlx Rule 707, but stated that adding a more specific description of the prohibited behavior would provide their members with greater transparency regarding this specific limitation on entering orders. The Commission also notes that the behavior prohibited by the proposed rule change was previously prohibited by Phlx Rule 1080 and that the Exchange is simply reinstating the prohibition in a manner that conforms to the rule text of affiliate exchanges.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, as such waiver will permit the Exchange to promptly update its rules to provide greater transparency to its members and to maintain consistency with its affiliate exchanges. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[10]

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

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] Nasdaq ISE, LLC, Nasdaq GEMX, LLC and Nasdaq MRX, LLC Options 3, Section 22(c).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2019–46 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2019–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2019–46 and should be submitted on or before November 21, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–23731 Filed 10–30–19; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12) and (59).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2019–0028]

Privacy Act of 1974; System of Records

AGENCY: Office of Privacy and Disclosure, Office of the General Counsel, and Office of Retirement and Disability Policy, Social Security Administration (SSA).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the Privacy Act, we are issuing public notice of our intent to modify an existing system of records entitled, Claims Folders System (60–0089), last published on April 1, 2003. This notice publishes details of the modified system as set forth under the caption, **SUPPLEMENTARY INFORMATION**.

DATES: The system of records notice (SORN) is applicable upon its publication in today's **Federal Register**, with the exception of the new routine uses, which are effective December 2, 2019. We invite public comment on the routine uses or other aspects of this SORN. In accordance with 5 U.S.C. 552a(e)(4) and (e)(11), the public is given a 30-day period in which to submit comments. Therefore, please submit any comments by December 2, 2019.

ADDRESSES: The public, Office of Management and Budget (OMB), and Congress may comment on this publication by writing to the Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, or through the Federal e-Rulemaking Portal at *http://www.regulations.gov,* please reference docket number SSA–2019–0028. All comments we receive will be available for public inspection at the above address and we will post them to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tristin Dorsey, Government Information Specialist, Privacy Implementation Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–2950, email: *tristin.dorsey@ssa.gov* and Andrea Huseth, Government Information Specialist, Disclosure and Data Support Division, Office of Privacy and Disclosure, Office of the General Counsel, SSA, Room G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone: (410) 965–6868, email: *andrea.huseth@ssa.gov.*

SUPPLEMENTARY INFORMATION: We are modifying the system of records name from ''Claims Folders System, SSA, Office of the General Counsel, Office of Public Disclosure'' to ''Claims Folders System'' to accurately reflect the system. We are modifying the authority for maintenance of the system to include Section 216 of the Social Security Act and Public Law 115–165. We are expanding system managers to include the Office of Retirement and Disability Policy.

We are modifying the categories of records to include that we will now collect advance designation information, per Section 201 of the Strengthening Protections for Social Security Beneficiaries Act of 2018 (H.R. 4547, Pub. L. 115–165, hereafter referred to as Pub. L. 115–165). Our representative payee program provides financial management for Social Security beneficiaries, Supplemental Security Income (SSI) recipients, and Special Veterans Benefits recipients (all referred to hereafter as beneficiaries) who are incapable of managing or directing the management of their benefits or payments. The representative payee's primary responsibility is to use the beneficiary's benefits or payments for the beneficiary's current and foreseeable needs. Public Law 115–165 allows claimants and beneficiaries to advance designate one or more individuals who could be their representative payee, if the time comes that they need one.

In addition, we are modifying the categories of records to remove references to the Claimant Identification Pilot Project, as we no longer collect photographic identification during our claims process. We are also adding the beneficiary notice control (BNC). Section 2 of the Social Security Number Fraud Prevention Act of 2017 (H.R. 624, Pub. L. 115–59, hereafter referred to as Pub. L. 115–59), restricts the inclusion of Social Security numbers (SSN) on documents the Federal government sends by mail. Some of our mailed documents include a placeholder for the

responder to include the full SSN. Pursuant to Public Law 115–59, we will retain the SSN for mailed documents that we determined are ''mission critical'' and require an SSN to facilitate our business processes. The remaining mailed documents that are not mission critical will have the SSN removed and replaced with a BNC.

We are deleting routine use No. 17, as it is no longer applicable and no longer a condition of the individual's eligibility for payment under section 1611(e)(3) of the Social Security Act. This routine use permitted disclosures to institutions or facilities approved for the treatment of drug addicts or alcoholics. We are also adding a new routine use No. 38 to permit disclosures to contractors, cooperative agreement awardees, Federal and State agencies, and Federal congressional support agencies for research and statistical activities. In the past, we disclosed information from this system of records to the entities listed above under our efficient administration routine use. We are establishing this new routine use to distinguish disclosures that we make specifically for research purposes. We are also modifying the policies and practices for the retrieval of records to clarify that we will also retrieve records by BNC. Lastly, we are modifying the notice throughout to correct miscellaneous stylistic formatting and typographical errors of the previously published notice, and to ensure the language reads consistently across multiple systems. We are republishing the entire notice for ease of reference.

In accordance with 5 U.S.C. 552a(r), we provided a report to OMB and Congress on this modified system of records.

Dated: October 23, 2019.

Matthew Ramsey,

Executive Director, Office of Privacy and Disclosure, Office of the General Counsel.

SYSTEM NAME AND NUMBER

Claims Folders System, 60–0089

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Social Security Administration, Office of Systems, Office of Systems Operations and Hardware Engineering, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

SYSTEM MANAGER(S):

Social Security Administration, Executive Director, Office of Privacy and Disclosure, Office of the General Counsel, G–401 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235, *OGC.OPD.Controls@ssa.gov*.

Social Security Administration, Deputy Commissioner of Retirement and Disability Policy, Office of Retirement and Disability Policy, Robert M. Ball Building, 6401 Security Boulevard, Baltimore, MD 21235, *DCDRP.Controls@ssa.gov*.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 202–205, 216, 223, 226, 228, 1611, 1631, 1818, 1836, 1840 and Title VIII of the Social Security Act, as amended, and the Strengthening Protections for Social Security Beneficiaries Act of 2018 (Pub. L. 115–165).

PURPOSE(S) OF THE SYSTEM:

We will use the information in this system to determine entitlement to or eligibility for Title II (Retirement, Survivor's and Disability Insurance) benefits, Title VIII (Special Veterans Benefits—SVB), and XVI (Supplemental Security Income—SSI) payments; reconcile problem cases; and produce and maintain the following existing systems of records: Black Lung Payment System (60–0045), Master Beneficiary Record (60–0090), SSI Record and SVB (60–0103), Master Representative Payee File (60–0222), and the Medicare Database File (60–0321).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system maintains information about all claimants, beneficiaries, and potential claimants for benefits and payments administered by SSA.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that include, but are not limited to, the name and SSN of the claimant or potential claimant; application for benefits or payments; earnings record information that we establish and maintain; documents that support findings of fact regarding entitlement or eligibility and continuing entitlement or eligibility; payment documentation; correspondence to and from claimants or representatives; information about representative payees; information about individuals whom a claimant or beneficiary has designated in advance as a representative payee; information received from third parties regarding claimants' potential entitlement; BNC; data collected as a result of inquiries and complaints or evaluation and measurement studies, which assess the effectiveness of claims policies; records of certain actions entered directly into the computer processes, which include reports of changes of address, work status and other post-adjudicative actions; abstracts used for statistical purposes (*i.e.,* disallowances, technical denials, and demographic and statistical information relating to disability decisions); and denied claims.

RECORD SOURCE CATEGORIES:

We obtain information in this system from claimants, potential claimants, and beneficiaries; accumulated reports of employers or self-employed individuals; various local, State, and Federal agencies; claimant representatives; and other sources that support findings of fact regarding entitlement or eligibility and continuing entitlement or eligibility, *i.e.,* information received from third parties regarding claimants' potential entitlement or eligibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses; however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Code (IRC), unless authorized by statute, IRS, or IRS regulations.

1. To third party contacts (*e.g.,* employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his or her benefits or payments, or his or her eligibility for or entitlement to benefits or eligibility for payments, under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

i. He or she is incapable or is of questionable mental capability;

ii. He or she cannot read or write;

iii. He or she cannot afford the cost of obtaining the information;

iv. He or she has a hearing impairment and contacts us via telephone through a telecommunications relay system operator;

v. A language barrier exists; or

vi. The custodian of the information will not, as a matter of policy, provide it to the individual; OR

(b) the data is necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

i. His or her entitlement to or eligibility for benefits under the Social Security program;

ii. The amount of his or her benefit or payment; or

iii. Any case in which the evidence is being reviewed, as a result of suspected abuse or fraud or concern for program integrity, quality appraisal or evaluation and measurement activities.

2. To third party contacts, where necessary, to establish or verify information provided by representative payees or representative payee applicants.

3. To a Social Security beneficiary or claimant, when a claim is filed by an individual on the same record adverse to the beneficiary, only information concerning the facts relevant to the interests of each party in a claim, *i.e.,*

(a) an award of benefits to a new claimant precludes an award to a prior claimant; or

(b) an award of benefits to a new claimant will reduce benefit payments to the individual(s) on the rolls, but only for information concerning the facts relevant to the interests of each party in a claim.

4. To employers, current or former, for correcting or reconstructing earnings records and for Social Security tax purposes.

5. To the Department of Treasury, for:

(a) Collecting Social Security taxes, or as otherwise pertinent to tax and benefit payment provisions of the Social Security Act, including SSN verification services; and

(b) investigating the alleged theft, forgery, or unlawful negotiation of Social Security checks.

6. To the United States Postal Service, for investigating the alleged theft or forgery of Social Security checks.

7. To Department of Justice (DOJ), for the purposes of:

(a) Investigating and prosecuting violations of the Social Security Act to which criminal penalties attach,

(b) representing the Commissioner of Social Security, and,

(c) investigating issues of fraud or violations of civil rights by officers or SSA employees.

8. To the Department of State, for administration of the Social Security Act in foreign countries through services and facilities of that agency.

9. To the American Institute, a private corporation under contract to the Department of State, for administering the Social Security Act in Taiwan through facilities and services of that agency.

10. To the Department of Veterans Affairs (VA), Regional Office, Manila, Philippines, for the administration of the Social Security Act in the Philippines and other parts of the Asia-Pacific region through services and facilities of that agency.

11. To the Department of Interior and its agents, for the purpose of administering the Social Security Act in the Northern Mariana Islands through facilities and services of that agency.

12. To the Railroad Retirement Board (RRB), for the purpose of administering provisions of the Social Security Act relating to railroad employment.

13. To State Social Security administrators, for administering agreements pursuant to section 218 of the Social Security Act.

14. To State audit agencies for the purpose of:

(a) Auditing State supplementation payments and Medicaid eligibility considerations; and

(b) expenditures of Federal funds by the State in support of the Disability Determination Services.

15. To private medical and vocational consultants, for use in preparing for, or evaluating the results of, consultative medical examinations or vocational assessments which they were engaged to perform by us or a State agency, in accordance with sections 221 or 1633 of the Social Security Act.

16. To specified business and other community members and Federal, State and local agencies for verification of eligibility for benefits under section 1631(e) of the Social Security Act.

17. To claimants, prospective claimants (other than the data subject), and their authorized representatives or representative payees, to the extent necessary to pursue Social Security claims; to representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting us in administering representative payment responsibilities under the Social Security Act; and to representative payees, for the purpose of assisting them in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

18. To a congressional office in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or third party acting on the subject's behalf.

19. In response to legal process or interrogatories relating to the enforcement of an individual's child support or alimony obligations, as required by section 459 of the Social Security Act.

20. To Federal, State, or local agencies (or agents on their behalf), for administering income or health maintenance programs including programs under the Social Security Act. Such disclosures include the release of information to the following agencies, but are not limited to:

(a) RRB, for administering provisions of the Railroad Retirement Act and Social Security Act, relating to railroad employment, and for administering provisions of the Railroad Unemployment Insurance Act;

(b) VA, for administering 38 U.S.C. 1312, and upon request, for determining eligibility for, or amount of, veterans' benefits or for verifying other information with respect thereto pursuant to 38 U.S.C. 5106;

(c) Department of Labor for administering provisions of Title IV of the Federal Coal Mine Health and Safety Act, as amended by the Black Lung Benefits Act;

(d) State welfare departments, for administering sections 205(c)(2)(B)(i)(II) and 402 of the Social Security Act, which require information about assigned SSNs for Temporary Assistance for Needy Families (TANF) program purposes, and for determining a beneficiary's eligibility under the TANF program;

(e) State agencies for administering the Medicaid program; and

(f) State agencies for making determinations of food stamp eligibility under the food stamp program.

21. To State welfare departments:

(a) Pursuant to agreements with us, for the administration of State supplementation payments;

(b) for enrollment of welfare beneficiaries for medical insurance under section 1843 of the Social Security Act; and

(c) for conducting independent quality assurance reviews of SSI beneficiary records, provided that the agreement for Federal administration of the supplementation provides for such an independent review.

22. To State vocational rehabilitation agencies, State health departments, or other agencies providing services to disabled children, for consideration of rehabilitation services, per sections 222 and 1615 of the Social Security Act.

23. To the Social Security agency of a foreign country, to carry out the purpose of an international Social Security agreement entered between the United States and the other country, pursuant to section 233 of the Social Security Act.

24. To IRS, Department of the Treasury, for the purpose of auditing SSA's compliance with the safeguard provisions of the IRC of 1986, as amended.

25. To the Office of the President in response to an inquiry from that office made on behalf of, and at the request of, the subject of the record or a third party acting on the subject's behalf.

26. To third party contacts (including private collection under contract with us), for the purpose of their assisting us in recovering overpayments.

27. To Department of Homeland Security, upon request, to identify and locate aliens in the United States pursuant to section 290(b) of the Immigration and Nationality Act (8 U.S.C. 1360(b)).

28. To contractors and other Federal Agencies, as necessary, for the purpose of assisting us in the efficient administration of our programs. We will disclose information under this routine use only in situations in which we may enter into a contractual or similar agreement to obtain assistance in accomplishing an SSA function relating to this system of records.

29. To the National Archives and Records Administration (NARA) under 44 U.S.C. 2904 and 2906.

30. To DOJ, a court or other tribunal, or another party before such tribunal, when:

(a) SSA, or any component thereof; or

(b) Any SSA employee in his or her official capacity; or

(c) Any SSA employee in his or her individual capacity where DOJ (or SSA, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where we determine that the litigation is likely to affect us or any of our components, is a party to litigation or has an interest in such litigation, and we determine that the use of such records by DOJ, a court or other tribunal, or another party before the tribunal, is relevant and necessary to the litigation, provided, however, that in each case, we determine that such disclosure is compatible with the purpose for which the records were collected.

31. To the Department of Education, addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et seq.* (the Robert T. Stafford Federal Student Loan Program), as authorized by section 489A of the Higher Education Act of 1965.

32. To student volunteers, individuals working under a personal services contract, and other workers who technically do not have the status of Federal employees, when they are performing work for us, as authorized by law, and they need access to personally identifiable information (PII) in our records in order to perform their assigned agency functions.

33. To Federal, State, and local law enforcement agencies and private security contractors as appropriate, if necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of our facilities, or

(b) to assist investigations or prosecutions with respect to activities that affect such safety and security, or activities that disrupt the operation of our facilities.

34. To appropriate agencies, entities, and persons when:

(a) SSA suspects or has confirmed that there has been a breach of the system of records;

(b) SSA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, SSA (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 SSA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

35. To agencies or entities who have a written agreement with us, to perform representative payee reviews for SSA and to provide training, administrative oversight, technical assistance, and other support for those reviews.

36. To state protection and advocacy (P&A) systems, that have a written agreement with us to conduct reviews of representative payees, for the purpose of conducting additional reviews that the P&A systems have reason to believe are warranted.

37. To another Federal agency or Federal entity, when we determine that information from this system of records 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, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

38. To contractors, cooperative agreement awardees, State agencies, Federal agencies, and Federal congressional support agencies for research and statistical activities that are designed to increase knowledge about present or alternative Social Security programs; are of importance to the Social Security program or the Social Security beneficiaries; or are for an epidemiological project that relates to the Social Security program or beneficiaries. We will disclose information under this routine use pursuant only to a written agreement with us.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

We maintain records in this system in paper and electronic form.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

We will retrieve records by SSN, name, or BNC.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

In accordance with NARA rules codified at 36 CFR 1225.16, we maintain records in accordance with the approved NARA Agency-Specific Records Schedule N1–47–05–1.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

We retain electronic and paper files containing personal identifiers in secure storage areas accessible only by our authorized employees who have a need for the information when performing their official duties. Security measures include, but are not limited to, the use of codes and profiles, personal identification number and password, and personal identification verification cards. We restrict access to specific correspondence within the system based on assigned roles and authorized users. We maintain electronic files with personal identifiers in secure storage areas. We will use audit mechanisms to record sensitive transactions as an additional measure to protect information from unauthorized disclosure or modification. We keep paper records in cabinets within secure areas, with access limited to only those employees who have an official need for access in order to perform their duties.

We annually provide our employees and contractors with appropriate security awareness training that includes reminders about the need to protect PII and the criminal penalties that apply to unauthorized access to, or disclosure of PII. *See* 5 U.S.C. 552a(i)(1). Furthermore, employees and contractors with access to databases maintaining PII must annually sign a sanction document that acknowledges their accountability for inappropriately accessing or disclosing such information.

RECORD ACCESS PROCEDURES:

Individuals may submit requests for information about whether this system contains a record about them by submitting a written request to the system manager at the above address,

which includes their name, SSN, or other information that may be in this system of records that will identify them. Individuals requesting notification of, or access to, a record by mail must include: (1) A notarized statement to us to verify their identity; or (2) must certify in the request that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

Individuals requesting notification of, or access to, records in person must provide their name, SSN, or other information that may be in this system of records that will identify them, as well as provide an identity document, preferably with a photograph, such as a driver's license. Individuals lacking identification documents sufficient to establish their identity must certify in writing that they are the individual they claim to be and that they understand that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

CONTESTING RECORD PROCEDURES:

Same as record access procedures. Individuals should also reasonably identify the record, specify the information they are contesting, and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate, or irrelevant. These procedures are in accordance with our regulations at 20 CFR 401.65(a).

NOTIFICATION PROCEDURES:

Same as record access procedures. These procedures are in accordance with our regulations at 20 CFR 401.40 and 401.45.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

68 FR 15784, Claims Folders System.

72 FR 69723, Claims Folders System.

83 FR 31250, Claims Folders System.

83 FR 54969, Claims Folders System.

[FR Doc. 2019–23750 Filed 10–30–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice: 10935]

Notice of a Public Meeting, in Preparation for an International Maritime Organization Meeting

The Department of State will conduct an open meeting at 1:00 p.m. on Tuesday, November 12, 2019 in Room 5L18–01 of the Douglas A. Munro Coast Guard Headquarters Building at St. Elizabeth's, 2703 Martin Luther King Jr. Ave. SE, Washington, DC 20593. The primary purpose of the meeting is to prepare for the 30th Extraordinary Council Session (CES30), the 31st Assembly (A31), and the 123rd Council Session (C123) of the International Maritime Organization (IMO), to be held at the IMO Headquarters, United Kingdom, November 21–22; November 25–December 5; and, December 6, respectively. The agenda items for CES30, to be considered include:

—Adoption of the agenda
—Report of the Secretary-General on credentials
—Strategy, planning and reform
—Resource management
—Report on the forty-first Consultative Meeting of Contracting Parties to the London Convention 1972 and the fourteenth Meeting of Contracting Parties to the 1996 Protocol to the London Convention
—Report of the Council to the Assembly on the work of the Organization since the thirtieth regular session of the Assembly
—IMO International Maritime Law Institute
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Items for inclusion in the provisional agendas for the next session of the Council (C123)
—Supplementary agenda items, if any

The agenda items for A31, to be considered include:

—Adoption of the agenda
—Election of the President and the Vice-Presidents of the Assembly
—Consideration of proposed amendments to the Rules of Procedure of the Assembly
—Application of Article 61 of the IMO Convention—Report of the Council to the Assembly on any requests by Members for waiver
—Establishment of committees of the Assembly
—Consideration of the reports of the committees of the Assembly
—Report of the Council to the Assembly on the work of the Organization since the thirtieth regular session of the Assembly
—Strategy, planning and reform
— IMO Member State Audit Scheme
—Consideration of the reports and recommendations of the Maritime Safety Committee
—Consideration of the reports and recommendations of the Legal Committee
—Consideration of the reports and recommendations of the Marine Environment Protection Committee
—Consideration of the reports and recommendations of the Technical Cooperation Committee
—Consideration of the reports and recommendations of the Facilitation Committee
—Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 and the 1996 Protocol thereto: Report on the performance of Secretariat functions and other duties
—Report to the Assembly on Periodic review of administrative requirements in mandatory IMO instruments
—Resource management
—Global maritime training institutions
—External relations
—Report on the status of the Convention and membership of the Organization
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions
—Election of Members of the Council, as provided for in Articles 16 and 17 of the IMO Convention
—Election of Members of the IMO Staff Pension Committee
—Appointment of the External Auditor
—Approval of the appointment of the Secretary-General
—Date and place of the thirty-second regular session of the Assembly
—Supplementary agenda items, if any

The agenda for C123 has not yet been published but traditionally includes:

—Election of the Chairman and Vice-Chairman
—Adoption of the agenda
—Date, place and duration of the next session of Council
—Supplementary agenda items, if any

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process, and to request reasonable accommodation, those who plan to attend must contact the meeting coordinator, LCDR Staci Weist, by email at *eustacia.y.weist@uscg.mil,* or by phone at (202) 372–1376, not later than November 7th, 7 days prior to the

meeting. Requests made after November 7, 2019 might not be able to be accommodated. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by public transportation, taxi and privately owned conveyance.

Jeremy M. Greenwood,

Coast Guard Liaison Officer, Office of Ocean and Polar Affairs, Department of State.

[FR Doc. 2019–23787 Filed 10–30–19; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2019–0019]

Request for Comments Concerning the Extension of Particular Exclusions Granted Under the December 2018 Product Exclusion Notice From the $34 Billion Action Pursuant to Section 301: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Effective July 6, 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $34 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated the exclusion process in July 2018 and granted an initial set of exclusions in December 2018. The exclusions granted in December 2018 are set to expire on December 28, 2019. The U.S. Trade Representative has decided to consider extending particular exclusions granted in December 2018 for up to twelve months. The Office of the U.S. Trade Representative (USTR) invites public comment on whether to extend particular exclusions.

DATES:

November 1, 2019 at noon EDT: Docket Number USTR–2019–0019 will open for comments on the possible extension of particular exclusions.

November 30, 2019 at 11:59 p.m. EDT: To be assured of consideration, submit written comments by November 30, 2019.

ADDRESSES: Submit comments through the Federal eRulemaking Portal: *http://www.regulations.gov.* The Docket Number is USTR–2019–0019. USTR strongly encourages all commenters to use Form A to submit comments. If applicable, you must submit Form B, which requests Business Confidential Information (BCI)), along with a copy of the corresponding Form A, via email to *301bcisubmissions@ustr.eop.gov.* See the submission instructions below.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsels Philip Butler or Benjamin Allen (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see the prior notices issued in the investigation, including 82 FR 40213 (August 23, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 32181 (July 11, 2018), and 83 FR 67463 (December 28, 2018).

Effective July 6, 2018, the U.S. Trade Representative imposed additional 25 percent duties on goods of China classified in 818 8-digit subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $34 billion. *See* 83 FR 28710. The U.S. Trade Representative's determination included a decision to establish a process by which U.S. stakeholders could request exclusion of particular products classified within an 8-digit HTSUS subheading covered by the $34 billion action from the additional duties. The U.S. Trade Representative issued a notice setting out the process for the product exclusions, and opened a public docket. *See* 83 FR 32181 (the July 11 notice).

The July 11 notice required submission of requests for exclusion from the $34 billion action no later than October 9, 2018, and noted that the U.S. Trade Representative periodically would announce decisions. In December 2018, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 83 FR 67463 (December 28, 2018) (December 2018 notice). These exclusions are set to expire on December 28, 2019.

B. Possible Extensions of Particular Product Exclusions

The U.S. Trade Representative is considering a possible extension of particular exclusions granted in the December 2018 notice for up to twelve months. USTR invites public comments on whether to extend particular exclusions granted in the December 2018 notice. At this time, USTR is not considering comments concerning possible extensions of exclusions granted under any other product exclusion notice.

USTR will evaluate the possible extension of each exclusion on a case-by-case basis. The focus of the evaluation will be whether, despite the first imposition of these additional duties in July 2018, the particular product remains available only from China. In addressing this factor, commenters should address specifically:

- Whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries.
- Any changes in the global supply chain since July 2018 with respect to the particular product, or any other relevant industry developments.
- The efforts, if any, the importers or U.S. purchasers have undertaken since July 2018 to source the product from the United States or third countries.

In addition, USTR will continue to consider whether the imposition of additional duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

USTR strongly encourages commenters to complete Form A, which USTR will post on its website before the docket opens, and submit the completed Form A through *http://www.regulations.gov.* The docket number is USTR–2019–0019. USTR will post completed Form A's on the public docket.

In addition to submitting Form A through *regulations.gov*, commenters who are importers and/or purchasers of the products covered by the exclusion should complete Form B, which USTR will post on its website before the docket opens. Form B requests BCI information, and will not be posted on the public docket. Submit Form B, along with a copy of the completed Form A, via email to *301bciextensions@ustr.eop.gov.*

Facsimiles of Form A and Form B are in the Annex to this notice and will be available electronically at: *https://ustr.gov/issue-areas/enforcement/section-301-investigations/section-301-china/34-billion-trade-action.*

Set forth below is a summary of the information to be entered on Form A:

- Contact information, including the full legal name of the organization making the comment, whether the commenter is a third party (*e.g.,* law firm, trade association, or customs broker) submitting on behalf of an organization or industry, and the primary point of contact (commenter and/or third party submitter).

• The publication date of the **Federal Register** notice containing the exclusion on which you are commenting. Since USTR at this time is only considering exclusions granted by the December 28, 2018 notice, this field must specify December 28, 2018.

• The full article description for the exclusion you are commenting on and the 10-digit code, as provided in the **Federal Register** notice granting the exclusion. Please indicate if the exclusion is a 10-digit HTSUS code covering all products under a single 10-digit HTSUS number.

• Whether the product or products covered by the exclusion are subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce.

• Whether you support or oppose extending the exclusion and an explanation of your rationale. Commenters must provide a public version of their rationale, even if the commenter also is submitting a Form B with more detailed, confidential information.

• Whether the products covered by the exclusion or comparable products are available from sources in the U.S. or in third countries. Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.

• Whether the commenter will be submitting Form B.

As indicated above, information submitted on Form B will not be publically available. Form B requires commenters who are importers and/or purchasers of the products covered by the exclusion to provide the following information:

• The efforts you have undertaken since July 2018 to source the product from the United States or third countries.

• The value and quantity of the Chinese-origin product covered by the specific exclusion request purchased in 2018, the first half of 2018, and the first half of 2019, and whether these purchases are from a related company, and if so, the name of and relationship to the related company.

• Whether Chinese suppliers have lowered their prices for products covered by the exclusion following the imposition of duties.

• The value and quantity of the product covered by the exclusion purchased from domestic and third country sources in 2018, the first half of 2018 and the first half of 2019.

• If applicable, the commenter's gross revenue for 2018, the first half of 2018, and the first half of 2019.

• Whether the Chinese-origin product of concern is sold as a final product or as an input.

• Whether the imposition of duties on the products covered by the exclusion will result in severe economic harm to the commenter or other U.S. interests.

• Any additional information in support or in opposition of the extending the exclusion.

Commenters also may provide any other information or data that they consider relevant.

C. Submission Instructions

To be assured of consideration, commenters must submit their comments between the opening of the docket on November 1, 2019 and the November 30, 2019 submission deadline. By submitting a comment, the commenter certifies that the information provided is complete and correct to the best of his or her knowledge.

D. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, USTR submitted a request to the Office of Management and Budget (OMB) for emergency review and clearance of this information collection request (ICR) titled *301 Exclusion Requests.* OMB assigned control number 0350–0015, which is due to expire on December 31, 2019. USTR issued notice and requested comments regarding its intent to seek approval of a three-year extension of the control number for the information request on August 22, 2019. 84 FR 43853.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

BILLING CODE 3290–F0–P

OMB Control Number: 0350-0015 Expiration Date: December 31, 2019

Exclusion Extension Comment Form A

Information in Form A should be submitted on the Public Docket at http://www.regulations.gov.

1 Submitter Information

Full Organization Legal Name **(Public)**	
Commenter First Name **(Public)**	
Commenter Last Name **(Public)**	

Are you a third party, such as a law firm, trade association, or customs broker, submitting on behalf of an organization or industry? (Public)

Note: If you are submitting on behalf of an organization/industry, the information below is required.

Third Party Firm/Association Name **(Public)**	
Third Party First Name **(Public)**	
Third Party Last Name **(Public)**	

2

a) Please provide the publication date of the Federal Register Notice containing the exclusion you are commenting on. (Public)

b) Please provide the 10-digit subheading of the HTSUS applicable to the exclusion you are commenting on. *A 10-digit HTSUS number is required.* (Public)

c) From the Federal Register Notice, please provide the full article description for the exclusion. If the exclusion is a 10-digit code, please indicate. (Public)

d) Is this product subject to an antidumping or countervailing duty order issued by the U.S. Department of Commerce? (Public)

3 Do you support extending the exclusion (yes or no)? Please explain your rationale. (You must provide a public version of your rationale, even if you are also submitting a Form B with more detailed, confidential information.) (Public)

4 Please explain whether the products covered by the exclusion, or comparable products, are available from sources in the United States? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product or any other relevant industry developments.) (Public)

5 Please explain whether the products covered by the exclusion, or a comparable products, are available from sources in third countries? (Please include information concerning any changes in the global supply chain since July 2018 with respect to the particular product.) (Public)

6 Will you be submitting Form B? (Public)

Note: Responses to Form A should be submitted to the Public Docket at Regulations.gov (Information submitted in Form A will be posted on the Public Docket).

OMB Control Number: 0350-0015 Expiration Date: December 31, 2019

Exclusion Extension Comment
Form B

Form B should be completed by Importers and Purchasers of the products covered by the exclusion.
Form B should be submitted via email at 301bcisubmissions@ustr.eop.gov and will not be available to the public. Please include Form A with your email submission of Form B.
NOTE: Form A should be submitted both on regulations.gov and with Form B, via email.

1

a.) Please provide the value in USD and quantity (with units) of the Chinese-origin product covered by the specific exclusion that you purchased in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

Are any of these purchases from a related company? (BCI)

Please list the name and relationship of the related company. (BCI)

Name: **Relationship:**

b.) Please discuss whether Chinese suppliers have lowered their prices for products covered by the exclusion following imposition of the duties. (BCI)

2 Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from any third-country source in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

3 Please provide the value in USD and quantity (with units) of the product covered by the specific exclusion that you purchased from domestic sources in 2018, the first half of 2018, and the first half of 2019. Limit this figure to the products purchased by your firm (or by members of your trade association). Please provide estimates if precise figures are unavailable. (BCI)

2018 Value:		**2018 Quantity:**	
2018 (Jan-Jun) Value:		**2018 (Jan-Jun) Quantity:**	
2019 (Jan-Jun) Value:		**2019 (Jan-Jun) Quantity:**	

Are the provided figures estimates? (BCI)

4 Please discuss any efforts you have undertaken since July 2018 to source this product from United States or third countries. (BCI)

5 Please provide information regarding your company's gross revenue in USD for 2018, the first half of 2018, and the first half of 2019. (BCI)

Fiscal Year 2018:	
First Half (Jan-Jun) 2018:	
First Half (Jan-Jun) 2019:	
Are the provided figures estimates? (BCI)	

6 Is the Chinese-origin product of concern sold as a final product or as an input used in the production of a final product or products? (BCI)

7 Please comment on whether the imposition of additional duties on the product(s) covered by the exclusion you are seeking an extension for, will result in severe economic harm to your company or other U.S. interests. (BCI)

8 Please provide any additional information in support of your request, taking account of the instructions provided in Section [B] of the Federal Register notice. (BCI)

[FR Doc. 2019–23751 Filed 10–30–19; 8:45 am]

BILLING CODE 3290–F0–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Aviation Rulemaking Advisory Committee (ARAC) meeting.

SUMMARY: This notice announces a meeting of the ARAC.

DATES: The meeting will be held on Thursday, December 12, 2019, from 1:00 p.m. to 3:00 p.m. Eastern Standard Time.

Requests to attend the meeting must be received by Thursday, November 21, 2019.

Requests for accommodations to a disability must be received by Thursday, November 21, 2019.

Persons requesting to speak during the meeting must submit a written copy of their remarks to the Designated Federal Officer (DFO) by Thursday, November 21, 2019.

Requests to submit written materials to be reviewed during the meeting must be received no later than Thursday, November 21, 2019.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591. General committee information including copies of the meeting minutes will be available on the FAA Committee website at *https://www.faa.gov/regulations_/policies/rulemaking/committees/documents/.*

FOR FURTHER INFORMATION CONTACT: Lakisha Pearson, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, telephone (202) 267–4191; fax (202) 267–5075; email *9-awa-arac@faa.gov.* Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The ARAC was created under the Federal Advisory Committee Act (FACA), in accordance with Title 5 of the United States Code (5 U.S.C. App. 2) to provide advice and recommendations to the FAA concerning rulemaking activities, such as aircraft operations, airman and air agency certification, airworthiness standards and certification, airports, maintenance, noise, and training.

II. Agenda

At the meeting, the agenda will cover the following topics:

- Status Report from the FAA
- Status Updates:
  - Active Working Groups
  - Transport Airplane and Engine (TAE) Subcommittee
- Recommendation Reports
- Any Other Business

A final agenda will be posted on the FAA Committee website at *https://www.faa.gov/regulations_policies/rulemaking/committees/documents/* at least one week in advance of the meeting.

III. Public Participation

The meeting will be open to the public on a first-come, first-served basis, as space is limited. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than November 21, 2019. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Callers are responsible for paying long-distance charges.

The U.S. Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 15 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA Office of Rulemaking may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to ARAC members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

The public may present written statements to the Aviation Rulemaking Advisory Committee by providing 25 copies to the Designated Federal Officer, or by bringing the copies to the meeting.

Issued in Washington, DC, on October 18, 2019.

Brandon Roberts,

Acting Executive Director Office of Rulemaking.

[FR Doc. 2019–23738 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0034]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt six individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 15, 2019. The exemptions expire on October 15, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA–2019–0034* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 6, 2019, FMCSA published a notice announcing receipt of applications from six individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84

FR 47042). The public comment period ended on October 7, 2019, and two comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received two comments in this proceeding. These comments supported granting these exemptions.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the September 6, 2019, **Federal Register** notice (84 FR 47042) and will not be repeated in this notice.

These six applicants have been seizure-free over a range of 12 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the six exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Taylor Bonvillain (MS)
James Klucas (KS)
Larry Lintelman (AK)
Charles Mershon (MN)
Brian Ranger (NV)
Adam Wilson (MN)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23757 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0013]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 19 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on October 4, 2019. The exemptions expire on October 4, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA–2019–0013* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 3, 2019, FMCSA published a notice announcing receipt of applications from 19 individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 46088). The public comment period ended on October 3, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 3, 2019, **Federal Register** notice (84 FR 46088) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The 19 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, central retinal artery occlusion, chorioretinal scar, Coats disease, corneal scarring, crushed orbit, optic neuropathy, prosthesis, retinal detachment, and retinal scarring. In most cases, their eye conditions did not develop recently. 12 of the applicants were either born with their vision impairments or have had them since childhood. The seven individuals that developed their vision conditions as adults have had them for a range of 3 to 38 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 7 to 89 years. In the past three years, no drivers were involved in crashes, and two drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise

physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 19 exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

William D. Amberman (PA)
Dwayne E. Bennett (TN)
John W. Burnett (WA)
Joseph A. Clark (WI)
Kent N. Davis (SD)
James W. Day (VA)
Robert L. Farnsworth (OR)
Clayton R. Galyean (TX)
Roy Girlie (FL)
Calvin B. Jones (MD)
Sidney L. Jones, Jr. (GA)
Theodore J. Kenyon (VT)
Mark V. Kneib (MO)
Molu H. Mohamed (OH)
Brian E. Monaghan (IL)
Robert M. Murphy (NJ)
Robert E. Nichols (NV)
Jeffery T. Skaggs (IA)
Karol Stankiewicz (IL)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23762 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 14 individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117; FMCSA–2016–0008; FMCSA–2017–0178, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 6, 2019, FMCSA published a notice announcing its decision to renew exemptions for 14 individuals from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) to operate a CMV in interstate commerce and requested comments from the public (84 FR 47036). The public comment period ended on October 7, 2019, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received one comment in this proceeding. This comment supported granting the exemptions.

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy:* § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

IV. Conclusion

Based on its evaluation of the 14 renewal exemption applications and comment received, FMCSA announces its decision to exempt the following drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of August and are discussed below.

As of August 1, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 47036): Donnie Kuck (MT); Tye Moore (IN); and Rickie Rineer (PA).

As of August 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers (84 FR 47036):

Eric Barnwell (MI)
John Boerth (WI)
Don Darbyshire (IA)
Todd Davis (WI)
Daniel Dellaserra (CA)
Charles Gray (OK)
Eric Hilmer (WI)
David Kietzman (WI)
Dennis Klamm (MN)
William Rainer, III (TX)
Brian Wiggins (ID)

The drivers were included in docket number FMCSA–2010–0203; FMCSA–2011–0389; FMCSA–2012–0094; FMCSA–2012–0294; FMCSA–2014–0381; FMCSA–2014–0382; FMCSA–2015–0116; FMCSA–2015–0117. Their exemptions are applicable as of August 13, 2019, and will expire on August 13, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23756 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0109]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 29 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 10, 2019. The exemptions expire on October 10, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0109* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On August 28, 2019, FMCSA published a notice announcing receipt of applications from 29 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 47048). The public comment period ended on October 7, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum

duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 29 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above.

Erin Barnes (OK)
Alicia Batiste (TX)
Jeremy Benoit (LA)
Kurt Bernabei (IL)
Jessica L. Driver (TX)
Donald P. Dunten (IN)
Steven Edwards (KS)
Debbie Gaskill (GA)
Steven J. Gandee (PA)
Daniel S. Geathers (VA)
Gregory A. Hale (AZ)
Richard Harrison (MO)
Charles Hine (MD)
Robert B. Mahan (OK)
Michael Penn (IN)
Ernest Pratt (PA)
James R. Quinn (TN)
Matthew Ramirez (SC)
Steven Robelia (WI)
Timothy Roberts (TN)
Willis O. Ryan (GA)
Kerry Stewart (IN)
Mark J. Tabangcora (CA)
Yenter Tu (TX)
Alan Vandermeulen (IA)
Yvon Victor (NJ)
Bret E. Wanner (PA)
Rodney Warfield (MD)
David Whisman (GA)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23754 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0017]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from 11 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2019–0017 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2019-0017.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2019–0017), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0017.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0017* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The 11 individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used three consecutive years of data, comparing the experiences of drivers in the first two years with their experiences in the final year.

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

III. Qualifications of Applicants

Willie V. Brannon, Jr.

Mr. Brannon, 47, has had glaucoma in his right eye since 2011. The visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2019, his ophthalmologist stated, ''It is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brannon reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.2 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Benjamin E. Brown

Mr. Brown, 61, has a cataract in the right eye due to a traumatic incident in 2007. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''It is my opinion that Ben does have sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Brown reported that he has driven straight trucks for 38 years, accumulating 1.5 million miles, and tractor-trailer combinations for 34 years, accumulating 1.9 million miles. He holds a Class AM CDL from Wyoming. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Charles L. Gaines

Mr. Gaines, 48, has had partial optic nerve atrophy in his left eye since 2009. The visual acuity in his right eye is 20/15, and in his left eye, 20/50. Following an examination in 2019, his optometrist stated, ''In my professional opinion, Mr. Gaines has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Gaines reported that he has driven straight trucks for 14 years, accumulating 43,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.3 million miles. He holds a Class A CDL from North Carolina. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

James L. Houser

Mr. Houser, 53, has complete loss of vision in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''In my medical opinion James L. Houser has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Houser reported that he has driven straight trucks for 20 years, accumulating 15,000 miles, and tractor-trailer combinations for ten years, accumulating 20,000 miles. He holds an operator's license from Nebraska. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Andrew J. Kite III

Mr. Kite, 35, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/50. Following an examination in 2019, his optometrist stated, ''In my medical opinion, Andrew has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Kite reported that he has driven straight trucks for ten years, accumulating 200,000 miles. He holds an operator's license from Georgia. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Sean P. McSperitt

Mr. McSperitt, 51, has a corneal scar in his left eye due to a traumatic incident in childhood. The visual acuity in his right eye is 20/15, and in his left eye, 20/150. Following an examination in 2019, his optometrist stated, ''His vision is sufficient to operate commercial vehicle in all driving conditions.'' Mr. McSperitt reported that he has driven straight trucks for 20 years, accumulating 200,000 miles, and tractor-trailer combinations for 21 years, accumulating 4.09 million miles. He holds a Class A CDL from Oregon. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Matthew J. Morrison

Mr. Morrison, 58, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/60. Following an examination in 2019, his ophthalmologist stated, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Morrison reported that he has driven straight trucks for 40 years, accumulating 440,000 miles, and tractor-trailer combinations for eight years, accumulating 40,000 miles. He holds a Class A CDL from Maryland. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Frederick L. PeLong

Mr. PeLong, 60, has a retinal detachment in his in his left eye due to a traumatic incident in 1994. The visual acuity in his right eye is 20/20 and in his left eye, hand motion. Following an examination in 2019, his optometrist stated, ''It is my medical opinion that Fred PeLong has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. PeLong reported that he has driven straight trucks for eight years, accumulating 120,000 miles. He holds a Class A CDL from Iowa. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Martin S. Reese

Mr. Reese, 59, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2019, his optometrist stated, ''I certify that in my medical opinion, Martin has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Reese reported that he has driven straight trucks for one year, accumulating 60,000 miles, and tractor-trailer combinations for eight years, accumulating 480,000 miles. He holds a Class A CDL from California. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Devin M. Smith

Mr. Smith, 24, has had optic nerve atrophy in his right eye since childhood. The visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''Mr. Smith has sufficient binocular vision to operate a commercial vehicle.'' Mr. Smith reported that he has driven straight trucks for three years, accumulating 24,000 miles, and tractor-trailer combinations for two years, accumulating 10,000 miles. He holds a Class A CDL from Ohio. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

Anthony C. White

Mr. White, 53, has a prosthetic in his right eye due to a traumatic incident in 2013. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2019, his optometrist stated, ''It is in my opinion Mr. White has sufficient vision for driving commercial vehicle at this time.'' Mr. White reported that he has driven buses for 28 years, accumulating

487,620 miles. He holds a Class BM CDL from Alabama. His driving record for the last three years shows no crashes and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date indicated under the **DATES** section of the notice.

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23761 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0016]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of denials.

SUMMARY: FMCSA announces its decision to deny applications from 91 individuals who requested an exemption from the vision standard in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a CMV in interstate commerce.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing materials in the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0016* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

FMCSA received applications from 91 individuals who requested an exemption from the vision standard in the FMCSRs.

FMCSA has evaluated the eligibility of these applicants and concluded that granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(10).

III. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA grants exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency.

IV. Conclusion

The Agency has determined that these applicants do not satisfy the eligibility criteria or meet the terms and conditions of the Federal exemption and granting these exemptions would not provide a level of safety that would be equivalent to, or greater than, the level of safety that would be obtained by complying with § 391.41(b)(10). Therefore, the 91 applicants in this notice have been denied exemptions from the physical qualification standards in § 391.41(b)(10).

Each applicant has, prior to this notice, received a letter of final disposition regarding his/her exemption request. Those decision letters fully outlined the basis for the denial and constitute final action by the Agency. This notice summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reasons for denial.

The following three applicants did not have sufficient driving experience over the past three years under normal highway operating conditions:

Edwin C. Cassidy (CA); Chad M. Moser (IA); and Frank L. Novich, Jr. (MO)

The following 34 applicants had no experience operating a CMV:

Kevin F. Aguiar (MA)
Carlos Aliaga Molina (IA)
Beverly J. Allen (OR)
Adam E. Atkinson (WY)
Jacob A. Bigelow (WI)
Douglas Bock (PA)
Zachary M. Bolton (SC)
Jamin R. Burson (OR)
James A. Claiborne (MD)
Christian C. Cutler (CA)
Robert F. Fullwood (PA)
Fidel V. Garcia (NJ)
Nikolas K. Gehrke (MS)
Stanley A. Green (TN)
Lonnie C. Harpole (KY)
Salman A. Hassan (MN)
Kody P. Hofman (WI)
Jon B. Jantzer (WA)
Colt Jarrett (UT)
Jonathan Leonard (NC)
Alejandro Manzano Perez (CA)
Daniel L. Proud (MD)
Ronald L. Riding (KS)
Martin Sandoval (IL)
Cheryl A. Sersland (IL)
Jason D. Smith (FL)
Willie L. Smith (TX)
Felix L. Spates (AR)
Scott A. Stead (WV)
Rasan Tahirovic (ND)
Tommy J. Tinley (PA)
Eh D. Wah (WA)
Justin J. Wegner (WI)
Aubrey L. Wilson (IN)

The following 21 applicants did not have three years of experience driving a CMV on public highways with their vision deficiencies:

James D. Bersey (FL)
Joel Bonilla (KS)
Kevin A. Bretz (NH)
Kevin C. Brunk (WI)
David R. Corujo (SD)
Lewis M. Culbertson (MD)
Mark A. Darnell (KY)
Carlos E. Donahue (AR)
Steven B. Hanson (MN)
Eduardo R. Martinez (ID)
Carl J. Medlock (NE)
Gary A. Oleson (IL)
Jacob D. Rhinehart (ID)
Timothy P. Sadler (WI)

Jose G. Sayago (MI)
Bradley D. Shonkwiler (MN)
James L. Stacy (AR)
Richard H. Stout (OH)
Terrence D. Taylor (TN)
Roger D. Williams (MO)
Douglas E. Zelaya (CA)

The following seven applicants did not have three years of recent experience driving a CMV on public highways with their vision deficiencies:

Christinia J. Chapman (PA)
Wendell A. Dowdy (MO)
John D. Hulbert (AL)
William W. Johnson (WY)
Kennard D. Julien (WA)
Gary D. Larson (NE)
Christopher St. Croix (NY)

The following four applicants did not have sufficient driving experience over the past three years under normal highway operating conditions (gaps in driving record):

James M. Kivett (NC)
Kyla E. Lamb (OH)
Zachary W. Lundy (SD)
Phillip D. Parker (MN)

The following applicant two applicants were charged with moving violations in conjunction with CMV accidents:

Zane D. Elliott (WV); and Donald K. Etter (PA)

Donald K. Etter (PA) was included in a notice requesting public comment on the Agency's intent to grant an exemption (docket no. FMCSA–2019–0009). During the commenting period, the applicant was involved in a CMV crash, and failed to submit supporting documentation for review. The exemption was not granted at that time. Information relating to the crash was submitted, and application was denied for the reasons cited above.

The following two applicants contributed to accident(s) in which the applicant was operating a CMV, which is a disqualifying offense:

Eddie B. Strange (GA); and Richard C. Strassburg (NY)

The following ten applicants were denied for multiple reasons:

Joseph C. Carpenter (CA)
Tommy J. Garcia (NM)
Jerry M. Madden (TX)
Christopher J. Marden (NH)
Saul Quintero (IN)
Barry Seiwell (PA)
Rickey S. Sheppard (AL)
Gregory D. Van Ruler (MN)
Alexander L. Walls (OR)
Jorge Zambrano (NJ)

The following six applicants have not had stable vision for the preceding three-year period:

Dennis D. Coulter (OH)
Ronald D. Davis (TX)
Adrian Hernandez (CA)
James M. Simpson (MO)
Glen Sterling (LA)
Ricky D. Wright (MO)

The following two applicants drove interstate while restricted to intrastate driving:

David Guerra (TX); and Edward R. Schmocker (WI)

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23766 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0139]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 29 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 1, 2019. The exemptions expire on October 1, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2018-0139* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On August 28, 2019, FMCSA published a notice announcing receipt of applications from 29 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 45206). The public comment period ended on September 27, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, ''Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety.'' The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) No studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the 29 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above.

David O. Barnett (AL)
Zachary Bruce-Hurst (FL)
Azulita Jane Camacho (CA)
Malcolm Collins (MO)
Wayne Crowl (IN)
Robert Culp (FL)
Charles Wesley Davis (AL)
Christopher Fisher (WA)
Ariel Gonzalez (RI)
Adrian Jiminez (CA)
Steven L. Johnson (TN)
Virginia M. Kammerer (NJ)
Keith C. Kenyon (WI)
Richard Melikian (NY)
Paul J. Pitre (AL)
Dion Prewitt (IL)
John M. Price, Jr (TX)
Marcel James Rambin II (WA)
Aleksandr M. Riabinin (CA)
Satwinder Sandher (CA)
Dustin E. Selby (OH)
Kerry Stewart (IN)
Andrew Tessin (NC)
Corey N. Thompson (TX)
Aleksandhr Turchin (WA)
Daniel Turchin (WA)
Gary Harrison Wallace (NC)
Honna Waymire (OH)
Charles Wozniak (NJ)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23753 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0385]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for three individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on August 13, 2019. The exemptions expire on August 13, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2015-0385* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9

a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 3, 2019, FMCSA published a notice announcing its decision to renew exemptions for three number individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (84 FR 46092). The public comment period ended on October 3, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received insert number comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the three renewal exemption applications FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41(b)(11).

As of August 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following insert three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (84 FR 46092):

Jerrell M. McCrary (NC); David A. Pressley (TX); and Jason D. Swearington (WA).

The drivers were included in docket number FMCSA–2015–0385. Their exemptions are applicable as of August 13, 2019, and will expire on August 13, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23755 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0240]

Hours of Service of Drivers: DPN, dba Matrix Medical Network; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from DPN, doing business as Matrix Medical Network (Matrix), requesting exemptions from the hours-of-service (HOS) provisions. Matrix requests the exemptions to allow its employee-drivers known as ''Mobile Team Leads'' to work up to 16 hours per day and be allowed to return to work with less than the mandatory 10 consecutive hours off duty. FMCSA requests public comment on Matrix's application.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2019–0240 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number of this notice. DOT posts all comments received without change to *www.regulations.gov,* including personal information in a comment. Please see the *Privacy Act* heading below.

Docket: To read background documents or comments, go to *www.regulations.gov* or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS) at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, please contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Telephone: (202) 366–4325; Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2019–0240), the specific section of this document to which the comment applies, and

provide reasons for suggestions or recommendations. You may submit online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in your document so the Agency can contact you if it has questions about your submission.

To submit your comments online, go to *www.regulations.gov* and put the docket number, ''FMCSA–2019–0240'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on the ''Submit a Formal Comment'' button and type your comment into the text box in the following screen. Indicate whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or deny this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

49 CFR 395.3(a)(1) prohibits a driver from operating a commercial motor vehicle (CMV) without first taking 10 consecutive hours off duty. 49 CFR 395.3(a)(2) prohibits a driver from operating a CMV after the the end of a 14 hour consecutive hour period without first taking 10 consecutive hours off duty.

Matrix requests a limited exemption for its drivers of mobile clinics known as ''Mobile Team Leads'' from the HOS 10 hour off-duty rule and the 14-hour period. Matrix requests that these employee-drivers be permitted to rest for 8 hours instead of 10 hours, and operate for 16 working hours instead of being limited to 14 hours.

Matrix reports that it operates a fleet of mobile medical clinics used to assist Medicare Advantage organizations. These services include, but are not limited to, providing patients with comprehensive health assessments and evaluations, and ongoing management of complex chronic conditions.

Matrix explained that it generally hosts patients during ''events,'' which are usually held two to three times per week. Patients are seen on a mobile clinic throughout an event day usually between 7 a.m. to 6 p.m. local time, however the events do not always end at scheduled times. Each mobile clinic operates with a minimal crew consisting of (1) a mobile team lead, (2) registered nurse or nurse practitioner, (3) mammography technician, and (4) a medical technician or cardiovascular technician. The Mobile Team Lead is an integral part of the mobile clinic's healthcare service delivery team. The Mobile Team Lead is responsible for duties akin to an office manager's responsibilities. In addition to these duties, the Mobile Team Lead is responsible for driving the mobile clinic to and from an event location and hotel location. The proposed exemption would cover approximately 50 mobile team leads for the 40 mobile clinics in the applicant's fleet. Additonally, the exemption, if granted, would be used on event days only.

Matrix asserts that the proposed exemption is critical to ensure that it meets the needs of its patients and support its mission. Matrix explains that patients cancelling or arriving late to scheduled appointments or appointments that require additional time with providers, can cause an event to go beyond its scheduled end time of 6:00 p.m. local time. Matrix argues that 395.3(a)(1) and 395.3(a)(2) would require Matrix to cancel patient appointments, causing a hardship on their operation. According to the applicant, the need to maximize patient engagement is the underlying reason for this exemption request. It would allow an event to continue past its scheduled end time and allow the Mobile Team Lead to drive the mobile clinic to a new hotel location that is close enough to the next event location so that the following event day can commence at 7:00 a.m. local time.

IV. Method To Ensure an Equivalent or Greater Level of Safety

To ensure an equivalent level of safety, Matrix offers short driving distances, short durations of driving, and driving at off-peak commuting times. Matrix believes that an equivalent level of safety will be sustained as Mobile Team leads are trained on fatigue awareness and hours of service compliance expectations, and, training programs from both the North American Fatigue Management Program and the Commercial Vehicle Training Alliance. Matrix states that Mobile Team Leads drive less than one-sixth of their work day. The rest of their day is spent performing non-clinical, management, and administrative services.

A copy of Matrix's application is available for review in the docket for this notice.

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23752 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9561; FMCSA–2003–15892; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2005–21711; FMCSA–2007–25246; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0327; FMCSA–2010–0385; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2011–0189; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2013–0165; FMCSA–2014–0302; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; FMCSA–2017–0020; FMCSA–2017–0023]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 95 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2001–9561, FMCSA–2003–15892, FMCSA–2005–20560, FMCSA–2005–21254, FMCSA–2005–21711, FMCSA–2007–25246, FMCSA–2007–27897, FMCSA–2008–0266, FMCSA–2009–0121, FMCSA–2009–0154, FMCSA–2010–0327, FMCSA–2010–0385, FMCSA–2011–0024, FMCSA–2011–0092, FMCSA–2011–0124, FMCSA–2011–0140, FMCSA–2011–0142, FMCSA–2011–0189, FMCSA–2013–0026, FMCSA–2013–0027, FMCSA–2013–0029, FMCSA–2013–0030, FMCSA–2013–0165, FMCSA–2014–0302, FMCSA–2015–0048, FMCSA–2015–0049, FMCSA–2015–0052, FMCSA–2015–0053, FMCSA–2015–0055, FMCSA–2016–0212, FMCSA–2016–0214, FMCSA–2017–0016, FMCSA–2017–0018, FMCSA–2017–0019, FMCSA–2017–0020, or FMCSA–2017–0023, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 6, 2019, FMCSA published a notice announcing its decision to renew exemptions for 95 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 47052). The public comment period ended on October 7, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 95 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10). As of October 3, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 58 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 17504; 70 FR 30997; 70 FR 30999; 70 FR 41811; 70 FR 46567; 72 FR 180; 72 FR 9397; 72 FR 27624; 72 FR 39879; 72 FR 40359; 72 FR 40362; 72 FR 52419; 73 FR 51689; 73 FR 63047; 74 FR 23472; 74 FR 26461; 74 FR 34074; 74 FR 34395; 74 FR 34630; 74 FR 37295; 74 FR 41971; 74 FR 48343; 75 FR 65057; 75 FR 66423; 75 FR 77492; 75 FR 79081; 76 FR 5425; 76 FR 17481; 76 FR 25766; 76 FR 28125; 76 FR 32017; 76 FR 34136; 76 FR 37169; 76 FR 37885; 76 FR 44652; 76 FR 44653; 76 FR 49528; 76 FR 50318; 76 FR 53708; 76 FR 54530; 76 FR 55463; 76 FR 61143; 77 FR 70537; 78 FR 800; 78 FR 4531; 78 FR 14410; 78 FR 22598; 78 FR 24300; 78 FR 24798; 78 FR 32708; 78 FR 34143; 78 FR 37270; 78 FR 37274; 78 FR 41975; 78 FR 46407; 78 FR 52602; 78 FR 56986; 78 FR 56993; 78 FR 77782; 78 FR 78477; 79 FR 4531; 79 FR 53708; 80 FR 12248; 80 FR 15863; 80 FR 26139; 80 FR 29152; 80 FR 29154; 80 FR 31635; 80 FR 31636; 80 FR 35699; 80 FR 36395; 80 FR 37718; 80 FR 40122; 80 FR 41547; 80 FR 41548; 80 FR 44188; 80 FR 48402; 80 FR 48404; 80 FR 48409; 80 FR 48411; 80 FR 48413; 80 FR 49302; 80 FR 50915; 80 FR 50917; 80 FR 59225; 80 FR 62161; 80 FR 62163; 81 FR 86063; 81 FR 96165; 82 FR 12678; 82 FR 12683; 82 FR 15277; 82 FR 18949; 82 FR 18954; 82 FR 22379; 82 FR 24430; 82 FR 28734; 82 FR 33542; 82 FR 34564; 82 FR 35043; 82 FR 35050; 82 FR 47295; 82 FR 47296; 82 FR 47312; 83 FR 4537):

Michael T. Allen (NV)
Joel D. Barchard (MA)
Rocky B. Bentz (WI)
Johnny A. Bingham (NC)
Keith A. Bliss (NY)
Fred Boggs (WV)
Michael W. Britt (MD)
Harry S. Bumps (VT)
Shaun E. Burnett (IA)
Kevin W. Cannon (TX)
Juan R. Cano (TX)
Todd A. Chapman (NC)
Larry O. Cheek (CA)
Thomas W. Crouch (IN)
Erik R. Davis (GA)
David S. Devine (ID)
Sean J. Dornin (PA)
Verlin L. Driskell (NE)
Robin C. Duckett (SC)
Bobby C. Floyd (TN)
Steven G. Garrett (CA)
Steven A. Garrity (MA)
Mark E. Gessner (FL)
Dale L. Giardine (PA)
David B. Ginther (PA)
Mark A. Grenier (CT)
Willard D. Hall (CA)
David A. Hayes (GA)
Steven C. Holland (OK)
Rufus L. Jones (NJ)
Udum Khamsoksavath (WA)
Bruce A. Lloyd (MA)

Alex P. Makhanov (WA)
Michael L. Martin (OH)
Dean A. Maystead (MI)
Lawrence McGowan (OH)
David McKinney (OR)
Dionicio Mendoza (TX)
William F. Nickel, V (OR)
Jason C. Nicklow (PA)
Russell W. Nutter (OH)
Gary A. Oster (OR)
Richard E. Perry (CA)
Nathan Pettis (FL)
Mark A. Pirl (NC)
Jason W. Rupp (PA)
Kirby R. Sands (IA)
Bobby Sawyers (PA)
Calvin J. Schaap (MN)
Ernesto Silva (NM)
Larry D. Steiner (MN)
Steven W. Stull (IL)
Terrance W. Temple (OH)
James L. Tinsley, Jr. (VA)
John Vanek (MO)
Victor H. Vera (TX)
Stephen W. Verrette (MI)
Daniel E. Watkins (FL)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2007–25246; FMCSA–2007–27897; FMCSA–2008–0266; FMCSA–2009–0121; FMCSA–2009–0154; FMCSA–2010–0327; FMCSA–2010–0385; FMCSA–2011–0024; FMCSA–2011–0092; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0142; FMCSA–2013–0026; FMCSA–2013–0027; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0302; FMCSA–2015–0048; FMCSA–2015–0049; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0212; FMCSA–2016–0214; FMCSA–2017–0016; FMCSA–2017–0018; FMCSA–2017–0019; and FMCSA–2017–0020. Their exemptions are applicable as of October 3, 2019, and will expire on October 3, 2021.

As of October 19, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 15 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 43647; 83 FR 2289):

Paul A. Bartels (WI)
Charles C. Berns (IA)
Jeremiah E. Casey (MO)
Leonard M. Cassieri (CA)
Jimmie E. Curtis (NM)
Jonathan P. Edwards (PA)
James A. Green (IL)
Richard Healy (MD)
Stephen M. Lovell (TX)
Carlos Marquez (WI)
Jason L. McBride (MI)
Dennis M. Olson (WI)
Daniel C. Sagert (WI)
Robert D. Steele (WA)
Daniel D. Woodworth (FL)

The drivers were included in docket number FMCSA–2017–0023. Their exemptions are applicable as of October 19, 2019, and will expire on October 19, 2021.

As of October 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following six individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 47818; 78 FR 63307; 80 FR 59225; 82 FR 47312):

Larry E. Blakely (GA)
Arlene S. Kent (NH)
Willie L. Murphy (IN)
Joseph J. Pudlik (IL)
Jeffrey R. Swett (SC)
Brian C. Tate (VA)

The drivers were included in docket number FMCSA–2013–0165. Their exemptions are applicable as of October 23, 2019, and will expire on October 23, 2021.

As of October 24, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 44837; 70 FR 30999; 70 FR 41811; 70 FR 46567; 70 FR 48797; 70 FR 61493; 72 FR 40359; 72 FR 54971; 74 FR 34074; 74 FR 49069; 76 FR 62143; 78 FR 77782; 80 FR 59225; 82 FR 47312):

Andrew B. Clayton (TN)
William P. Doolittle (MO)
Jonathan M. Gentry (TN)
Benny D. Hatton, Jr. (NY)
Robert W. Healey, Jr. (NJ)
Thomas W. Markham (MN)
Kevin L. Moody (OH)
John C. Young (VA)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2005–21254; FMCSA–2005–21711. Their exemptions are applicable as of October 24, 2019, and will expire on October 24, 2021.

As of October 30, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 52811; 68 FR 61860; 70 FR 61165; 74 FR 53581; 76 FR 64171; 78 FR 68137; 80 FR 59225; 82 FR 47312):

Dewayne E. Harms (IL)
Jesse L. Townsend (LA)
James A. Welch (NH)
Michael E. Yount (ID)

The drivers were included in docket number FMCSA–2003–15892. Their exemptions are applicable as of October 30, 2019, and will expire on October 30, 2021.

As of October 31, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following four individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 55465; 76 FR 67246; 78 FR 77782; 80 FR 59225; 82 FR 47312):

Darrell G. Anthony (TX)
Harold L. Pearsall (PA)
Phillip M. Pridgen, Sr. (MD)
Gerald D. Stidham (CO)

The drivers were included in docket number FMCSA–2011–0189. Their exemptions are applicable as of October 31, 2019, and will expire on October 31, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23759 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0014]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt ten individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable

these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on October 8, 2019. The exemptions expire on October 8, 2019.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0014* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 6, 2019, FMCSA published a notice announcing receipt of applications from ten individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (84 FR 47050). The public comment period ended on October 7, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 6, 2019, **Federal Register** notice (84 FR 47050) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The ten exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, aphakia, chorioretinal scar, complete loss of vision, enucleated left eye, optic atrophy, prosthesis, retinal detachment, and retinal scar. In most cases, their eye conditions did not develop recently. Four of the applicants were either born with their vision impairments or have had them since childhood. The six individuals that developed their vision conditions as adults have had them for a range of 5 to 36 years. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging for 4 to 45 years. In the past three years, no drivers were involved in crashes, and no drivers were convicted of moving violations in CMVs. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a

certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the ten exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:

Alex T. Balk (AZ)

Brian K. Egbert (MO)

Joseph M. Morgan (FL)

Chris J. Orphan, Jr. (SC)

Wayne E. Page (NC)

Joaquin A. Sandoval (OR)

Donald J. Thoel (MI)

Harold W. Via (VA)

Milton D. Voepel (MO)

Andrew L. Walker (MN)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23763 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2019–0033]

Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt five individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have ''no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV.'' The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on October 4, 2019. The exemptions expire on October 4, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2019-0033* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On August 28, 2019, FMCSA published a notice announcing receipt of applications from five individuals requesting an exemption from the epilepsy and seizure disorders prohibition in 49 CFR 391.41(b)(8) and requested comments from the public (84 FR 45205). The public comment period ended on September 27, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(8).

The physical qualification standard for drivers regarding epilepsy found in § 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria [1] to assist medical examiners (MEs) in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum

[1] These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. Epilepsy: § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at *https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf.*

duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on the 2007 recommendations of the Agency's Medical Expert Panel (MEP). The Agency conducted an individualized assessment of each applicant's medical information, including the root cause of the respective seizure(s) and medical information about the applicant's seizure history, the length of time that has elapsed since the individual's last seizure, the stability of each individual's treatment regimen and the duration of time on or off of anti-seizure medication. In addition, the Agency reviewed the treating clinician's medical opinion related to the ability of the driver to safely operate a CMV with a history of seizure and each applicant's driving record found in the Commercial Driver's License Information System for commercial driver's license (CDL) holders, and interstate and intrastate inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency (SDLA). A summary of each applicant's seizure history was discussed in the August 28, 2019, **Federal Register** notice (84 FR 45206) and will not be repeated in this notice.

These five applicants have been seizure-free over a range of 18 years while taking anti-seizure medication and maintained a stable medication treatment regimen for the last 2 years. In each case, the applicant's treating physician verified his or her seizure history and supports the ability to drive commercially.

The Agency acknowledges the potential consequences of a driver experiencing a seizure while operating a CMV. However, the Agency believes the drivers granted this exemption have demonstrated that they are unlikely to have a seizure and their medical condition does not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the epilepsy and seizure disorder prohibition in § 391.41(b)(8) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the five exemption applications, FMCSA exempts the following drivers from the epilepsy and seizure disorder prohibition, § 391.41(b)(8), subject to the requirements cited above:

Lucas Meeker (OH)

Michael Miller (TX)

Jason Plummer (IN)

Keith Sayre (OH)

Tyler Tilseth (NM)

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23758 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2008–0292; FMCSA–2009–0086; FMCSA–2009–0154; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0011; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0213; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 104 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these individuals to continue to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Services, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the

docket number, FMCSA–1998–4334; FMCSA–1999–5578; FMCSA–2001–9561; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2005–21254; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2007–27897; FMCSA–2007–28695; FMCSA–2008–0292; FMCSA–2009–0086; FMCSA–2009–0154; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0124; FMCSA–2011–0140; FMCSA–2011–0141; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2013–0030; FMCSA–2014–0011; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0213; FMCSA–2017–0017; FMCSA–2017–0020; FMCSA–2017–0022, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

II. Background

On September 6, 2019, FMCSA published a notice announcing its decision to renew exemptions for 104 individuals from the vision requirement in 49 CFR 391.41(b)(10) to operate a CMV in interstate commerce and requested comments from the public (84 FR 47038). The public comment period ended on October 7, 2019, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based on its evaluation of the 104 renewal exemption applications and comments received, FMCSA confirms its decision to exempt the following drivers from the vision requirement in § 391.41(b)(10).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of September and are discussed below. As of September 6, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 49 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (66 FR 30502; 66 FR 41654; 68 FR 37197; 68 FR 44837; 68 FR 48989; 69 FR 64806; 70 FR 2705; 70 FR 17504; 70 FR 30997; 70 FR 41811; 70 FR 42615; 71 FR 32183; 71 FR 41310; 71 FR 63379; 72 FR 1051; 72 FR 5489; 72 FR 12666; 72 FR 21313; 72 FR 25831; 72 FR 27624; 72 FR 32703; 72 FR 40360; 72 FR 40362; 73 FR 61922; 73 FR 61925; 73 FR 74565; 73 FR 78423; 74 FR 15586; 74 FR 19267; 74 FR 19270; 74 FR 23472; 74 FR 26464; 74 FR 28094; 74 FR 34395; 74 FR 34632; 75 FR 72863; 75 FR 77949; 75 FR 79083; 76 FR 2190; 76 FR 9856; 76 FR 17483; 76 FR 18824; 76 FR 20076; 76 FR 21796; 76 FR 25762; 76 FR 25766; 76 FR 29022; 76 FR 29024; 76 FR 32017; 76 FR 34135; 76 FR 37169; 76 FR 37885; 76 FR 44082; 76 FR 44652; 76 FR 49531; 76 FR 50318; 77 FR 68202; 77 FR 74273; 77 FR 74731; 77 FR 74734; 78 FR 10251; 78 FR 12811; 78 FR 16762; 78 FR 20376; 78 FR 20379; 78 FR 22596; 78 FR 24300; 78 FR 24798; 78 FR 26106; 78 FR 27281; 78 FR 32708; 78 FR 34140; 78 FR 34141; 78 FR 34143; 78 FR 37270; 78 FR 41188; 78 FR 46407; 78 FR 51268; 78 FR 52602; 78 FR 56993; 79 FR 4531; 79 FR 24298; 79 FR 56099; 79 FR 65759; 79 FR 70928; 79 FR 73686; 79 FR 73687; 80 FR 15863; 80 FR 16502; 80 FR 18696; 80 FR 22773; 80 FR 26139; 80 FR 26320; 80 FR 29149; 80 FR 29154; 80 FR 31640; 80 FR 33007; 80 FR 33009; 80 FR 35699; 80 FR 36395; 80 FR 36398; 80 FR 37718; 80 FR 40122; 80 FR 44185; 80 FR 44188; 80 FR 45573; 80 FR 48404; 80 FR 48409; 80 FR 50917; 80 FR 62161; 80 FR 62163; 81 FR 59266; 81 FR 96165; 82 FR 13187; 82 FR 15277; 82 FR 18949; 82 FR 20962; 82 FR 22379; 82 FR 23712; 82 FR 32919; 82 FR 33542; 82 FR 34564; 82 FR 37499; 82 FR 47269; 83 FR 4537):

Jimmie L. Blue (MT)
Wilfred J. Brinkman (OH)
Dale E. Bunke (ID)
Ralph H. Bushman (IL)
Roger C. Carson (IN)
Daniel G. Cohen (VT)
Adan Cortes-Juarez (WA)
Jeffrey W. Cotner (OR)
Timothy J. Curran (CA)
Joseph Cuthbert (PA)
Walter C. Dean, Sr. (AL)
John C. Dimassa (WA)
Sonya Duff (IN)
Mark J. Dufresne (NH)
Dennis C. Edler (PA)
Jonathan G. Estabrook (MA)
Eric M. Grayson (KY)
William K. Gullett (KY)
Anthony Hall (LA)
Paul M. Hinkson (TN)
Wesley D. Hogue (AR)
Roy W. Houser II (TN)
John T. Johnson (NM)
Jay D. Labrum (UT)
Anthony Luciano (CT)
Duffy P. Metrejean, Jr. (LA)
Brian P. Millard (SC)
Vincent R. Neville (MN)
Willie L. Nez (UT)
Gonzalo Pena (FL)
Robert D. Porter (CA)
Dennis M. Prevas (WI)
Steven A. Proctor (TX)
William A. Ramirez Vasquez (CA)
Steven P. Richter (MN)
Jonathan C. Rollings (IA)
Salvador Sanchez (CA)
Dennis J. Smith (CO)
Hoyt V. Smith (SC)
Rodney W. Sukalski (MN)
Sukru Tamirci (NY)
Lee T. Taylor (FL)
Michael J. Thane (OH)
Jon C. Thompson (TX)
Larry A. Tidwell (MO)
Harlon C. VanBlaricom (MN)
Richard A. Westfall (OH)
Jeff L. Wheeler (IA)
Tommy N. Whitworth (TX)

The drivers were included in docket numbers FMCSA–2001–9561; FMCSA–2003–15268; FMCSA–2004–19477; FMCSA–2005–20560; FMCSA–2006–24783; FMCSA–2006–26066; FMCSA–2007–27333; FMCSA–2007–27515; FMCSA–2008–0292; FMCSA–2009–

0086; FMCSA–2010–0354; FMCSA–2011–0010; FMCSA–2011–0057; FMCSA–2011–0092; FMCSA–2011–0102; FMCSA–2011–0140; FMCSA–2012–0338; FMCSA–2013–0021; FMCSA–2013–0025; FMCSA–2013–0027; FMCSA–2013–0028; FMCSA–2013–0029; FMCSA–2014–0011; FMCSA–2014–0305; FMCSA–2015–0048; FMCSA–2015–0052; FMCSA–2015–0053; FMCSA–2015–0055; FMCSA–2016–0033; FMCSA–2016–0213; FMCSA–2017–0017; FMCSA–2017–0020. Their exemptions are applicable as of September 6, 2019, and will expire on September 6, 2021.

As of September 7, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (76 FR 34136; 76 FR 37169; 76 FR 50318; 76 FR 55463; 78 FR 78477; 80 FR 50915; 83 FR 4537):

Charles E. Carter (MI); James A. Ellis (NY); and Peter M. Shirk (PA)

The drivers were included in docket numbers FMCSA–2011–0124; FMCSA–2011–0140. Their exemptions are applicable as of September 7, 2019, and will expire on September 7, 2021.

As of September 12, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (82 FR 37501; 82 FR 47309):

Eddie S. Bennett (MI)
David A. Cooper (WV)
Nicholas M. Deschepper (SD)
John F. Ferguson (PA)
Dominick P. Fittipaldi (PA)
Louis R. LeMonds (WA)
Jonathan Marin (NJ)
Mark E. McNaughton (IA)
Louis Neofotistos (MA)
James R. Rupert (CA)
Christopher J. Schmidt (WI)
Greg C. Stilson (WY)
Eloy Zuniga (TX)

The drivers were included in docket number FMCSA–2017–0022. Their exemptions are applicable as of September 12, 2019, and will expire on September 12, 2021.

As of September 13, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (63 FR 66226; 64 FR 16517; 66 FR 41656; 68 FR 44837; 70 FR 41811; 72 FR 39879; 72 FR 40362; 72 FR 52419; 74 FR 41971; 76 FR 54530; 78 FR 78477; 80 FR 48402; 83 FR 4537):

John A. Bridges (GA)
Brian W. Curtis (IL)
Tomie L. Estes (MO)
Ray C. Johnson (AR)
James J. Mitchell (NC)
Joshua R. Perkins (ID)
Craig R. Saari (MN)
Jerry L. Schroder (IL)

The drivers were included in docket numbers FMCSA–1998–4334; FMCSA–2007–27897. Their exemptions are applicable as of September 13, 2019, and will expire on September 13, 2021.

As of September 16, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following seven individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (78 FR 27281; 78 FR 34143; 78 FR 41188; 78 FR 41975; 78 FR 52602; 78 FR 56986; 80 FR 48411; 83 FR 4537):

Carl Block (NY)
Christopher Brim (TN)
Phyllis Dodson (IN)
Juan M. Guerrero (TX)
Berl C. Jennings (VA)
Vincent Marsee, Sr. (NC)
David Snellings (MD)

The drivers were included in docket numbers FMCSA–2013–0030; FMCSA–2013–0028; FMCSA–2013–0029. Their exemptions are applicable as of September 16, 2019, and will expire on September 16, 2021.

As of September 22, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 13 individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (68 FR 19598; 68 FR 33570; 70 FR 17504; 70 FR 25878; 70 FR 30997; 72 FR 28093; 72 FR 40362; 74 FR 20523; 74 FR 34394; 74 FR 37295; 74 FR 48343; 76 FR 34136; 76 FR 53708; 76 FR 54530; 76 FR 55463; 78 FR 78477; 80 FR 49302; 83 FR 4537):

Michael K. Adams (OH)
Eleazar R. Balli (TX)
Darrell W. Bayless (TX)
Clifford D. Carpenter (MO)
Cecil A. Evey (ID)
Kamal A. Gaddah (OH)
Eric M. Kousgaard (NE)
Samuel A. Miller (IN)
Larry T. Rogers (IL)
Marcial Soto-Rivas (OR)
Boyd D. Stamey (NC)
David C. Sybesma (ID)
Matthew K. Tucker (MN)

The drivers were included in docket numbers FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2009–0154; FMCSA–2011–0124. Their exemptions are applicable as of September 22, 2019, and will expire on September 22, 2021.

As of September 23, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following nine individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (64 FR 27027; 64 FR 51568; 66 FR 48504; 68 FR 19598; 68 FR 33570; 68 FR 37197; 68 FR 48989; 68 FR 54775; 70 FR 30999; 70 FR 42615; 70 FR 46567; 70 FR 53412; 72 FR 39879; 72 FR 52419; 72 FR 62896; 74 FR 43221; 76 FR 53708; 78 FR 78477; 80 FR 53383; 83 FR 4537):

Linda L. Billings (NV)
Weldon R. Evans (OH)
Orasio Garcia (TX)
Leslie W. Good (OR)
James P. Guth (PA)
Gregory K. Lilly (WV)
Kenneth A. Reddick (PA)
Leonard Rice, Jr. (GA)
James T. Sullivan (KY)

The drivers were included in docket numbers FMCSA–1999–5578; FMCSA–2003–14504; FMCSA–2003–15268; FMCSA–2005–21254; FMCSA–2007–27897. Their exemptions are applicable as of September 23, 2019, and will expire on September 23, 2021.

As of September 27, 2019, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the vision requirement in the FMCSRs for interstate CMV drivers (72 FR 46261; 72 FR 54972; 74 FR 43223; 76 FR 40445; 76 FR 53710; 76 FR 55469; 78 FR 78477; 83 FR 4537):

Joe M. Flores (NM); and Kenneth D. Perkins (NC)

The drivers were included in docket numbers FMCSA–2007–28695; FMCSA–2011–0141. Their exemptions are applicable as of September 27, 2019, and will expire on September 27, 2021.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: October 24, 2019.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2019–23760 Filed 10–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

[Case ID GLOMAG–15684]

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* 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 (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On September 13, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individuals/Entities

1. KAYIHURA, Kale (a.k.a. MUHWEZI, Edward Kalekezi Kayihura); DOB 26 Dec 1955; nationality Uganda; Gender Male; Passport DA024329 (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for being a foreign person who is or has been a leader or official an entity, including any government entity, that has engaged in, or whose members have engaged in, serious human rights abuse relating to the leader's or official's tenure.

Also designated pursuant to section 1(a)(ii)(B)(1) of E.O. 13818 for being a foreign person who is a current or former government official, or a person acting for or on behalf of such an official, who is responsible for or complicit in, or has directly or indirectly engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to contracts or the extraction of natural resources, or bribery.

Dated: September 13, 2019.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2019–23784 Filed 10–30–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR 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; or 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 Actions

On October 10, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. ESSA, Salim (a.k.a. ESSA, Salim Aziz), Johannesburg, South Africa; DOB 15 Jan 1978; nationality South Africa; Gender Male; Passport M00073786 (South Africa) issued 09 Nov 2012 expires 08 Nov 2022; National ID No. 7801155017084 (South Africa) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(3) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. GUPTA, Atul (a.k.a. GUPTA, Atul Kumar), Dubai, United Arab Emirates; DOB 14 Jun 1968; POB Saharanpur, India; nationality South Africa; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(3) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

3. GUPTA, Ajay (a.k.a. GUPTA, Ajay Kumar), Dubai, United Arab Emirates; DOB 05 Feb 1966; POB Saharanpur, India; nationality India; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(ii)(C)(1) of E.O. 13818 for being a foreign person who is or has been a leader or official of an entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

4. GUPTA, Rajesh (a.k.a. GUPTA, Rajesh Kumar; a.k.a. ''GUPTA, Tony''), Dubai, United Arab Emirates; DOB 05 Aug 1972; POB Saharanpur, India; nationality South Africa; Gender Male; National ID No. 7208056345087 (South Africa) (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(3) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any entity, including any government entity, that has engaged in, or whose members have engaged in, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Dated: October 10, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–23785 Filed 10–30–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR 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; or 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 October 11, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

Individuals

1. AL-CARDINAL, Ashraf Seed Ahmed (a.k.a. HUSSEIN, Ashraf Said Ahmed; a.k.a. HUSSEIN, Ashraf Seed Ahmed; a.k.a. SEED AHMED, Asharaf; a.k.a. SEED AHMED, Ashraff; a.k.a. SEEDAHMED, Ashiraf; a.k.a. ''ALI, Ashraf Sayed''; a.k.a. ''HUSSEIN ALI, Ashraf''), 1 College Yard, Winchester Avenue, London, England NW6 7UA, United Kingdom; 207 Jersey Road, Osterley, London TW7 4RE, United Kingdom; DOB 01 Jan 1957 to 31 Jan 1957; nationality Sudan; Gender Male (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of Executive Order 13818 of December 20, 2017, ''Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption'' (E.O. 13818) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

2. AJING ATER, Kur (a.k.a. AJING ATER KUR, Kur; a.k.a. AJING, Kur), Juba, South Sudan; DOB 02 Jan 1962; POB Equatorial Guinea; nationality South Sudan; Gender Male; Passport B00001010 (South Sudan) expires 11 Aug 2022 (individual) [GLOMAG].

Designated pursuant to section 1(a)(iii)(A)(1) of E.O. 13818 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery.

Entities

1. AL CARDINAL INVESTMENTS CO. LTD (a.k.a. AL-CARDINAL INVESTMENTS COMPANY LIMITED), 201 Kasini Road, Mombasa, Kenya; Juba, South Sudan; Tax ID No. 100104695 (South Sudan) [GLOMAG] (Linked To: AL-CARDINAL, Ashraf Seed Ahmed).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL-CARDINAL, Ashraf Seed Ahmed, a person whose property and interests in property are blocked pursuant to E.O. 13818.

2. ALCARDINAL GENERAL TRADING LIMITED, 207 Jersey Road, Osterley, London TW7 4RE, United Kingdom; Company Number 08227698 (United Kingdom) [GLOMAG] (Linked To: AL-CARDINAL, Ashraf Seed Ahmed).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL-CARDINAL, Ashraf Seed Ahmed, a person whose property and interests in property are blocked pursuant to E.O. 13818.

3. ALCARDINAL GENERAL TRADING LLC, Dubai, United Arab Emirates [GLOMAG] (Linked To: AL-CARDINAL, Ashraf Seed Ahmed).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL-CARDINAL, Ashraf Seed Ahmed, a person whose property and interests in property are blocked pursuant to E.O. 13818.

4. ALCARDINAL PETROLEUM COMPANY LIMITED (a.k.a. ALCARDINAL PETROLEUM CO. LTD), Mombasa, Kenya; Juba, South Sudan [GLOMAG] (Linked To: AL-CARDINAL, Ashraf Seed Ahmed).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL-CARDINAL, Ashraf Seed Ahmed, a person whose property and interests in property are blocked pursuant to E.O. 13818.

5. NILETEL, Juba, South Sudan [GLOMAG] (Linked To: AL-CARDINAL, Ashraf Seed Ahmed).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AL-CARDINAL, Ashraf Seed Ahmed, a person whose property and interests in property are blocked pursuant to E.O. 13818.

6. LOU TRADING AND INVESTMENT COMPANY LIMITED (a.k.a. LOU TRADING AND INVESTMENT CO LTD; a.k.a. LOU TRADING AND INVESTMENT COMPANY LTD), Juba, South Sudan; Tax ID No. 100108046 (South Sudan) [GLOMAG] (Linked To: AJING ATER, Kur).

Designated pursuant to 1(a)(iii)(B) of E.O. 13818 for being owned or controlled by, or for having acted or purported to act for or on behalf of, directly or indirectly, AJING ATER, Kur, a person whose property and interests in property are blocked pursuant to E.O. 13818.

Dated: October 11, 2019.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

[FR Doc. 2019–23786 Filed 10–30–19; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 211 October 31, 2019

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9879]

RIN 1545–BO49

Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations providing guidance on new information reporting obligations under section 6050Y related to reportable policy sales of life insurance contracts and payments of reportable death benefits. The final regulations also provide guidance on the amount of death benefits excluded from gross income under section 101 following a reportable policy sale. The final regulations affect parties involved in certain life insurance contract transactions, including reportable policy sales, transfers of life insurance contracts to foreign persons, and payments of reportable death benefits.

DATES:

Effective Date: These regulations are effective October 31, 2019.

Applicability Date: For dates of applicability, see §§ 1.101–6 and 1.6050Y–1(b).

FOR FURTHER INFORMATION CONTACT: Kathryn M. Sneade, (202) 317–6995 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under sections 101 and 6050Y of the Internal Revenue Code (Code). These amendments (final regulations) implement legislative changes to sections 101 and 6050Y of the Code by sections 13520 and 13522 of Public Law 115–97 (131 Stat. 2054, 2149, 2151), commonly referred to as the Tax Cuts and Jobs Act (TCJA). The final regulations under section 101 amend final regulations under section 101 published in the **Federal Register** on November 26, 1960 (25 FR 11402), as subsequently amended on December 24, 1964 (29 FR 18356), September 27, 1982 (47 FR 42337), and July 26, 2007 (72 FR 41159) (existing regulations).

Section 13520 of the TCJA added section 6050Y to chapter 61 (Information and Returns) of subtitle F of the Code (chapter 61). Section 6050Y imposes information reporting obligations related to certain life insurance contract transactions, including reportable policy sales and payments of reportable death benefits. Section 6050Y provides that each of the returns required by section 6050Y is to be made ''at such time and in such manner as the Secretary shall prescribe.'' The final regulations under section 6050Y implement section 6050Y by specifying the manner in which and time at which the information reporting obligations must be satisfied. The final regulations also provide definitions and rules that govern the application of the information reporting obligations.

Section 13522 of the TCJA amended section 101. New section 101(a)(3) defines the term ''reportable policy sale'' and provides rules for determining the amount of death benefits excluded from gross income following a reportable policy sale. The final regulations under section 101 provide definitions applicable under sections 101 and 6050Y and guidance for determining the amount of death benefits excluded from gross income following a reportable policy sale.

Notice 2018–41, 2018–20 I.R.B. 584, described sections 13520 and 13522 of the TCJA and the regulations the Department of the Treasury (Treasury Department) and the IRS expected to propose under section 6050Y, requested comments on the definition of ''reportable policy sale'' set forth in section 101(a)(3)(B), among other things, and identified the need for regulations providing guidance on the application of section 101(a) following the addition of section 101(a)(3) to the Code. The Treasury Department and the IRS received comments in response to the notice and considered these comments in developing the proposed regulations.

The Treasury Department and the IRS published proposed regulations under sections 101 and 6050Y (REG–103083–18) in the **Federal Register** (84 FR 11009) on March 25, 2019 (proposed regulations). The Treasury Department and the IRS received public comments on the proposed regulations and held a public hearing on June 5, 2019.

After consideration of all of the comments on the proposed regulations, the proposed regulations are adopted as amended by this Treasury decision.

Summary of Comments and Explanation of Revisions

This section discusses the public comments received on the proposed regulations and explains the revisions adopted by the final regulations in response to those comments.

1. Comments and Changes Relating to Applicability Dates

A. Applicability Date for Section 6050Y Regulations

Section 1.6050Y–1 of the proposed regulations provides that the rules in § 1.6050Y–1 through 1.6050Y–4 of the proposed regulations apply to reportable policy sales made and reportable death benefits paid after December 31, 2017, and provides transition relief with respect to reporting required on reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before the date final regulations under section 6050Y are published in the **Federal Register**.

One commenter recommended that reporting obligations under section 6050Y (as well as application of the rules under section 101 relating to section 6050Y) be delayed until 60 days after the date the final regulations are published in the **Federal Register**. Informal comments also were received requesting transition relief (such as delayed reporting) or permanent relief with respect to the reporting obligations under section 6050Y for reportable policy sales and payments of reportable death benefits occurring after December 31, 2017, and before January 1, 2019 (such as waiving the reporting obligations for this period). One commenter requested that at least an additional 30 days be added to the 90-day relief period provided in § 1.6050Y–1(b)(2) and (3) of the proposed regulations for filing returns and furnishing statements required under section 6050Y(b) and (c) and § 1.6050Y–3 and 1.6050Y–4 of the proposed regulations, to give issuers at least 60 days to complete their reporting after the 60-day extension period provided to acquirers of an interest in a life insurance contract under § 1.6050Y–1(b)(1) of the proposed regulations. The commenter asserted that issuers require significantly more time than the 30 days effectively provided to complete Forms 1099–SB, ''Seller's Investment in Life Insurance Contract,'' and 1099–R ''Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.'', and to add new forms (such as Form 1099–SB) to their systems. The commenter stated that issuers must identify policies that are subject to reporting once the Forms 1099–LS, ''Reportable Life Insurance Sale,'' are received as well as enhance systems to track these policies over their life and transmit data between various systems in order to accurately report under sections 6050Y(b) and (c).

In response to these comments, and to give acquirers and issuers ample time to develop and implement reporting systems, the final regulations provide that the rules in §§ 1.6050Y–1 through 1.6050Y–4 of the final regulations apply to reportable policy sales made and reportable death benefits paid after December 31, 2018. *See* § 1.6050Y–1(b) of the final regulations. As a result, no reporting is required under section 6050Y for reportable policy sales made and reportable death benefits paid after December 31, 2017, and before January 1, 2019.

Section 1.6050Y–1(a)(12) of the final regulations defines ''reportable death benefits'' as ''amounts paid by reason of the death of the insured under a life insurance contract that are attributable to an interest in the contract that was transferred in a reportable policy sale.'' Accordingly, because the definition of ''reportable policy sale'' under § 1.6050Y–1(a)(14) of the final regulations applies only to transfers of interests in life insurance contracts made after December 31, 2018, death benefits are ''reportable death benefits'' under § 1.6050Y–1(a)(12) of the final regulations and are subject to the reporting requirements of § 1.6050Y–4 of the final regulations only if the death benefits are paid by reason of the death of the insured under a life insurance contract transferred after December 31, 2018, in a reportable policy sale.

The final regulations also provide transition relief as set forth in the proposed regulations with two modifications. First, the transition relief applies with respect to reportable policy sales made and reportable death benefits paid after December 31, 2018, and on or before October 31, 2019. Second, as requested by one of the commenters, § 1.6050Y–1(b)(3), (4), and (5) of the final regulations provide issuers with at least 120 days after the final regulations are published in the **Federal Register** to file returns and furnish statements under section 6050Y(b) and (c) and §§ 1.6050Y–3 and 1.6050Y–4 of the final regulations. These features of the final regulations are intended to give acquirers and issuers ample time to develop and implement reporting systems.

Noting that 250 or more information returns of a single taxpayer must be filed electronically, one commenter requested waivers from electronic filing for 2018 and 2019 issuer reporting under section 6050Y(b) and (c). The Treasury Department and the IRS have determined not to provide the requested waiver in the final regulations under section 6050Y because procedures already exist for any person required to file 250 or more returns during the calendar year to request a waiver from the requirement to file electronically by showing hardship. *See* § 301.6011–2(c).

B. Applicability Date for Section 101 Regulations

Section 1.101–6(b) of the proposed regulations provides that, for purposes of section 6050Y, § 1.101–1(b), (c), (d), (e), (f), and (g) apply to reportable policy sales made after December 31, 2017, and to reportable death benefits paid after December 31, 2017. Section 1.101–6(b) of the proposed regulations further provides that, for any other purpose, § 1.101–1(b), (c), (d), (e), (f), and (g) apply to transfers of life insurance contracts, or interests therein, made after the date the Treasury decision adopting the proposed regulations as final regulations is published in the **Federal Register**.

Several commenters requested clarification regarding the applicability dates set forth in § 1.101–6(b) of the proposed regulations. Two of these commenters requested that the Treasury Department and the IRS clarify that the rules issued with respect to section 101(a)(3) apply to all transfers of life insurance contracts, or interests therein, made after December 31, 2017, or alternatively, that the Treasury Department and the IRS allow taxpayers to rely upon the rules in § 1.101–1 of the proposed regulations for transactions undertaken after December 31, 2017, and before the date that the Treasury Department adopts final rules. Another commenter recommended that application of the rules under section 101 (as well as the reporting obligations under section 6050Y) be delayed until 60 days after the date the final regulations are published in the **Federal Register**, but suggested that language should be included in the preamble to the final regulations to provide that taxpayers may rely on the proposed regulations for the period prior to the effective date of the final regulations.

Because the final regulations provide that the reporting obligations under section 6050Y apply to reportable policy sales and payments of reportable death benefits occurring after December 31, 2018, for purposes of determining whether a transfer of an interest in a life insurance contract is a reportable policy sale or a payment of death benefits is a payment of reportable death benefits subject to the reporting requirements of section 6050Y and §§ 1.6050Y–1 through 1.6050Y–4 of the final regulations, the definitions and rules set forth in § 1.101–1(b) through (g) of the final regulations apply to reportable policy sales made after December 31, 2018, and to reportable death benefits paid after December 31, 2018. *See* §§ 1.101–6(b) and 1.6050Y–1(b) of the final regulations.

The final regulations provide that, for other purposes, specifically for purposes of determining the amount of the proceeds of life insurance contracts payable by reason of death excluded from gross income under section 101, § 1.101–1(b) through (g) of the final regulations apply to amounts paid by reason of the death of the insured under a life insurance contract, or interest therein, transferred after October 31, 2019. However, under section 7805(b)(7), a taxpayer may apply the rules set forth in § 1.101–1(b) through (g) of the final regulations, in their entirety, with respect to all amounts paid by reason of the death of the insured under a life insurance contract, or interest therein, transferred after December 31, 2017, and on or before October 31, 2019.

2. Comments and Changes Relating to § 1.101–1(b) of the Proposed Regulations

Generally, amounts received under a life insurance contract that are paid by reason of the death of the insured are excluded from gross income for Federal income tax purposes under section 101(a)(1). However, if a life insurance contract or interest therein is sold or otherwise transferred for valuable consideration, the ''transfer for value rule'' set forth in section 101(a)(2) limits the excludable portion of the amount received by reason of the death of the insured to the sum of the consideration paid for the contract or interest therein and any premiums and other amounts subsequently paid by the transferee with respect to the contract or interest therein. Section 101(a)(2)(A) and (B) provide two exceptions to this transfer for value rule. One exception (the ''certain person exception'') applies to transfers to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (''certain persons''). *See* section 101(a)(2)(B). The other exception (the ''carryover basis exception'') applies if the transferee's basis for determining gain or loss in the life insurance contract or interest therein is determined in whole or in part by reference to the transferor's basis in the contract or interest therein. *See* section 101(a)(2)(A). Under section 101(a)(3), which was added by section 13522 of the TCJA, neither of these exceptions to the transfer for value rule apply in the case of a transfer of a life insurance contract, or any interest therein, that is a reportable policy sale.

Section 1.101–1(b)(1)(i) of the proposed regulations provides the general transfer for value rule set forth in section 101(a)(2). Section 1.101–1(b)(1)(ii) of the proposed regulations sets forth the exceptions from this general rule for transfers for valuable consideration that are not reportable policy sales (the certain person exception and carryover basis exception provided in section 101(a)(2)). Section 1.101–1(b)(2) of the proposed regulations provides rules regarding gratuitous transfers of interests in life insurance contracts, as well as transfers of only a part of an interest in a life insurance contract and bargain sales of an interest in a life insurance contract (that is, transfers that are in part gratuitous and in part transfers for valuable consideration). This section of this Summary of Comments and Explanation of Revisions discusses comments received on § 1.101–1(b) of the proposed regulations.

A. Transfers to Certain Persons

One commenter on the proposed regulations described a life insurance policy subject to the section 101(a)(2) transfer for value rule as ''tainted,'' in that death benefits paid under the policy are no longer fully excluded from income under section 101(a)(1). The commenter asked that the final regulations provide for removal of the ''taint'' by a transfer to the insured, as was permitted before the TCJA, and asked for clarification regarding whether a transfer of a policy to the insured must be a sale for fair market value to remove the ''taint'' of a transfer for valuable consideration. The commenter suggested that mistakes happen, including the mistake of not seeking tax advice from a professional who knows the section 101 rules, and that taxpayers should be able to take corrective measures to remove this ''taint.'' The commenter noted that the insured may no longer have a business or other need for the current transferee to own the policy and may wish to hold the policy to protect the insured's family, or the insured may regret selling the policy and wish to buy the policy back after the policy was transferred in a reportable policy sale. The commenter pointed out that § 1.101–1(b)(3)(ii) of the existing regulations (not yet revised to reflect TCJA changes to section 101) currently provides such a corrective measure, allowing the ''taint'' to be removed by a transfer of the policy to certain persons. However, § 1.101–1(b)(1)(ii)(B)(*2*) of the proposed regulations makes this corrective measure unavailable to the extent that the transfer to those certain persons was preceded by a transfer of the policy for valuable consideration in a reportable policy sale. The commenter also noted that § 1.101–1(b)(3)(ii) of the existing regulations does not require the corrective transfer to be a sale for fair market value, and that § 1.101–1(b)(1)(ii)(B)(*1*) of the proposed regulations does not impose such a requirement. The commenter suggested that *Example 1, Example 2,* and *Example 3* in § 1.101–1(g)(1), (2), and (3) of the proposed regulations, read together, however, appear to require that the transfer to the insured be a sale for fair market value to clear the ''taint'' of a prior transfer for valuable consideration. The commenter asked for clarification on this point. The commenter suggested that the transfer to the insured be available as a corrective measure even if that transfer was preceded by a reportable policy sale, and, to prevent any possible abuse, that the insured be required to pay fair market value if the policy previously had been transferred in a reportable policy sale.

Section 1.101–1(b)(1)(ii)(B)(*1*) of the proposed regulations does not explicitly require that the valuable consideration for a transfer of an interest in a life insurance contract be equal to the interest's fair market value, but, in the case of a bargain sale, the rules implementing the provisions of section 101 are applied separately to the sale and gift portions of the transferred interest. Under § 1.101–1(b)(2)(iii) of the proposed regulations, part of the transfer in a bargain sale is treated as a gratuitous transfer subject to § 1.101–1(b)(2)(i) of the proposed regulations. *Example 1, Example 2,* and *Example 3* in § 1.101–1(g)(1), (2), and (3) of the proposed regulations are intended to illustrate the application of the rules implementing the changes made by the TCJA. For the sake of simplicity, the consideration in these examples equals fair market value, so the bargain sale rules do not apply. The final regulations include an example that illustrates the application of the bargain sale rules. *See Example 7* in § 1.101–1(g)(7) of the final regulations.

In response to the comments received, the final regulations provide for a fresh start with respect to an interest gratuitously transferred to the insured, provided the interest has not previously been transferred for value in a reportable policy sale. *See* § 1.101–1(b)(2)(i) of the final regulations. *Example 2* in § 1.101–1(g)(2) of the final regulations illustrates the application of this rule. The final regulations also provide for a fresh start with respect to an interest (or portion thereof) that is transferred to the insured following a reportable policy sale of the interest for valuable consideration, but only to the extent that the insured pays fair market value for the interest and only with respect to the interest (or relevant portion thereof) transferred to the insured that is not subsequently transferred in a transfer for valuable consideration or in a reportable policy sale. *See* § 1.101–1(b)(1)(ii)(B)(*3*) of the final regulations. The application of this rule is illustrated in revised *Example 6,* new *Example 7,* new *Example 8,* and new *Example 9* in § 1.101–1(g)(6), (g)(7), (g)(8), and (g)(9) of the final regulations.

B. Gratuitous Transfers

Under § 1.101–1(b)(2)(i) of the proposed regulations, the amount of the policy proceeds attributable to a gratuitously transferred interest in a life insurance policy that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount attributable to the gratuitously transferred interest that would have been excludable by the transferor if the transfer had not occurred, and the premiums and other amounts subsequently paid by the transferee with respect to the interest. Unlike the existing regulations, the proposed regulations do not provide a special rule for a gratuitous transfer made by or to certain persons.[1] As explained in the preamble to the proposed regulations, such a rule is not required by section 101(a), and a special rule for these transfers could be subject to abuse. *See* 84 FR 11009, 11017.

Section 1.101–1(b)(2)(i) of the proposed regulations applies to any gratuitous transfer of an interest in a life insurance contract, ''including a reportable policy sale that is not for valuable consideration.'' One commenter requested that this language be deleted, asserting that including gratuitous transfers within the definition of reportable policy sales is

[1] Under § 1.101–1(b)(2) of the existing regulations, in the case of a gratuitous transfer, by assignment or otherwise, of a life insurance policy or any interest therein, the amount of the proceeds attributable to such policy or interest that is excludable from the transferee's gross income under section 101(a) is, as a general rule, limited to the sum of the amount which would have been excludable by the transferor if no such transfer had taken place and any premiums and other amounts subsequently paid by the transferee with respect to the interest. However, if the gratuitous transfer in question is made by or to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, the entire amount of the proceeds attributable to the policy or interest transferred is excludable from the transferee's gross income.

not consistent with section 101.[2] The commenter noted that the title of section 101(a)(3) is ''Exception to valuable consideration rules for commercial transactions,'' which the commenter asserted makes clear that a reportable policy sale can occur only if there has been a transfer for valuable consideration. The commenter further asserted that the provisions of section 101(a)(3)(A) and (B) limit the relevance of reportable policy sales to those situations in which a taxpayer needs to determine whether one of the section 101(a)(2) exceptions applies and, because those exceptions are never relevant for gratuitous transfers, reportable policy sales are never relevant for gratuitous transfers.

The TCJA added section 101(a)(3)(A) to provide that the two pre-existing exceptions to the transfer for value rules no longer apply if the transfer is a reportable policy sale. Section 101(a)(3)(B) defines a reportable policy sale as any acquisition of an interest in a life insurance contract in the absence of the described relationship between the acquirer and insured. Although the availability of exceptions from the transfer for value rules is not directly relevant to a gratuitous transfer standing alone, the acquisition of an interest in a contract by an acquirer that does not have the described relationship with the insured, including a gratuitous transfer, may affect the exclusion of the policy proceeds from gross income under section 101(a) and the regulations thereunder if there are subsequent transfers. Consistent with the statutory language, the definition of a reportable policy sale in the final regulations does not exclude gratuitous transfers.

3. Comments and Changes Relating to § 1.101–1(c) of the Proposed Regulations

Under section 101(a)(3)(B) and § 1.101–1(c)(1) of the proposed regulations, a reportable policy sale is, as a general matter, any direct or indirect acquisition of an interest in a life insurance contract if the acquirer has, at the time of the acquisition, no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in the life insurance contract. Exceptions to the definition of reportable policy sale for transfers between certain related entities are provided in § 1.101–1(c)(2)(i) and (ii) of the proposed regulations. Section 1.101–1(c)(2)(iii) of the proposed regulations sets forth exceptions from the definition of reportable policy sales for certain indirect acquisitions. This section of this Summary of Comments and Explanation of Revisions discusses comments received on § 1.101–1(c) of the proposed regulations.

A. Pre-TCJA Acquisitions

Two commenters on the proposed regulations requested clarification regarding the application of § 1.101–1(c)(2)(iii)(A) with respect to the indirect acquisition of an interest in a life insurance contract if the entity that directly holds the interest acquired the interest before January 1, 2018 (that is, before the existence of any reporting requirements under section 6050Y(a)). Both commenters recommended that an exception from the definition of reportable policy sale be provided with respect to the indirect acquisition of an interest in a life insurance contract by a person if the partnership, trust, or other entity that directly holds the interest in the life insurance contract acquired the interest before January 1, 2018. One commenter recommended that, if the requested exception is not provided, the partnership, trust, or other entity in which the investment interest is purchased should be permitted to undertake the applicable reporting, instead of requiring the investor to navigate the complexities of the reporting requirements. This commenter also suggested that, if the requested exception is provided, the partnership, trust, or other entity could file an information return with the IRS for its portfolio of policies acquired prior to January 1, 2018, as a transition solution. However, the other commenter suggested that the partnership, trust, or other entity may not have tracked or retained information sufficient to satisfy the reporting requirements under section 6050Y with respect to interests acquired before January 1, 2018.

In response to these comments, § 1.101–1(c)(2)(iii)(A) of the final regulations provides an exception from the definition of reportable policy sale with respect to the indirect acquisition of an interest in a life insurance contract by a person if a partnership, trust, or other entity in which an ownership interest is being acquired directly or indirectly holds the interest in the life insurance contract and acquired that interest before January 1, 2019, or acquired that interest in a reportable policy sale reported in compliance with section 6050Y(a) and § 1.6050Y–2.[3]

B. Additional Requests for Expanded Indirect Acquisition Exceptions

One commenter on the proposed regulations identified the existence of a possible technical issue with § 1.101–1(c)(2)(iii)(A) of the proposed regulations, which provides an exception from reportable policy sale status for certain indirect acquisitions. The commenter noted that, under this provision, the indirect acquisition of an interest in a life insurance contract is not a reportable policy sale if the partnership, trust, or other entity that directly holds the interest in the life insurance contract acquired the interest in a reportable policy sale that was reported in compliance with section 6050Y(a) and the regulations thereunder. The commenter described a fact pattern in which legal title to a life insurance contract is held by a nominee (for example, a securities intermediary) on behalf of a partnership, trust, or other entity (for example, an investment fund). The commenter concluded that, in this fact pattern, the exception in § 1.101–1(c)(2)(iii)(A) of the proposed regulations cannot apply to an investor in the partnership, trust, or other entity because the investor's ownership interest is in the partnership, trust, or other entity (which does not hold a direct interest in the life insurance contract), not in the nominee (which directly holds the legal interest in the life insurance contract). The commenter also recommended that § 1.101–1(c)(2)(iii)(A) be revised to clarify that the exception applies if reporting under section 6050Y is done by either the legal owner of the life insurance contract (such as a securities intermediary holding legal title as a nominee) or the beneficial owner of the life insurance policy that controls the life insurance contract under a securities account agreement (such as an investment fund).

In the fact pattern described in the comment letter, the partnership, trust, or other entity in which the investor acquires an ownership interest holds an interest in the life insurance contract. An interest in a life insurance contract is not limited to legal ownership of the

[2] The commenter also asserted that this language creates unnecessary and confusing reporting requirements under section 6050Y for gift transfers and is inconsistent with the statutory language, which, according to the commenter, indicates that a reportable policy sale must be a transfer for value. The commenter's concerns about reporting are discussed in section 10.A of this Summary of Comments and Explanation of Revisions.

[3] As discussed in section 1.A of this Summary of Comments and Explanation of Revisions, the final regulations provide that the reporting obligations under section 6050Y apply to reportable policy sales and payments of reportable death benefits occurring after December 31, 2018. *See* § 1.6050Y–1(b) of the final regulations. Section 3.B of this Summary of Comments and Explanation of Revisions describes changes adopted in § 1.101–1(c)(2)(iii)(A) of the final regulations in response to other comments requesting expanded indirect acquisition exceptions.

contract. Instead, any person that acquires an enforceable right to receive all or a part of the proceeds of the life insurance contract or acquires the right to any other economic benefits of the policy as described in § 20.2042–1(c)(2) acquires an interest in the life insurance contract under § 1.101–1(e)(1) of the proposed regulations.

The partnership, trust, or other entity described by the commenter presumably would hold such an interest directly, even though legal title to the life insurance contract is held by a nominee or other intermediary. By acquiring an interest in the partnership, trust, or other entity, the investor indirectly would acquire a beneficial interest in the life insurance contract. The exception in § 1.101–1(c)(2)(iii)(A) of the proposed regulations would apply to this indirect acquisition if the partnership, trust, or other entity reported its acquisition of the beneficial interest in the contract in compliance with section 6050Y(a). The commenter's recommended revision to § 1.101–1(c)(2)(iii)(A) of the proposed regulations therefore is not adopted in the final regulations.

The commenter also proposed that § 1.101–1(c)(2)(iii)(A) of the proposed regulations be modified to apply if ''the partnership, trust, or other entity that directly *or indirectly* holds the interest in the life insurance contract acquired that interest in a reportable policy sale reported in compliance with section 6050Y(a) and § 1.6050Y–2.'' This change is adopted in the final regulations, which also clarify that the partnership, trust, or other entity must be a partnership, trust, or other entity in which an ownership interest is being acquired. As modified, the exception applies to the indirect acquisition of an interest in a life insurance contract by a person acquiring an ownership interest in a partnership, trust, or other entity that holds the interest in the life insurance contract, regardless of whether the person's ownership interest in the partnership, trust, or other entity that reported its acquisition of the interest in the life insurance contract is direct or indirect and regardless of whether that partnership, trust, or other entity acquired its interest in a direct or indirect acquisition, provided the partnership, trust, or other entity acquired its interest in a reportable policy sale reported in compliance with section 6050Y(a) and § 1.6050Y–2 or, as discussed in section 3.A of this Summary of Comments and Explanation, acquired its interest before January 1, 2019.

One commenter on the proposed regulations reiterated its previous request, made in comments on Notice 2018–41, that an exception from the reporting requirements of section 6050Y be provided with respect to an indirect acquisition of an interest in a life insurance contract by any investor that acquires a 5 percent or less economic and voting interest in an investment vehicle that holds, directly or indirectly, life insurance policies, with the added proviso that the investor must not be an officer or director of the investment vehicle. Section 1.101–1(c)(2)(iii)(B) of the proposed regulations provides that the indirect acquisition of an interest in a life insurance contract is not a reportable policy sale if the acquirer and his or her family members own, in the aggregate, 5 percent or less of the partnership, trust, or other entity that directly holds the interest in the life insurance contract, but this exception applies only if, immediately before the acquisition, no more than 50 percent of the gross value of the assets of the partnership, trust, or other entity that directly holds the interest in the life insurance contract consists of life insurance contracts.

The final regulations do not adopt the proposed change because, if more than 50 percent of an entity's asset value is life insurance contracts, investment in life insurance contracts is likely the entity's primary business activity, and it is reasonable to expect even small investors to be able to determine the primary activity of the business they are investing in, regardless of whether they are also officers or directors of the entity. In addition, any investor that does not qualify for the exception set forth in § 1.101–1(c)(2)(iii)(B) of the final regulations because more than 50 percent of the gross value of the assets of the partnership, trust, or other entity that directly holds the interest in the life insurance contract consists of life insurance contracts may still qualify for the exception set forth in § 1.101–1(c)(2)(iii)(A) of the final regulations if a partnership, trust, or other entity that directly or indirectly holds the interest in the life insurance contract acquired the interest before January 1, 2019, or acquired that interest in a reportable policy sale reported in compliance with section 6050Y(a) and § 1.6050Y–2.

Separately, § 1.101–1(c)(2)(iii)(B) of the final regulations clarifies that, if the partnership, trust, or other entity in which the acquirer is directly acquiring an ownership interest indirectly holds an interest in one or more life insurance contracts, (i) the assets of the partnership, trust, or other entity in which the ownership interest is being acquired are tested to determine whether more than 50 percent of the gross value of the assets of that partnership, trust, or other entity consists of life insurance contracts, and (ii) the ownership interest in that partnership, trust, or other entity held by the acquirer and his or her family members after the acquisition is tested to determine whether they hold more than a 5 percent ownership interest in the entity. The assets of the partnership, trust, or other entity that directly holds the interest in the life insurance contract and the interest in that partnership, trust, or other entity held by the acquirer and his or her family member are tested only if the acquirer is directly acquiring an ownership interest in that partnership, trust, or other entity.

4. Comments and Changes Relating to § 1.101–1(e) of the Proposed Regulations

Section 1.101–1(e) of the proposed regulations defines the terms used to determine whether there has been an acquisition of an interest in a life insurance contract. This section of this Summary of Comments and Explanation of Revisions discusses comments that generally relate to the definitions in § 1.101–1(e) of the proposed regulations.

A. Interest in a Life Insurance Contract

Under § 1.101–1(e)(1) of the proposed regulations, an ''interest in a life insurance contract'' is generally defined as the interest held by any person that has taken title to or possession of the life insurance contract, in whole or part, for state law purposes, and the interest held by any person that has an enforceable right to receive all or a part of the proceeds of the life insurance contract or to any other economic benefits of the policy as described in § 20.2042–1(c)(2). Section 1.101–1(e)(2) of the proposed regulations provides that the term ''transfer of an interest in a life insurance contract'' means the transfer of any interest in the life insurance contract, including any transfer of title to, possession of, or legal or beneficial ownership of the life insurance contract itself. Under § 1.101–1(e)(3) of the proposed regulations, the acquisition of an interest in a life insurance contract may be direct or indirect, as described in § 1.101–1(e)(3)(i) (defining ''direct acquisition of an interest in a life insurance contract'') and (ii) (defining ''indirect acquisition of an interest in a life insurance contract'').

One commenter on the proposed regulations suggested that, in a life settlement transaction in which a securities intermediary holds legal title to the acquired life insurance contract as nominee for the new beneficial owner of the life insurance contract pursuant to a

securities account agreement, the new beneficial owner does not acquire an interest in the life insurance contract under § 1.101–1(e)(3) of the proposed regulations, even though the new beneficial owner controls and enjoys all of the benefits of the life insurance policy, because the new beneficial owner neither acquires legal title to the life insurance policy nor holds an ownership interest in the securities intermediary holding legal title. However, under the proposed regulations, the new beneficial owner acquires an interest in the life insurance contract because it acquires control of all of the benefits of the life insurance policy. Any person that acquires an enforceable right to receive all or a part of the proceeds of the life insurance contract or to any other economic benefits of the policy as described in § 20.2042–1(c)(2) acquires an interest in the life insurance contract under § 1.101–1(e)(1) of the proposed regulations. In the situation described in the comment, after the life settlement transaction, there are two persons who have an interest in the life insurance contract at issue: The legal title holder and the new beneficial owner. *Example 16* of § 1.101–1(g)(16) of the final regulations illustrates a reportable policy sale in which one acquirer acquires legal title and another acquires beneficial ownership.

B. Section 1035 Exchanges

Section 1.101–1(e)(2) of the proposed regulations provides that the issuance of a life insurance contract to a policyholder, other than the issuance of a policy in an exchange pursuant to section 1035, is not a transfer of an interest in a life insurance contract. The preamble to the proposed regulations requests comments on whether the proposed regulations should include additional provisions regarding the treatment of section 1035 exchanges of life insurance contracts. *See* 84 FR 11009, 11019.

One commenter on the proposed regulations recommended that no additional provisions be added to the proposed regulations for this circumstance. The commenter stated that the acquirer of a life insurance contract in a reportable policy sale would be unlikely to meet the requirements for an insurable interest in the insured and, consequently, would not be able to make a section 1035 exchange. In support of this position, the commenter explained that, in order for an exchange of policies to qualify as a section 1035 exchange, the owner of the new contract must be the same person who owned the old contract at the time of the exchange. The commenter also stated that an insurer can issue a new policy only when that new policy will meet state insurance laws requiring an insurable interest in the insured, and an insurable interest is generally based on a close familial relationship with the insured or a lawful and substantial financial interest in the continued life of the insured.

Another commenter recommended that the statement in § 1.101–1(e)(2) of the proposed regulations regarding section 1035 exchanges be deleted or amended to eliminate any suggestion that such transactions, by themselves, can lead to reportable policy sales. The commenter indicated that the statement suggests that the mere issuance of a new life insurance policy in a section 1035 exchange could (or perhaps would) give rise to a reportable policy sale and asserted that such treatment is unnecessary and would be inappropriate.

In support of this position, the commenter explained that, mechanically, a section 1035 exchange typically involves the assignment by the policyholder of the existing policy to the carrier, followed by the surrender of the policy and the application of the cash proceeds as a premium under a new policy issued to the same owner on the same insured's life. The commenter remarked that, although the new carrier acquires an interest in the old policy, that interest is immediately extinguished. The commenter also remarked that treating the exchange as a reportable policy sale is not necessary to serve any information collection purpose in the case of an exchange involving a new, different carrier, because the exchange must be reported to the IRS and the policyholder on a Form 1099–R. Additionally, the commenter suggested that, even if an exchange were viewed as potentially meeting the definition of a reportable policy sale, the new carrier should be viewed as having a substantial business or financial relationship with the insured, considering that the carrier just issued a new policy on that individual's life.

The commenter suggested that, if there are specific transactions involving section 1035 exchanges that fall outside the normal situation described by the commenter, and the Treasury Department and the IRS determine that such atypical scenarios might give rise to reportable policy sales, the scope of any provision addressing those transactions should be limited to those particular transactions, so that doubt will not be cast on everyday policy exchanges.

The reference in § 1.101–1(e)(2) of the proposed regulations to section 1035 exchanges was not intended to imply that the transfer of a policy to an insurance company in a section 1035 exchange would be a reportable policy sale. In response to the comments received on section 1035 exchanges, § 1.101–1(c)(2)(iv) of the final regulations provides that the acquisition of a life insurance contract by an insurance company in an exchange pursuant to section 1035 (such as the acquisition that would result from the assignment by the policyholder of the existing policy to the insurance company in exchange for the issuance of a new life insurance contract) is not a reportable policy sale.

The concern prompting the reference in § 1.101–1(e)(2) of the proposed regulations to section 1035 exchanges related to the possibility that a policy transferred in a reportable policy sale subsequently could be exchanged for a new policy in an exchange pursuant to section 1035 and that, absent the reference in § 1.101–1(e)(2), the death benefits paid under the new policy might not be reported under section 6050Y(c). Under the final regulations, which adopt § 1.101–1(e)(2) of the proposed regulations as proposed, the issuance of a new life insurance contract to a policyholder in an exchange pursuant to section 1035 is a transfer of an interest in a life insurance contract (the newly issued life insurance contract) to the policyholder, which results in a direct acquisition of an interest in a life insurance contract (the newly issued life insurance contract) by the policyholder. *See* § 1.101–1(e)(2) and (3)(i) of the final regulations. The tax treatment of the newly issued life insurance contract under section 101 is not affected by the tax treatment of the policy for which it was exchanged. However, if the policyholder's acquisition of the newly issued contract constitutes a reportable policy sale, the rules generally applicable to reportable policy sales under section 101 and the regulations thereunder apply to determine the effect of the reportable policy sale on the tax treatment of the newly issued policy under section 101, and the rules generally applicable to reportable policy sales under section 6050Y and the regulations thereunder apply to determine whether section 6050Y reporting is required with respect to the reportable policy sale. The final regulations provide that the acquisition of a newly issued life insurance contract by a policyholder in an exchange pursuant to section 1035 is not a reportable policy sale, if the

policyholder has a substantial family, business, or financial relationship with the insured, apart from its interest in the life insurance contract, at the time of the exchange. *See* § 1.101–1(c)(2)(v) of the final regulations. If no such relationship exists at the time of the section 1035 exchange, the exchange is a reportable policy sale under § 1.101–1(c)(1) of the final regulations. The Treasury Department and the IRS have determined that no exception from the definition of reportable policy sale should apply in this situation. Based on comments received, this situation should rarely arise due to state law insurable interest requirements.

Should this situation arise, however, the policyholder, as an acquirer, must furnish the statement to the issuer required by section 6050Y(a)(2) and § 1.6050Y–2(d)(2) of the final regulations (the reportable policy sale statement or ''RPSS''). *See* § 1.6050Y–2(f)(3) of the final regulations. In this case, the statement must be furnished to the issuer that issues the new life insurance contract. *See* § 1.6050Y–1(8)(ii) of the final regulations. However, the policyholder is not required to file the information return required by section 6050Y(a)(1) and § 1.6050Y–2(a) of the final regulations. *See* § 1.6050Y–2(f)(3). Also, because the policyholder is not only the acquirer, but is also the reportable policy sale payment recipient and the seller with respect to the reportable policy sale, the policyholder is not required to furnish the statement generally required to be furnished to the reportable policy sale payment recipient under § 1.6050Y–2(d)(1) of the final regulations. *See* § 1.6050Y–1(a)(15), (16), and (18) of the final regulations; § 1.6050Y–2(f)(3) of the final regulations. Additionally, although the issuer that issues the new life insurance contract receives an RPSS, it is not required to file a return or furnish a statement to the seller under section 6050Y(b) and § 1.6050Y–3 because the seller does not need the information that would be provided on the statement to properly report a section 1035 exchange. *See* § 1.6050Y–3(f)(3) of the final regulations. However, if the issuer makes a payment of reportable death benefits under the newly issued life insurance contract, the issuer must report that payment under section 6050Y(c) and § 1.6050Y–4 of the final regulations, unless an exception under § 1.6050Y–4 applies.

C. Ordinary Course Trade or Business Acquisitions

Several commenters on Notice 2018–41 suggested that acquisitions of life insurance contracts, or interests therein, in ordinary course business transactions in which one trade or business acquires another trade or business that owns life insurance on the lives of former employees or directors should not be reportable policy sales. The proposed regulations include provisions that exclude certain of these transactions from the definition of reportable policy sales. These provisions include the definition of substantial business relationship in § 1.101–1(d)(2) of the proposed regulations, the special rule for indirect acquisitions in § 1.101–1(d)(4)(i) of the proposed regulations, and the definition of the term ''indirect acquisition of an interest in a life insurance contract'' in § 1.101–1(e)(3)(ii) of the proposed regulations.

Two commenters on the proposed regulations suggested that ordinary course business transactions (such as mergers or acquisitions) involving businesses that own life insurance contracts were not intended by Congress to fall within the meaning of a reportable policy sale and noted that the rules describing a reportable policy sale in the proposed regulations are very helpful in confirming that narrow intent. Another commenter stated that, although the legislative history does not elaborate on the intent of section 101(a)(3)(A) (which limits the carryover basis exception to transfers for value that fall outside the definition of reportable policy sale in section 101(a)(3)(B)), it is widely understood to be aimed at ensuring enforcement of the transfer for value rule with respect to newer forms of speculative transfers involving life insurance policies, rather than imposing new restrictions on legitimate business uses of life insurance. The commenter asserted that the preamble to the proposed regulations implicitly acknowledges this by stating that some provisions are meant to ensure that ''certain ordinary course business transactions'' will not be treated as reportable policy sales. In response to these comments supporting the ordinary course exclusions from the definition of reportable policy sales in the proposed regulations, those provisions are retained in the final regulations.

One commenter on the proposed regulations requested that the proposed regulations be revised to provide that any transfer of an interest in a life insurance contract as part of a tax-free reorganization conducted in the ordinary course of business is eligible for an exception to being treated as a reportable policy sale under section 101(a)(3)(B), regardless of whether the target survives the reorganization transaction. In this regard, the commenter recommended revising § 1.101–1(e)(3)(ii) of the proposed regulations, which defines the term ''indirect acquisition of an interest in a life insurance contract,'' to specifically cover all transactions involving the acquisition of a C corporation that qualify for tax-free reorganization treatment unless, immediately prior to the acquisition, more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts. The commenter also recommended adding an example to illustrate this point. The commenter concluded that § 1.101–1(e)(3)(ii) of the proposed regulations applies in the case of acquisition transactions in which the corporate existence of the target survives the acquisition (for instance, a taxable stock sale with no section 338 election, a reverse subsidiary merger structured to qualify as a tax-free reorganization under section 368(a)(2)(E), or a tax-free reorganization under section 368(a)(1)(B)) and appears not to apply in the case of acquisition transactions in which the target corporation is merged with and into the acquiring corporation and the target's separate corporate existence is terminated as of the merger date (for instance, a tax-free reorganization under section 368(a)(1)(A), (C), or (D) or section 368(a)(2)(D)).

Under § 1.101–1(e)(3)(ii) of the proposed regulations, an indirect acquisition of an interest in a life insurance contract occurs when a person (acquirer) becomes a beneficial owner of a partnership, trust, or other entity that holds (whether directly or indirectly) the interest in the life insurance contract. However, for this purpose, the term ''other entity'' does not include a C corporation, unless more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts immediately before the indirect acquisition. Accordingly, the acquisition of ownership of a C corporation that owns an interest in a life insurance contract is not an indirect acquisition of such an interest, and therefore is not a reportable policy sale, if no more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts. The commenter thus is correct that § 1.101–1(e)(3)(ii) of the proposed regulations applies only in the case of indirect acquisitions of life insurance contracts (which include a tax-free reorganization in which the corporate existence of the target that holds an interest in a life insurance contract survives the acquisition), and not direct acquisitions

of life insurance contracts (which include a tax-free reorganization in which the separate corporate existence of a target that holds an interest in a life insurance contract is terminated).

The commenter asserted that this disparate treatment (between policies transferred directly in tax-free asset reorganizations and indirectly in stock reorganizations) is inappropriate and not warranted as a matter of good tax policy. The commenter further asserted that all tax-free reorganizations should be eligible for an exception similar to the exception provided in § 1.101–1(e)(3)(ii) of the proposed regulations. The commenter noted that the proposed regulations provide certain exceptions that could apply to tax-free mergers in which the target goes out of existence and the surviving corporation continues to hold the life insurance contract, but asserted that having to determine in these types of tax-free mergers whether a particular exception applies on a contract-by-contract basis is unduly complex and a trap for the unwary. The commenter further asserted that this burdensome exercise does not appear to serve the purpose of the change in the statute, which is to address abusive transactions and a failure to report income when appropriate.

The final regulations do not adopt the commenter's recommendation regarding amendments to § 1.101–1(e)(3)(ii). The exception in § 1.101–1(e)(3)(ii) of the proposed regulations is not targeted to acquisitions of C corporation stock in tax-free reorganizations, but instead is a relatively broad exception that applies to the acquisition of any interest in a C corporation, provided that no more than 50 percent of the C corporation's gross asset value consists of life insurance contracts. This exception is one of a number of exceptions in the proposed regulations intended to provide relief for indirect acquisitions in which acquisition of the underlying life insurance contract interest likely was not a significant motivating factor for the acquisition. The final regulations preserve the different results for stock and asset reorganizations because there are significant differences between these two types of reorganizations, and the Treasury Department and the IRS have concluded that those distinctions justify different treatment for purposes of sections 101 and 6050Y. In addition, no exception is provided in the final regulations that excludes reorganizations from the definition of a reportable policy sale. Rather, there are exclusions based on the application of the definitions of substantial relationships as mandated by the statute and exceptions for certain indirect acquisitions that may produce different results in different types of reorganizations.

One reason for treating indirect and direct acquisitions of life insurance contract interests differently is that an acquirer of an interest in an entity may have limited ability to determine what types of assets an entity owns, or to obtain from the entity information necessary to report on the entity's assets. Thus, for example, the proposed regulations provide a reportable policy sale exception for the acquisition of a small (five percent or less) interest in any entity, unless more than 50 percent of the entity's gross asset value consists of life insurance contracts. *See* § 1.101–1(c)(2)(iii)(B) of the proposed regulations. In addition, in the case of a C corporation, a corporate level income tax applies to corporate earnings in addition to income tax on distributions at the shareholder level. As a result, C corporations are not frequently used as vehicles for investing in life insurance contracts covering insureds with respect to which the corporation does not have a substantial business, financial, or family relationship at the time the contract is issued. For this reason, the proposed regulations provide a more generous exception for acquisitions of interests in a C corporation, provided that no more than 50 percent of the C corporation's gross asset value consists of life insurance contracts, as determined under § 1.101–1(f)(4) of the proposed regulations. *See* § 1.101–1(e)(3)(ii) of the proposed regulations.[4]

After the TCJA amendments to section 101, the fact that the transfer of a life insurance contract occurs in a carryover basis transaction qualifying under section 101(a)(2)(A) (such as a tax-free reorganization) is no longer sufficient to avoid the limit on the amount of life insurance policy proceeds that are excludable from gross income under the section 101(a)(1) transfer for value rule. Rather, Congress provided that the carryover basis exception in section 101(a)(2)(A) does not apply unless the transferee also has a substantial family, business, or financial relationship with the insured. Under the proposed regulations, in the case of life insurance contracts transferred in an asset reorganization, the surviving corporation could, for example, establish that a substantial business relationship exists by determining that the life insurance policies transferred in the reorganization cover insureds who are key persons of, or materially participate in, an active trade or business of the acquirer as owners, employees, or contractors. *See* § 1.101–1(d)(2)(i) of the proposed regulations. The surviving corporation could also establish that a substantial business relationship exists by determining that the life insurance contracts cover insureds who either (i) are officers, directors or employees of the business being acquired immediately before the acquisition or (ii) previously were directors, highly compensated employees or highly compensated individuals within the meaning of section 101(j)(2)(A)(ii) and the surviving corporation will have ongoing financial obligations with respect to these individuals after the acquisition (such as retirement obligations). *See* § 1.101–1(d)(2)(ii) of the proposed regulations. Corporations must track this data annually for purposes of section 101(j) corporate owned life insurance (COLI) reporting obligations and related recordkeeping, so it should not be overly burdensome to obtain this information. Additionally, in an asset reorganization, it would in any case be necessary to review the life insurance contracts directly acquired on a contract-by-contract basis in order to update insurance contract ownership and beneficiary information with the relevant insurance company.

It is possible that an asset acquisition could result in the loss of the complete exclusion of death benefits from income with respect to some COLI policies that cover insureds who are not employed by the target immediately before the acquisition or employed by the acquirer after the acquisition and with respect to whom the acquirer has no ongoing obligations to pay retirement or other benefits. However, the Treasury Department and the IRS have not identified any clear policy reason why that tax benefit should carry over when ownership of the insurance policy is transferred. The indirect transfer exceptions in the proposed regulations that could permit COLI benefits to be retained with respect to some policies covering no-longer-connected officers, directors, and employees apply only when ownership of the insurance policy is not transferred, such as in a stock reorganization. These exceptions reflect a weighing by the Treasury Department and the IRS of information collection

[4] Section 1.101–1(f)(4) of the final regulations clarifies that the gross value of assets means, with respect to any entity, the fair market value of the entity's assets, including assets beneficially owned by the entity under § 1.101–1(f)(1) of the final regulations as a beneficial owner of a partnership, trust, or other entity. Accordingly, the 50 percent test in § 1.101–1(e)(3)(ii) of the final regulations applies to a C corporation's assets and the assets held by any partnership, trust, or other entity beneficially owned by the C corporation.

burdens versus potential for abuse in indirect acquisition scenarios.

The commenter also recommended modifying the language in *Example 8* of § 1.101–1(g)(8) of the proposed regulations to clarify that the example is intended only to illustrate application of the rule under § 1.101–1(d) of the proposed regulations and is not intended to imply that, without the insured's current employment by the acquired corporation, the transaction would be treated as a reportable policy sale. *Example 8* of § 1.101–1(g)(8) of the proposed regulations describes a tax-free reorganization in which a corporation transfers to an acquiring corporation its active trade or business and a life insurance policy on the life of a current employee that was acquired from the employee. The example concludes that, because the insured was an employee of the target corporation at the time of the tax-free reorganization, and the acquiring corporation carries on the acquired trade or business, the transfer in the tax-free reorganization is not a reportable policy sale because the acquirer has a substantial business relationship with the insured under § 1.101–1(d)(2)(ii) of the proposed regulations. The commenter observed that the example suggests that the transfer of the policy as part of the tax-free reorganization described in the example would not have qualified for an exception from being treated as a reportable policy sale under the proposed regulations absent the existence of the substantial business relationship. The commenter's understanding of the example is correct. The substantial business relationship is necessary for the tax-free reorganization in the example to avoid being treated as a reportable policy sale. As discussed in this section of this Summary of Comments and Explanation of Revisions, the Treasury Department and the IRS have not adopted the commenter's recommendation regarding amendments to § 1.101–1(e)(3)(ii), and therefore have not revised the example in the final regulations.

This commenter also recommended a related change to § 1.101–1(d)(4)(i) of the proposed regulations. Under § 1.101–1(d)(4)(i) of the proposed regulations, an indirect acquirer is deemed to have a substantial business or financial relationship with the insured if the direct holder of the interest in the life insurance contract has a substantial business or financial relationship with the insured immediately before and after the date the indirect acquirer acquires its interest. Section 1.101–1(d)(4)(i) of the proposed regulations provides relief for acquirers who do not hold their interest in the relevant life insurance contracts directly, when the direct holder of those interests has a substantial business or financial relationship with the insured before and after the acquisition. The Department of Treasury and the IRS have determined that it is not appropriate to treat an indirect acquisition of an interest in a life insurance contract as a reportable policy sale when the direct owner of the interest in the life insurance contract does not change and the direct owner has a substantial family, business, or financial relationship with the insured. The commenter recommended modification of § 1.101–1(d)(4)(i) of the proposed regulations to eliminate what the commenter describes as disparate treatment that arises depending on the type of merger transaction the acquirer undertakes or whether after the merger the insured remains with the company or retains the right to retirement or other post-employment benefits.

First, the commenter observed that, in a tax-free merger in which the target goes out of existence, the direct holder of the life insurance contract no longer exists, and therefore would no longer have any relationship with the insured. Accordingly, the acquirer cannot be deemed to have a substantial business or financial relationship with the insured under § 1.101–1(d)(4)(i) of the proposed regulations. However, in a tax-free merger in which the target does not survive, § 1.101–1(d)(4)(i) of the proposed regulations would not apply because the acquirer would own the insurance contract directly. An acquirer that holds its interest in the relevant life insurance contract directly must determine whether it has a substantial family, business, or financial relationship with the insured under § 1.101–1(d) of the proposed regulations at the time of the acquisition.

Second, the commenter suggested that there are situations in which the insured's employment with the target company is terminated as a result of a merger or acquisition, and the insured has no continuing relationship with the surviving company that retains the life insurance contract. The commenter observed that, in such cases, the ''after the date of the acquisition'' prong of § 1.101–1(d)(4)(i) of the proposed regulations cannot be satisfied. The commenter recommended modifying § 1.101–1(d)(4)(i) of the proposed regulations to provide that the acquirer of an interest in a life insurance contract in a tax-free merger is deemed to have a substantial business or financial relationship with the insured if the target has a substantial business or financial relationship with the insured immediately prior to the merger, provided the acquirer does not otherwise transfer any interest in the life insurance contract in a transaction treated as a reportable policy sale. The commenter also recommended that the rule specifically state that the fact that the surviving company continues to hold, after the merger, the contract on the life of an individual with whom the target had a substantial financial or business relationship is the determinative factor under this modified rule.

The proposed modification is not adopted because, although § 1.101–1(d)(4)(i) of the proposed regulations generally would not apply to the situations referenced by the commenter, the proposed regulations already include exceptions that may apply in the situations referenced by the commenter. In a tax-free merger in which the target does not survive, § 1.101–1(d)(4)(i) of the proposed regulations would not apply because the acquirer would have a direct acquisition of any interest in a life insurance contract acquired from the target. However, the acquirer does not have a reportable policy sale if the acquirer has a substantial family, business, or financial relationship with the insured. Under § 1.101–1(d)(2)(ii) of the proposed regulations, the surviving company has a substantial business relationship with the insured, and therefore has not acquired its interest in the life insurance contract on the insured's life in a reportable policy sale, if: (1) The insured is an employee within the meaning of section 101(j)(5)(A) of the acquired trade or business immediately preceding the acquisition, and (2) the surviving company either carries on the acquired trade or business or uses a significant portion of the acquired business assets in an active trade or business that does not include investing in interests in life insurance contracts. Accordingly, the proposed regulations already include a rule similar to the one requested by the commenter that is applicable to direct acquisitions of interests in life insurance contracts (such as acquisitions resulting from tax-free mergers in which the target does not survive).

5. Comments and Changes Relating to § 1.101–1(d) of the Proposed Regulations

Section 1.101–1(d) of the proposed regulations defines the terms substantial family relationship, substantial business relationship, and substantial financial relationship, and provides special rules for applying these definitions. This section of this Summary of Comments

and Explanation of Revisions discusses comments that generally relate to the definitions and special rules in § 1.101–1(d) of the proposed regulations.

A. Beneficial Owners With a Combination of Substantial Relationships

Under § 1.101–1(d)(1) of the proposed regulations, a substantial family relationship exists between the insured and a partnership, trust, or other entity if all of the beneficial owners of that partnership, trust, or other entity have a substantial family relationship with the insured. A partnership, trust, or other entity may itself have a substantial business or financial relationship with the insured under § 1.101–1(d)(2) or (3) of the proposed regulations.

One commenter on the proposed regulations recommended that a transfer to a trust, partnership, or other entity not be a reportable policy sale within the meaning of section 101(a)(3) if all of the beneficial owners of the trust, partnership, or other entity have a substantial family, business, or financial relationship with the insured. The Treasury Department and the IRS have determined it would be appropriate to expand the definition of substantial family, business, or financial relationship to include the relationship between the insured and a trust, partnership, or other entity, every beneficial owner of which has a substantial family, business, or financial relationship with the insured. Accordingly, § 1.101–1(d)(4)(iii) of the final regulations provides this expanded definition.

The commenter also suggested that the definition of ''family member'' under § 1.101–1(f)(3) should include charities to which the insured has given substantial financial support or significant volunteer support. Another commenter suggested that a trust with beneficiaries that include both individual family members and a charity with a substantial financial relationship to the insured should qualify as a ''family member.'' Under § 1.101–1(d)(3)(iii) of the proposed regulations, a substantial financial relationship exists between the insured and acquirer if the acquirer is an organization described in sections 170(c), 2055(a), and 2522(a) that previously received financial support in a substantial amount or significant volunteer support from the insured. Under either of the approaches suggested by the commenters, the acquisition of an interest in a life insurance contract by a trust with beneficiaries that include both individuals who are family members of the insured and a charity described in § 1.101–1(d)(3)(iii) of the proposed regulations would not be a reportable policy sale. The Treasury Department and the IRS agree that the existence of a trust beneficiary that is a charity described in § 1.101–1(d)(3)(iii) of the proposed regulations should not cause a transfer to that trust to be a reportable policy sale. However, rather than expanding the definition of ''family member'' under § 1.101–1(f)(3) of the proposed regulations as suggested by the commenters, the Treasury Department and the IRS have adopted a more direct and expansive approach to address the commenters' concerns by adding a new rule in the final regulations providing that any combination of the described substantial relationships between a trust's beneficiaries and the insured is sufficient to qualify the transfer to that trust for the reportable policy sale exclusion. *See* § 1.101–1(d)(4)(iii) of the final regulations. As a result, under the final regulations, there is no need to also expressly treat a trust established and maintained for the primary benefit of the insured or one or more of the insured's family members as a family member of the insured. Therefore, the final regulations do not include such a trust in the definition of family member.

B. Substantial Financial Relationships With Charities

Under § 1.101–1(d)(3)(iii) of the proposed regulations, the acquirer of an interest in a life insurance contract has a substantial financial relationship with the insured if the acquirer is an organization described in sections 170(c), 2055(a), and 2522(a) that previously received financial support in a substantial amount or significant volunteer support from the insured. One commenter on the proposed regulations suggested that this provision be expanded to include any other such organization with which the insured has substantial personal ties, such as the donor or a family member having benefitted from the charitable organization's services in some manner. The commenter stated that it is not uncommon for a donor to both (i) contribute very modestly, if at all, to a charity during life because the donor is concerned about having sufficient retirement income, and (ii) want to benefit the charity when the donor no longer needs to preserve retirement income sources. The commenter also stated that donors often benefit charities through either a split interest trust described in section 170(f)(2) or a bargain sale described in § 1.1011–2.

The Treasury Department and IRS have not adopted this suggestion in the final regulations because it would be challenging to determine when personal ties with a charity are substantial enough to constitute a substantial financial relationship with the insured, in the absence of a significant donation of time or property. Also, there generally will be little detriment to a charity as a result of an acquisition (whether gratuitous or for value) of an interest in a life insurance contract in a reportable policy sale. Nevertheless, as discussed later in this section, the final regulations provide that the category of charities considered to have a substantial financial relationship with an insured may be expanded in the future in guidance published in the Internal Revenue Bulletin.

Treating a gratuitous transfer of an interest in a life insurance contract (or the part of the transfer that is gratuitous, in the case of a bargain sale) as a reportable policy sale does not affect the amount of proceeds excludable by the gratuitous transferee. Section 1.101–1(b)(2)(i) of the final regulations applies to all gratuitous transfers of interests in life insurance contracts and generally provides that the transferee in a gratuitous transfer of an interest in a life insurance contract steps into the shoes of the transferor and may exclude death benefits paid under the contract from gross income to the same extent that the transferor would have been able to exclude the benefits, in addition to the premiums and other amounts paid by the transferee. Furthermore, treatment of a gratuitous transfer as a reportable policy sale does not result in reporting obligations for the gratuitous transferee because the gratuitous transferor is not a reportable policy sale payment recipient. *See* §§ 1.6050Y–1(a)(16) and 1.6050Y–2(a) of the final regulations.

Even if a charity purchased some or all of its interest in a life insurance contract for valuable consideration, a charity generally is not subject to Federal income tax on its income (including insurance policy proceeds) unless the income arises from an unrelated trade or business. Thus, the charity's obligation in case of a purchase generally would be limited to acquirer reporting under § 1.6050Y–2, which merely requires providing on Form 1099–LS information that should be readily available to the charity. This reporting provides important information regarding the sale to reportable policy sale payment recipients and the IRS.

In response to the commenter's concerns, however, the final regulations provide that the IRS may publish

guidance in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) describing other situations in which a substantial financial relationship exists between the insured and an acquirer that is an organization described in sections 170(c), 2055(a), and 2522(a). *See* § 1.101–1(d)(3)(iii) of the final regulations.

C. Substantial Financial Relationships and BOLI Pooling Transactions

One commenter on the proposed regulations requested confirmation that a reportable policy sale will not arise when a life insurance policy is involved in a transaction that pools bank-owned life insurance (BOLI). The commenter explained that businesses, such as banks, commonly promise certain pre- and post-retirement benefits to their employees, such as retiree health care benefits, which can result in substantial liabilities for the businesses that must be reflected on their financial statements. The commenter described BOLI as permanent, cash value life insurance coverage on the lives of a bank's officers, directors, and employees purchased by the bank to fund such obligations informally and to establish assets on its financial statements to offset liabilities for the promised benefits. The commenter stated that BOLI owners typically hold the policies until the death benefits become payable and use the benefits to fund the costs of the employee benefits or to recover such costs after the fact. The commenter described BOLI pooling transactions as transactions that pool the BOLI policies of multiple banks for the continued purpose of funding each bank's employee benefits, but in a more effective, centralized way. The commenter described the initial step of a BOLI pooling transaction as the transfer by multiple unrelated banks of their pre-existing BOLI policies to a partnership, in return for which each bank receives a partnership interest proportional to the value of its contributed policies. The commenter explained that the partnership holds and manages the contributed policies and distributes death benefits among the bank-partners pro rata based on their respective partnership interests, which is expected to help normalize cash flows from the policies.

The commenter asserted that BOLI pooling transactions are ordinary course business transactions that should not be treated as reportable policy sales because they are not speculative and can be distinguished from sales of policies to third parties because the intent and result is to pool the policies among all the original policyholders for the continued purpose of funding their employee benefit liabilities. The commenter noted that the IRS has issued private letter rulings that confirm, directly or indirectly, that the carryover basis exception to the transfer for value rule in section 101(a)(2) applies to a bank's contribution of BOLI policies to the partnership in a BOLI pooling transaction, thereby preserving the tax-free character of the death benefits when paid to the partnership. These rulings pre-date the addition of section 101(a)(3) to the Code. The reportable policy sale rules of section 101(a)(3) are in addition to the carryover basis exception of section 101(a)(2). As a result, policy transfers are ineligible for the carryover basis exception if no substantial family, business, or financial relationship exists between the acquirer of an interest in a life insurance contract and the insured under that contract at the time of the acquisition.

The commenter asserted that the proposed regulations support the requested treatment of BOLI pooling transactions because a substantial financial relationship exists between the acquirer and insured. A substantial financial relationship exists under § 1.101–1(d)(3)(ii) of the proposed regulations if the acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets or satisfy liabilities following the death of the insured. The commenter asserted that this provision applies in BOLI pooling transactions with respect to both the bank and the partnership as follows: (1) The partnership has a direct acquisition of life insurance policies, which it maintains to satisfy liabilities following the death of the insured, namely, the employee benefit liabilities of the bank-partners for which they originally purchased the policies; (2) the bank has an indirect acquisition of life insurance policies contributed by other banks to the partnership; and (3) the bank maintains its indirect interest in those policies to continue funding the same employee benefit liabilities. The commenter recommended clarification of the regulations to confirm this treatment, either by adding additional language to the definition of substantial financial relationship, or by adding an example that applies that provision to the BOLI pooling transaction. Alternatively, the commenter suggested a separate exception to the reportable policy sale definition.

The final regulations do not adopt the commenter's requested changes because the changes would be inconsistent with the statute. The proposed regulations do not support, and were not intended to support, the requested treatment of BOLI pooling transactions.

First, the partnership described by the commenter does not have a substantial family, business, or financial relationship with the insureds under the proposed regulations. Specifically, it does not have a substantial financial relationship with any insured under § 1.101–1(d)(3)(ii) of the proposed regulations because it does not maintain the life insurance contract on the life of the insured to provide funds for the partnership to purchase assets or satisfy liabilities following the insured's death. As described by the commenter, the partnership maintains the life insurance contracts to provide its partners, the banks, with funds to satisfy the banks' employee benefit liabilities. Accordingly, the partnership's acquisition of the life insurance contracts in the circumstances described is a reportable policy sale that must be reported under section 6050Y and § 1.6050Y–2 of the proposed regulations.

Second, the definition of a substantial financial relationship in § 1.101–1(d)(3)(ii) of the proposed regulations was not intended to cover relationships as tenuous as those existing between the indirect acquirers (the banks) and the insureds in the BOLI pooling transactions described by the commenter. Section 1.101–1(d)(3)(ii) of the proposed regulations was intended to cover situations in which the life insurance contract is held to provide funds to purchase assets or satisfy liabilities, when the need for the asset purchases or liability payments results from the insured's death. In the situation described by the commenter, a bank does not have this kind of relationship with the insureds under life insurance contracts contributed to the partnership by other banks. However, in the circumstances described, because the partnership acquires the life insurance contracts in a reportable policy sale that must be reported under section 6050Y(a) and § 1.6050Y–2 of the proposed regulations, the bank's indirect acquisition of the life insurance contracts is not a reportable policy sale, provided the partnership complies with the reporting requirements. *See* § 1.101–1(c)(2)(iii)(A) of the proposed regulations.

D. Substantial Financial Relationships Under § 1.101–1(d)(3)(ii)

A substantial financial relationship exists under § 1.101–1(d)(3)(ii) of the proposed regulations if the acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets or satisfy liabilities

following the death of the insured. As described in section 5.C of this Summary of Comments and Explanation of Revisions, this definition was intended to apply in situations in which the life insurance contract is held to provide funds to purchase assets or satisfy liabilities following the death of the insured, when the need for the asset purchases or liability payments results from the insured's death. Accordingly, § 1.101–1(d)(3)(ii) of the final regulations revises the definition to provide that a substantial financial relationship exists between the acquirer and insured if the acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets of or to satisfy liabilities of the insured or the insured's estate, heirs, legatees, or other successors in interest, or to satisfy other liabilities arising upon or by reason of the death of the insured.

6. Comments and Changes Relating to § 1.101–1(a) of the Proposed Regulations

The proposed regulations would remove the second sentence of § 1.101–1(a)(1) of the existing regulations, which states: ''Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contracts, such as workmen's compensation insurance contracts, endowment contracts, or accident and health insurance contracts, are covered by this provision.'' As noted in the preamble to the proposed regulations, this update reflects the addition of section 7702 to the Code in 1984. *See* 84 FR 11015.

One commenter stated that it is important that no changes be made with respect to the second sentence because the benefits described therein were written into older policies, some of which are still in effect, and changing the rules would negatively impact policyholders who have long relied on the appropriate exclusion of these death benefits from income. The commenter further stated that there is a longstanding and extensive body of court decisions and IRS rulings that establish the conditions under which such benefits qualify for treatment as life insurance proceeds.

In response to these comments, the final regulations revise, rather than remove, the second sentence of § 1.101–1(a)(1) of the existing regulations to clarify that the sentence only applies to contracts issued on or before December 31, 1984, the effective date of section 7702.

7. Comments and Changes Relating to § 1.6050Y–1 of the Proposed Regulations

Section 1.6050Y–1(a) of the proposed regulations provides definitions for terms used in §§ 1.6050Y–1 through –4 of the proposed regulations. This section of this Summary of Comments and Explanation of Revisions discusses comments received that generally relate to § 1.6050Y–1(a) of the proposed regulations.

A. Definition of Issuer

Section 6050Y(d)(3) defines issuer to mean any life insurance company that bears the risk with respect to a life insurance contract on the date any return or statement is required to be made under section 6050Y. The definition of issuer under the proposed regulations depends on the context in which the term is used. In general, the term ''issuer'' means, on any date, with respect to any interest in a life insurance contract, any person that bears any part of the risk with respect to the life insurance contract on that date and any person responsible on that date for administering the contract, including collecting premiums and paying death benefits. *See* § 1.6050Y–1(a)(8)(i) of the proposed regulations. For instance, if a reinsurer reinsures on an indemnity basis all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract, both the reinsurer and the original issuer of the contract are issuers of the life insurance contract.

One commenter noted that this definition of issuer in the proposed regulations appears to be a reversal of position from a statement in Notice 2018–41 that, according to the commenter, appropriately proposed to exclude a ''reinsurer in an indemnity contract covering all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract.'' In Notice 2018–41, the Treasury Department and the IRS announced the intent to limit the information reporting obligations imposed under § 6050Y(b) to the life insurance company that is responsible for administering the contract, including paying death benefits under the life insurance contract to reduce the burden on reporting life insurance companies and prevent duplicative reporting. Notice 2018–41 indicated that, under the proposed regulations, the reporting obligations would not apply, for instance, to a reinsurer in an indemnity contract covering all or a portion of the risks that the original issuer (and continuing contract administrator) might otherwise have incurred with respect to a life insurance contract.

Under the proposed regulations, although the definition of issuer is broad enough that information reporting obligations could apply to a reinsurer, reporting obligations in practice will generally be limited to the life insurance company that is responsible for administering the life insurance contract, or its designee. The proposed regulations facilitate this result by providing relief for an issuer that is subject to reporting obligations, but is not responsible for administering the contract. For purposes of information reporting by the acquirer under section 6050Y(a) and § 1.6050Y–2 of the proposed regulations, the ''6050Y(a) issuer'' to which the acquirer must furnish an RPSS is the issuer responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date of the reportable policy sale. *See* § 1.6050Y–1(a)(8)(ii) of the proposed regulations. For purposes of information reporting by the issuer under section 6050Y(b) and § 1.6050Y–3 of the proposed regulations, reporting is required by any ''6050Y(b) issuer'' that receives an RPSS or notice of a transfer to a foreign person, or its designee. *See* § 1.6050Y–1(a)(8)(iii)(A) and (B) of the proposed regulations. Accordingly, with respect to reportable policy sales, 6050Y(b) issuers responsible for reporting under section 6050Y(b) and § 1.6050Y–3 of the proposed regulations will generally be issuers responsible for administering the life insurance contracts. No other issuer should receive an RPSS. Also, with respect to a transfer to a foreign person, if any issuer other than the issuer responsible for administering the life insurance contract receives notice of the transfer, it will not be considered a 6050Y(b) issuer if it provides the 6050Y(b) issuer responsible for administering the life insurance contract with notice of the transfer and any available information necessary to accomplish reporting under section 6050Y(b) and § 1.6050Y–3 of the proposed regulations. *See* § 1.6050Y–1(a)(8)(iii)(B) of the proposed regulations. The final regulations clarify that an issuer other than the issuer responsible for administering the life insurance contract will not be considered a 6050Y(b) issuer if it received notice of a transfer to a foreign person from the issuer responsible for administering the life insurance contract. *See* § 1.6050Y–1(a)(8)(iii)(B) of

the final regulations. Additionally, a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by section 6050Y(b) and § 1.6050Y–3 of the final regulations is timely reported by any other 6050Y(b) issuer. *See* § 1.6050Y–3(b) of the final regulations.

The commenter recommended that the definition of issuer expressly exclude a reinsurer in an indemnity contract covering all or a portion of the risks that the original issuer (or its continuing contract administrator) might otherwise have incurred with respect to a life insurance contract. The commenter stated that in most instances of indemnity reinsurance transactions, the original insurer continues to administer the life insurance contracts, some or all of the underlying risks of which the reinsurer may have assumed, or alternatively, the parties select a third-party contract administrator who assumes such a role, which includes managing ownership changes and other functions relating to contract administration and interfacing with policyholders. The commenter asserted that if the approach in the proposed regulations is due to any presumption that a reinsurer in an indemnity reinsurance transaction may be or may become privy to any information relating to transfers to domestic or foreign persons, such presumptions are misplaced.

The final regulations do not adopt the commenter's proposal because a reinsurer in an indemnity contract bears risk with respect to the life insurance contracts reinsured, and is therefore an issuer under section 6050Y(d). It is thus not appropriate to completely exclude an indemnity reinsurer from the possibility of being an issuer for reporting purposes. However, the definition of 6050Y(b) issuer under the proposed and final regulations is narrower than the definition of issuer in section 6050Y(d) and, consistent with the intent expressed in Notice 2018–41 to limit the information reporting obligations imposed under section 6050Y(b) to the life insurance company that is responsible for administering the contract, will generally exclude a reinsurer in an indemnity contract from reporting obligations, as the commenter acknowledges. Furthermore, § 1.6050Y–1(a)(8)(iii)(B) of the final regulations provides any reinsurer in an indemnity contract that is not the issuer responsible for administering the life insurance contract, but nonetheless falls within the definition of 6050Y(b) issuer, with a mechanism to avoid that designation (by providing notice and relevant information to the 6050Y(b) issuer responsible for administering the contract).

B. Definition of Notice of a Transfer to a Foreign Person

Section 6050Y(b) and § 1.6050Y–3 of the proposed regulations generally require reporting by an issuer upon notice of a transfer of a life insurance contract to a foreign person. The proposed regulations define ''notice of a transfer to a foreign person'' to mean any notice of a transfer of a life insurance contract (that is, a transfer of title to, possession of, or legal ownership of the life insurance contract) received by a 6050Y(b) issuer. *See* § 1.6050Y–1(a)(10) of the proposed regulations. The proposed regulations further provide that notice of a transfer to a foreign person includes information provided for nontax purposes, such as a change of address notice for purposes of sending statements or for other purposes, and information relating to loans, premiums, or death benefits with respect to the contract, unless the 6050Y(b) issuer knows that no transfer of the contract has occurred or knows the transferee is a United States person. *Id.* For this purpose, a 6050Y(b) issuer may rely on a Form W–9, ''Request for Taxpayer Identification Number and Certification'' or a valid substitute form that meets the requirements of § 1.1441–1(d)(2) (substituting ''6050Y(b) issuer'' for ''withholding agent''), that indicates the transferee is a United States person. *Id.*

One commenter expressed appreciation that the proposed regulations exclude from the definition of notice of a transfer to a foreign person situations in which the issuer knows that no transfer has occurred or that the transferee is a United States person. The commenter requested that the definition be modified so that the obligation for an issuer to report under section 6050Y(b) and § 1.6050Y–3 of the proposed regulations is not triggered unless the issuer receives notice of a transfer of a life insurance contract to a foreign person that includes foreign indicia. Such foreign indicia may include information provided for nontax purposes such as a change of address notice to a foreign residence or mailing address for purposes of sending statements or for other purposes. The commenter noted that section 6050Y(b) requires issuers to identify transfers to foreign persons to capture transfers that may escape section 6050Y(a)(2) reporting in the event that a foreign acquirer does not comply with section 6050Y(a)(2) and suggested that the foreign indicia requirement furthers this purpose by allowing an issuer to identify a foreign acquirer as foreign based on information the acquirer provides to the issuer. This recommendation is adopted in § 1.6050Y–1(a)(10) of the final regulations.

C. Definition of Estimate of Investment in the Contract

Informal comments were received regarding the definition of the term ''estimate of investment in the contract'' in the proposed regulations. The commenter asked whether the estimate of investment in the contract with respect to a person includes any amount paid by the person for the life insurance contract or interest therein other than premiums (such as, for example, the amount paid for the contract or interest therein in a transfer for value) and whether information about any other payments must be provided to issuers and payors reporting the estimate of investment in the contract. The definition in § 1.6050Y–1(a)(7)(ii) of the proposed regulations, which is adopted without modification by the final regulations, provides that the estimate of investment in the contract is the aggregate amount of premiums paid for the contract by that person before that date, less the aggregate amount received under the contract by that person before that date to the extent such information is known to or can reasonably be estimated by the issuer or payor. Accordingly, the only amounts paid by a person that are included in the estimate of investment in the contract with respect to that person are the premiums paid for the contract by that person. Issuers and payors of reportable death benefits do not need information about other amounts paid for a life insurance contract or interest therein to determine the estimate of investment in the contract. Under section 6050Y(a)(2)(B) and § 1.6050Y–2(d)(2)(i)(A) of the final regulations, an acquirer is not required to provide an issuer with the amount of any reportable policy sale payment when fulfilling its reporting obligations under section 6050Y(a).

D. Definition of Reportable Policy Sale Payments

Under section 6050Y(a) and § 1.6050Y–2(a) of the proposed regulations, as a general matter, every person that is an acquirer in a reportable policy sale during any calendar year must file a separate information return with the IRS for each reportable policy sale payment recipient, including any seller that is a reportable policy sale payment recipient. A reportable policy sale payment recipient is defined in

§ 1.6050Y–1(a)(16) of the proposed regulations as any person that receives a reportable policy sale payment in a reportable policy sale, as well as any broker or other intermediary that retains a portion of the cash or other consideration transferred in a reportable policy sale. Under section 6050Y(d)(1), the term ''payment'' means, with respect to any reportable policy sale, the amount of cash and the fair market value of any consideration transferred in the sale. A reportable policy sale payment is defined by § 1.6050Y–1(a)(15) of the proposed regulations as the total amount of cash and the fair market value of any other consideration transferred, or to be transferred in a reportable policy sale, including any amount of a reportable policy sale payment recipient's debt assumed by the acquirer in a reportable policy sale. The final regulations clarify that consideration in this case means consideration reducible to a money value, which is the standard used in § 1.101–1(f)(5) of the proposed and final regulations for determining whether a transfer of an interest in a life insurance contract is a transfer for valuable consideration. *See* § 1.6050Y–1(a)(15) of the final regulations.

The preamble to the proposed regulations requested information about the types and timing of payments made by acquirers in reportable policy sales, including the types of ancillary costs and expenses paid in reportable policy sales, the recipients of those payments, and existing reporting requirements applicable to those payments. *See* 84 FR 11009, 11019. One commenter on the proposed regulations described ancillary payments made by an acquirer in connection with the acquisition of a life insurance policy as including escrow agent fees and expenses, fees and expenses of securities intermediaries, fees paid to companies that assist the acquirer in evaluating a life insurance policy, fees for policy services, origination fees, fees to life expectancy report providers, miscellaneous other administrative costs such as mailing and courier charges, and legal fees. The commenter asserted that these are all normal and customary transaction costs paid by the acquirer in the ordinary course of its business in connection with the routine process of acquiring a life insurance policy and that the aggregate of such costs in each transaction is relatively small in contrast to the aggregate amount of the consideration paid to the seller of the policy and the seller's broker, if any. The commenter stated that these minor costs and expenses are primarily administrative in nature, and the IRS is already receiving information regarding the payment of fees in connection with existing reporting required under section 6041. The commenter recommended that such ancillary costs be specifically excluded from the definition of reportable policy sale payments.

Another commenter also recommended excluding ancillary fees from the definition of reportable policy sale payments. Alternatively, the commenter suggested that recipients of such ancillary fees could be excluded from the definition of reportable policy sale payment recipients. The commenter stated that the sale of a single life insurance contract from the insured individual to a purchaser on the secondary market may involve several transfers and implicate several potential recipients of a reportable policy sale payment, as that term is defined by the proposed regulations. The commenter described the parties that commonly receive ancillary fees in connection with the sale of a life insurance contract as including securities intermediaries, escrow agents (including separate sub-escrow agents), policy servicers, and other service providers. The commenter asserted that these ancillary fees already should be otherwise reported to the IRS under other provisions of the Code and Treasury Regulations and that including these fees as reportable policy sale payments adds a significant administrative burden to acquirers given the multitude of potential reportable policy sale payment recipients.

The definition of ''payment'' in section 6050Y(d)(4) is broad, and the legislative history does not suggest that this term was intended to exclude any payment made in a reportable policy sale, such as the ancillary fees described by the commenters. Accordingly, the recommendations to exclude ancillary fees from the definition of reportable policy sale payments or exclude recipients of ancillary fees from the definition of reportable policy sale payment recipients are not adopted. However, after consideration of these comments, the Treasury Department and the IRS have determined that an acquirer that reports a reportable policy sale payment made to a person other than the seller under section 6041 or section 6041A will be deemed to have satisfied its reporting requirements under section 6050Y(a) and § 1.6050Y–2 of the final regulations with respect to that payment. *See* § 1.6050Y–2(f)(2) of the final regulations. The Treasury Department and the IRS have also determined to exclude from the definition of reportable policy sale payment recipient any person, other than the seller, that receives aggregate payments of less than $600 with respect to that reportable policy sale. *See* § 1.6050Y–1(a)(16)(ii) of the final regulations.

8. Comments and Changes Relating to § 1.6050Y–2 of the Proposed Regulations

Section 6050Y(a) requires reporting of payments made by an acquirer in a reportable policy sale. Section 1.6050Y–2(a) of the proposed regulations sets forth the requirement of information reporting applicable to acquirers in reportable policy sales under section 6050Y(a)(1) and describes the information that must be reported. This section of this Summary of Comments and Explanation of Revisions discusses comments that generally relate to § 1.6050Y–2 of the proposed regulations.

A. Requests To Limit the Definition of Acquirer or Expand Unified Reporting Option

Under § 1.6050Y–1(a)(1) of the proposed regulations, an ''acquirer'' is any person that acquires an interest in a life insurance contract (through a direct or indirect acquisition of the interest) in a reportable policy sale. Section 1.6050Y–1(a)(6) of the proposed regulations adopts by cross-reference the definition of ''interest in a life insurance contract'' set forth in § 1.101–1(e) of the proposed regulations. Section 6050Y(a) imposes reporting requirements on an acquirer in a reportable policy sale.

One commenter on Notice 2018–41 recommended that the definition of acquirer be limited to any person who acquires a direct or indirect economic interest in a life insurance contract and not include any person who acquires title to a life insurance contract as an agent or intermediary for another person and whose sole economic interest in the life insurance contract is security for the payment of a fee to act as an agent or intermediary. For this purpose, the commenter noted, a partnership or a trust (other than a grantor trust) would not be treated as an agent or intermediary. The commenter observed that, in many transactions that will be treated as reportable policy sales, title to the life insurance contract is held in the name of a securities intermediary, but beneficial ownership of the policy is held by an investor. The commenter asserted that, although the securities intermediary may, in a given case, have a portion of the information required to be reported by section 6050Y, burdening the securities intermediary with a

reporting obligation is beyond the scope of its duties.

Commenting on the proposed regulations, this commenter again recommended that securities intermediaries should not be deemed to be acquirers in life settlement transactions because they are not likely to know, among other things, the purchase price paid to the seller, fees paid to a life settlement broker, or ancillary fees paid in connection with the acquisition of a policy. The commenter suggested that, if securities intermediaries are deemed acquirers, the regulations could instead provide for elective, substitute reporting by the beneficial owner of the life insurance policy under a securities account agreement. In other words, for a transaction in which a securities intermediary is involved, either the securities intermediary as the legal title holder or the beneficial owner of the life insurance policy under the securities account agreement could be responsible for the reporting required by section 6050Y(a) and § 1.6050Y–2 of the proposed regulations.

In response to these comments, § 1.6050Y–2(b) of the final regulations expands the situations in which acquirers may use unified reporting. Under § 1.6050Y–2(b) of the proposed regulations, the reporting requirement in § 1.6050Y–2(a) of the proposed regulations applies to each acquirer in a series of prearranged transfers of an interest in a life insurance contract. However, § 1.6050Y–2(b) of the proposed regulations provides for ''unified reporting.'' In a series of prearranged transfers, an acquirer's reporting obligation is deemed satisfied if the information required by § 1.6050Y–2(a) of the proposed regulations with respect to that acquirer is timely reported on behalf of that acquirer in a manner that is consistent with forms, instructions, and other IRS guidance by one or more other acquirers or by a third party information reporting contractor. One commenter expressed support for the concept set forth in § 1.6050Y–2(b) of the proposed regulations that authorizes but does not mandate unified reporting in certain situations. The final regulations retain this approach of authorizing, but not mandating, unified reporting in certain situations. Additionally, in response to comments requesting elective, substitute reporting by the beneficial owner of the life insurance policy under a securities account agreement for a securities intermediary with reporting obligations, the final regulations expand the applicability of this provision to include acquirers in simultaneous transfers, as well as acquirers in a series of prearranged transfers.

Another commenter recommended that the definition of acquirer be narrowed to include only those acquirers that will ultimately hold beneficial ownership of a life insurance contract after a transfer, thus excluding transitory interest holders from the definition of acquirer. The commenter stated that, under a plain reading of § 1.101–1(e)(1) of the proposed regulations, beneficial owners as well as nominees and any other person that holds legal title to any part of a beneficial interest in any life insurance contract for any amount of time during the course of the transaction would be subject to the acquirer reporting requirements of the proposed regulations. The commenter suggested that the definition may be over-inclusive given the realities of the life settlement industry including, for instance, the fact that service providers and their respective securities intermediaries may transitorily hold legal title to a life insurance contract during the course of a transaction. Acknowledging that the proposed regulations provide a unified reporting option, the commenter objected to each such transitory legal title holder being subject to the reporting requirements described in § 1.6050Y–2 of the proposed regulations, despite likely not having access to all the information required to sufficiently discharge its reporting obligations. This recommendation is not adopted in the final regulations because the option of unified reporting is available in the situations described by the commenter and it should be feasible, as part of the acquisition transaction, to assign section 6050Y reporting responsibilities to a party with the information needed to satisfy the reporting requirements described in § 1.6050Y–2 of the final regulations.

B. Request To Reduce or Eliminate Reporting on Tertiary Market Transactions

One commenter asked that the Treasury Department and the IRS consider whether reporting requirements imposed under section 6050Y are appropriate to transactions in the tertiary market (that is, with respect to sales of life insurance contract interests between investors, after the contract has been purchased from the original policyholder). The commenter asserted that the parties (that is, the acquirers and sellers) involved in tertiary transactions in the life settlement industry are already highly regulated, and the reporting requirements under section 6050Y are unduly cumbersome given that the tax information sought by the IRS is already included in such parties' audited financial statements. This request to eliminate or reduce reporting obligations under section 6050Y with respect to tertiary market transactions is not adopted in the final regulations. Section 6050Y requires reporting with respect to reportable policy sales. That term is broadly defined by section 101(a)(3) as the acquisition of an interest in a life insurance contract, directly or indirectly, if the acquirer has no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in such life insurance contract. Tertiary market transactions generally fall within this definition, and therefore are required to be reported.

This commenter also suggested that in the tertiary market, beneficial ownership of a life insurance policy may be transferred between different beneficial owners under separate securities account agreements with the same securities intermediary, without any ownership or beneficiary changes on the books and records of the issuer, so the securities intermediary might be both the seller and the acquirer of the policy interest for purposes of section 6050Y reporting. However, even though the securities intermediary does not transfer its interest in the life insurance contract as the legal title holder in the transfer described, the previous beneficial owner transfers its interest to the new beneficial owner. Under the final regulations, as under the proposed regulations, the new beneficial owner is the acquirer of an interest in the life insurance contract under § 1.101–1(e)(3)(i) and § 1.6050Y–1(a)(1) and (3), and the previous beneficial owner is the seller under § 1.6050Y–1(a)(18)(i), which defines ''seller'' to include any person that holds an interest in a life insurance contract and transfers that interest, or any part of that interest, to an acquirer in a reportable policy sale.

C. Request To Allow Good Faith Effort Reporting

One commenter on the proposed regulations observed that a situation could arise in which a person acquires a non-controlling interest in an entity that holds direct interests in life insurance contracts, and such entity has neither the obligation nor the willingness to provide the indirect acquirer with information necessary for the indirect acquirer to determine whether it is subject to the reporting requirements or to satisfy any reporting obligations. The commenter suggested

that this problem is exacerbated when there are tiers of entities between the indirect acquirer and the entity holding direct interests in life insurance contracts. The commenter recommended that an indirect acquirer be considered to have complied with the reporting requirements of section 6050Y(a) and § 1.6050Y–2 of the proposed regulations if it demonstrates that it has in good faith requested information required to comply with the reporting requirements from the relevant entity or entities and was unable to obtain such information by providing to the IRS: (i) The information it does have, (ii) a statement of its efforts to collect any missing data, and (iii) the identifying information on the entity through which it acquired an indirect interest in a life insurance contract or contracts.

Sections 1.6050Y–2(g)(1) and (2) cross-reference section 6724(a) and § 301.6724–1 for the waiver of a penalty for failure to file timely a correct information return or furnish a correct statement under section 6050Y and § 1.6050Y–2 if the failure is due to reasonable cause and is not due to willful neglect. The penalty may be waived if the filer establishes there are significant mitigating factors with respect to the failure (such as the fact that the filer had not previously had this filing obligation, or has a history of complying with information reporting obligations), or that the failure was due to events beyond the filer's control. Events beyond the filer's control may include the actions of a third party who has information needed by the filer. The filer must show that the failure was due to the failure of another person, who is required to provide information to the filer that is necessary for the filer to comply with information reporting requirements, to provide information or to provide correct information. In addition, a filer seeking a waiver based on reasonable cause must establish that it acted in a responsible manner both before and after the failure. The filer must exercise reasonable care in determining its filing obligations, including requesting extensions to prevent failures, preventing impediments to failures, and rectifying failures when discovered. These penalty relief procedures are available to acquirers and may apply to acquirers in the situation described by the commenter. Accordingly, the final regulations do not adopt the change suggested by the commenter.

9. Comments Relating to § 1.6050Y–3 of the Proposed Regulations

Section 6050Y(b) imposes reporting requirements on an issuer of a life insurance contract upon the receipt of a written statement furnished by an acquirer under section 6050Y(a)(2), or upon any notice of the transfer of a life insurance contract to a foreign person. Section 1.6050Y–3 of the proposed regulations sets forth the requirement of information reporting applicable to issuers under section 6050Y(b) and describes the information that must be reported. This section of this Summary of Comments and Explanation of Revisions discusses comments that generally relate to § 1.6050Y–3 of the proposed regulations.

Section 1.6050Y–3(d)(1) of the proposed regulations requires an issuer to furnish a statement to a seller. Section 1.6050Y–3(d)(2) of the proposed regulations provides that such statement generally must be furnished on or before February 15 of the year following the calendar year in which the reportable policy sale or transfer to a foreign person occurred. This due date was adopted in response to comments on Notice 2018–41. The proposed regulations also provide that if a 6050Y(b) issuer does not receive notice of a transfer to a foreign person until after January 31 of the calendar year following the year in which the transfer occurred, the statement generally must be furnished by the date thirty days after the date notice is received. *See* § 1.6050Y–3(d)(2) of the proposed regulations.

One commenter expressed appreciation regarding the adoption of the February 15 due date and the relief provided to 6050Y(b) issuers that do not receive notice of a transfer to a foreign person until after January 31 of the calendar year following the year in which the transfer occurred. The commenter asked that a similar thirty-day period be provided if the 6050Y(b) issuer does not receive an RPSS until after January 31 of the calendar year following the year in which the reportable policy sale occurred. If a 6050Y(b) issuer that receives an RPSS after the January 31 due date and before the February 15 due date is unable to furnish the required statement to the seller by the February 15 due date because of this delay, the 6050Y(b) issuer generally may request, before the February 15 due date, an extension of time to furnish the statement, pursuant to IRS procedures. For example, procedures for requesting such an extension are currently described in the ''General Instructions for Certain Information Returns.'' Additionally, the late furnishing of an RPSS by an acquirer to a 6050Y(a) issuer would generally constitute an event beyond the issuer's control for purposes of determining whether the issuer is eligible for penalty relief for failure, as a 6050Y(b) issuer, to timely furnish a statement to the seller named in the RPSS. *See* §§ 1.6050Y–3(g)(2), 301.6722–1, and 301.6724–1. Therefore, the Treasury Department and the IRS have determined not to adopt this recommendation.

10. Comments and Changes Relating to § 1.6050Y–4 of the Proposed Regulations

Section 6050Y(c) imposes reporting requirements on every person who makes a payment of reportable death benefits during any taxable year. Section 1.6050Y–4 of the proposed regulations sets forth the requirement of information reporting applicable to payors of reportable death benefits under section 6050Y(c) and describes the information that must be reported. This section of this Summary of Comments and Explanation of Revisions discusses comments that generally relate to § 1.6050Y–4 of the proposed regulations.

A. Gratuitous Transfers

As discussed in section 2.B of this Summary of Comments and Explanation of Revisions, one commenter requested an exception from the definition of reportable policy sale for any gratuitous transfer of an interest in a life insurance contract. The commenter asserted that treating gratuitous transfers as reportable policy sales creates unnecessary and confusing reporting requirements under section 6050Y for gift transfers. The change requested by the commenter is not adopted in the final regulations because the reporting required under section 6050Y for gift transfers is limited under the proposed and final regulations. However, in response to these comments, the reporting required under section 6050Y for gift transfers is further limited by the addition of § 1.6050Y–4(e)(3) of the final regulations, which provides that a payor of reportable death benefits is not required to file an information return under § 1.6050Y–4(a) of the final regulations with respect to the reportable death benefits if the payor never received, and has no knowledge of any issuer having received, a related RPSS.

The commenter asserted that the reporting requirements under section 6050Y will result in an acquirer having to send a Form 1099–LS for transfers that are mere gifts, and that this will be

confusing to the parties involved, making it appear that the transfer will have taxable consequences to both the donor, who will receive a Form 1099–SB and the gift recipient, who will receive a Form 1099–R (when a death benefit is paid).

However, with respect to a gratuitous transfer, there is no requirement to provide a Form 1099–SB to the donor. Section 1.6050Y–2(a) of the proposed regulations requires the acquirer (the gratuitous transferee in a gratuitous transfer) to undertake reporting with respect to any reportable policy sale payment recipient, including any seller that is a reportable policy sale payment recipient. A gratuitous transferor will not receive any reportable policy sale payment and therefore will not be a reportable policy sale payment recipient. Accordingly, a gratuitous transferee will not be required to file a Form 1099–LS with respect to the gratuitous transferor, to furnish a statement to the gratuitous transferor, or to furnish an RPSS to the issuer. *See* § 1.6050Y–2(a) and (d) of the proposed regulations. Because a gratuitous transferee is not required to furnish an RPSS to the issuer, the issuer should not be required to file a Form 1099–SB or furnish a statement to the ''seller'' (in this case, the gratuitous transferor) as a result of a gratuitous transfer. *See* § 1.6050Y–3(a) of the proposed regulations.

Because amounts paid by reason of the death of the insured under a life insurance contract that are attributable to an interest in the contract that was transferred in a reportable policy sale are reportable death benefits under § 1.6050Y–1(a)(12) of the proposed regulations, the proposed regulations technically would require reporting under section 6050Y(c) when death benefits are paid with respect to an interest in a life insurance contract that was transferred in a gratuitous reportable policy sale. *See* 1.6050Y–4(a) and (c). The issuer therefore could be required under the proposed regulations to provide the gratuitous transferee with a statement (for instance, a copy of the Form 1099–R) if the gratuitous transferee is the reportable death benefits payment recipient. *See* 1.6050Y–4(c). The commenter asserted that this would confuse the Form 1099–R recipient, who now possesses a Form 1099–R reporting a gross distribution amount that indicates a possible taxable distribution when none exists. The commenter also asserted that inclusion of the estimate of investment in the contract on the Form 1099–R will further confuse the gift recipient because it would indicate to a taxpayer that they have a taxable gain based on the difference between the gross distribution amount and the basis amount reported on the form.

However, the distribution to the gift recipient may be taxable. Under § 1.101–1(b)(2)(i) of the proposed regulations, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount of the proceeds attributable to the gratuitously transferred interest that would have been excludable by the transferor if the transfer had not occurred, and the premiums and other amounts subsequently paid by the transferee with respect to the interest. Thus, for example, if an interest in a life insurance contract was transferred for value in a reportable policy sale, and then transferred again as a gift, the death benefit exclusion would be limited to the consideration paid in the reportable policy sale, plus subsequent premiums paid.

As a practical matter, however, if the only reportable policy sale of an interest in a life insurance contract is a gratuitous reportable policy sale, and the issuer does not receive an RPSS, the issuer would not know that the death benefits are attributable to an interest in a life insurance contract transferred in a reportable policy sale, and thus would not be on notice to do the reporting technically required under § 1.6050Y–4(a) and (c) of the proposed regulations. Accordingly, in response to these comments, § 1.6050Y–4(e)(3) of the final regulations provides that a payor of reportable death benefits is not required to file an information return under § 1.6050Y–4(a) of the final regulations with respect to the reportable death benefits if the payor never received, and has no knowledge of any issuer having received, a related RPSS.

B. Other Comments Relating to § 1.6050Y–4

Section 1.6050Y–4(a)(4) of the proposed regulations requires that ''the gross amount of payments made to the reportable death benefits payment recipient during the taxable year'' be reported by the payor. One commenter requested that ''payments made'' be replaced by ''reportable death benefits paid'' to clarify that ''gross amount of payments'' are death benefit payments. The commenter asserted that the broader term ''payments made'' could be confused to include items such as interest paid on delayed claims, which is reportable on Form 1099–INT, ''Interest Income,'' or a payment to the policy owner resulting from a partial surrender in the same year as the insured's death. This recommendation is adopted in the final regulations.

Section 1.6050Y–4(d) of the proposed regulations requires a payor of reportable death benefits that files a return or furnishes a statement reporting the payment of the reportable death benefits to file a corrected return or furnish a corrected statement after receiving notice of rescission of the reportable policy sale. The commenter indicated that, if a payor has already paid the death benefit pursuant to the change in ownership, the payor may not be contractually required, or may not attempt to, reclaim such benefit after a rescission. The commenter asserted that payors of death benefits generally do not file corrected Forms 1099–R in similar instances because the payment was, in fact, made to the initial recipient. The commenter recommended that § 1.6050Y–4(d) of the proposed regulations be modified to provide that the payor is required to correct the Form 1099–R only if the reportable death benefit payment was returned to the payor. In response to this comment, § 1.6050Y–4(d) of the final regulations requires a payor of reportable death benefits that files a return or furnishes a statement reporting the payment of the reportable death benefits to file a corrected return or furnish a corrected statement within 15 days after recovering any portion of the reportable death benefits payment from the reportable death benefits payment recipient as the result of the rescission of a reportable policy sale.

The commenter also requested that the final regulations clarify that the reportable death benefits paid to a foreign person should be reported on Form 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' instead of on Form 1099–R. Under § 1.6050Y–4(e)(1) of the proposed regulations, a payor generally is not required to report reportable death benefits paid to a foreign person on Form 1099–R if the payor obtains documentation in accordance with § 1.1441–1(e)(1)(ii) upon which the payor may rely to treat the reportable death benefits payment recipient as a foreign beneficial owner of the reportable death benefits. However, this exception does not apply if a 6050Y(b) issuer obtains a Form W–8ECI, ''Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States.'' Accordingly, if the payment of reportable death benefits to a foreign beneficial owner is income effectively connected with the foreign person's trade or business in the United

States, the payor may be required to report the payment on both the Form 1042–S in accordance with § 1.1461–1(c) and the Form 1099–R in accordance with § 1.6050Y–4 of the proposed regulations. In response to this comment, therefore, § 1.6050Y–4(e)(1) of the final regulations does not include the limitation on the use of the exception for reportable death benefits that are income effectively connected with the conduct of a trade or business in the United States, but instead references other due diligence or reporting requirements that may apply to a payor that relies on the exception, including reporting requirements under § 1.1461–1(c). As a result, the final regulations do not require reportable death benefits paid to a foreign person that must be reported on Form 1042–S to also be reported on Form 1099–R.

11. Comments and Changes Relating to Penalties

Sections 1.6050Y–2(g), 1.6050Y–3(g), and 1.6050Y–4(f) of the proposed regulations cross-reference sections 6721 and 6722 and the regulations thereunder for provisions relating to the penalties provided for failure to file timely a correct information return or furnish timely a correct information return required under section 6050Y and §§ 1.6050Y–2, 1.6050Y–3, or 1.6050Y–4 of the proposed regulations. Sections 1.6050Y–2(g), 1.6050Y–3(g), and 1.6050Y–4(f) of the proposed regulations also cross-reference § 301.6724–1 for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

One commenter asked for permanent penalty relief for issuers unable to meet the filing due date for reasons beyond the control of the issuer. The commenter stated that such relief is available under section 6724(a), which allows for waivers for reasonable cause for reporting failures. The commenter suggested that the requested relief could be accomplished through guidance that designates late receipt of a Form 1099–LS (serving as an RPSS) as establishing reasonable cause for purposes of section 6724. To identify reports eligible for such relief, the commenter suggested that a check box could be added to Form 1099–SB for ''late receipt of Form 1099–LS,'' thereby avoiding the inefficiencies and costs associated with waiver and abatement procedures. The commenter did not provide any reason to anticipate that many acquirers will fail to timely furnish statements to 6050Y(a) issuers as required by section 6050Y(a) and § 1.6050Y–2(d)(2). Accordingly, the Treasury Department and the IRS have determined that the normal penalty relief procedures, as described in section 9 of this Summary of Comments and Explanation of Revisions, should be sufficient and have not adopted the commenter's recommendation.

Applicability Dates

Section 1 of this Summary of Comments and Explanation of Revisions describes the applicability dates for § 1.101–1(b) through (g) of the final regulations and §§ 1.6050Y–1 through 1.6050Y–4 of the final regulations.

As described in section 1 of this Summary of Comments and Explanation of Revisions, the final regulations provide transition relief as set forth in § 1.6050Y–1(b) of the proposed regulations, with some modifications. For reportable policy sales and payments of reportable death benefits occurring after December 31, 2018, and on or before October 31, 2019, § 1.6050Y–1(b) of the final regulations provides transition relief as follows:

(1) Statements required to be furnished to issuers under section 6050Y(a)(2) and § 1.6050Y–2(d)(2)(i) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–2(d)(2)(ii) or December 30, 2019.

(2) Statements required to be furnished to reportable policy sale payment recipients under section 6050Y(a)(2) and § 1.6050Y–2(d)(1)(i) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–2(d)(1)(ii) or February 28, 2020.

(3) Statements required to be furnished to sellers under section 6050Y(b)(2) and § 1.6050Y–3(d)(1) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–3(d)(2) or February 28, 2020.

(4) Statements required to be furnished to reportable death benefits payment recipients under section 6050Y(c)(2) and § 1.6050Y–4(c)(1) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–4(c)(2) or February 28, 2020.

(5) Returns required to be filed under section 6050Y(a)(1) and § 1.6050Y–2(a), section 6050Y(b)(1) and § 1.6050Y–3(a), and section 6050Y(c)(1) and § 1.6050Y–4 must be filed by the later of the applicable deadline set forth in § 1.6050Y–2(c), § 1.6050Y–3(c), and § 1.6050Y–4(b) or February 28, 2020.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

Paperwork Reduction Act

The collection of information contained in the final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control Numbers 1545–0119, 1545–1621, and 1545–2281. In general, the collection of information in the final regulations is required under section 6050Y of the Code: (1) The requirement under § 1.6050Y–2 of the final regulations for an acquirer to report certain information about payments made in reportable policy sales is required under section 6050Y(a); (2) the requirement under § 1.6050Y–3 of the final regulations for an issuer to report certain information about transferors of life insurance contracts is required under section 6050Y(b); and (3) the requirement under § 1.6050Y–4 of the final regulations for a payor to report certain information about payments of reportable death benefits is required under section 6050Y(c). Section 1.6050Y–3(a)(3) of the final regulations also requires the issuer to report to the seller and the IRS the amount the seller would have received if the seller had surrendered the life insurance contract on the date of the reportable policy sale. This information is necessary to allow the seller and the IRS to determine the character (capital or ordinary) of all or a portion of the seller's taxable income from the sale of the life insurance contract. Section 1.6050Y–3(f)(1) of the final regulations contains reporting exceptions for certain foreign beneficial owners. To determine qualification for these reporting exceptions, § 1.6050Y–3(f)(1) of the final regulations requires that certain foreign beneficial owners provide a Form W–8ECI to the 6050Y(b) issuer. This information is necessary to document whether the reporting exception in § 1.6050Y–3(f)(1) of the final regulations applies in a particular situation.

For purposes of the Paperwork Reduction Act, the burden associated with the collection of information contained in section 6050Y(a) and § 1.6050Y–2 of the final regulations is reflected in the IRS Form 1099–LS (OMB control number 1545–2281). For purposes of the Paperwork Reduction Act, the burden associated with the collection of information contained in section 6050Y(b) and § 1.6050Y–3 of the final regulations is reflected in the IRS Form 1099–SB (OMB control number 1545–2281). For purposes of the Paperwork Reduction Act, the burden

associated with the collection of information contained in section 6050Y(c) and § 1.6050Y–4 of the final regulations is reflected in the IRS Form 1099–R (OMB Control Number 1545–0119). For purposes of the Paperwork Reduction Act, the burden associated with the collection of information contained in § 1.6050Y–3(f)(1) of the final regulations will be reflected in the IRS Form W–8ECI (OMB Control Number 1545–1621), when the burden is revised to reflect the additional collection of information in § 1.6050Y–3(f)(1) of the final regulations.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Regulatory Flexibility Act

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 13520 of the TCJA added section 6050Y to chapter 61 (Information and Returns) of the Code. Section 6050Y imposes information reporting obligations related to certain life insurance contract transactions, including reportable policy sales and payments of reportable death benefits. Section 6050Y provides that each of the returns required by section 6050Y is to be made ''at such time and in such manner as the Secretary shall prescribe.'' The final regulations under section 6050Y implement section 6050Y by specifying the manner in which and time at which the information reporting obligations must be satisfied. Because the regulations are limited in scope to time and manner of information reporting and definitional information, the economic impact of the regulations is expected to be minimal. In addition, the IRS and Treasury expect that the reporting burden will fall primarily on financial and insurance firms with annual receipts greater than $38.5 million and, therefore, will not affect a substantial number of small entities. *See* 13 CFR 121.201, sector 52 (finance and insurance).

Although the reporting burden falls primarily on larger entities, some small entities under the size threshold may be subject to a one-time reporting requirement that includes information that is readily available to the entities. This one-time reporting is unlikely to present a significant economic burden on any small entities affected.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2018, that threshold is approximately $150 million. This rule does not include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (titled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Drafting Information

The principal author of these regulations is Kathryn M. Sneade, Office of Associate Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

Availability of IRS Documents

The IRS notice cited in this preamble is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for Part 1 is amended by adding entries for §§ 1.6050Y–2, 1.6050Y–3, and 1.6050Y–4 in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

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Section 1.6050Y–2 also issued under 26 U.S.C. 6050Y(a).

Section 1.6050Y–3 also issued under 26 U.S.C. 6050Y(b).

Section 1.6050Y–4 also issued under 26 U.S.C. 6050Y(c).

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■ **Par. 2.** Section 1.101–1 is amended by:

■ 1. Revising the second sentence of paragraph (a)(1), removing the third sentence of paragraph (a)(1), and adding a sentence at the end of paragraph (a)(1).

■ 2. Revising paragraphs (b)(1) through (3).

■ 3. Removing paragraphs (b)(4) and (5).

■ 4. Adding paragraphs (c) through (g).

The revisions and additions read as follows:

§ 1.101–1 Exclusion from gross income of proceeds of life insurance contracts payable by reason of death.

(a)(1) * * * Death benefit payments having the characteristics of life insurance proceeds payable by reason of death under contracts, such as workmen's compensation insurance contracts, endowment contracts, or accident and health insurance contracts, issued on or before December 31, 1984, are covered by this provision. * * * If the life insurance contract is an employer-owned life insurance contract within the definition of section 101(j)(3), the amount to be excluded from gross income may be affected by the provisions of section 101(j).

* * * * *

(b) * * *

(1) *Transfer of an interest in a life insurance contract for valuable consideration*—(i) *In general.* In the case of a transfer of an interest in a life insurance contract for valuable consideration, including a reportable policy sale for valuable consideration, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited under section 101(a)(2) to the

sum of the actual value of the consideration for the transfer paid by the transferee and the premiums and other amounts subsequently paid by the transferee with respect to the interest. For exceptions to this general rule for certain transfers for valuable consideration that are not reportable policy sales, see paragraph (b)(1)(ii) of this section. The application of section 101(d), (f) or (j), which is not addressed in paragraph (b) of this section, may further limit the amount of the proceeds excludable from gross income.

(ii) *Exceptions*—(A) *Exception for carryover basis transfers.* The limitation described in paragraph (b)(1)(i) of this section does not apply to the transfer of an interest in a life insurance contract for valuable consideration if each of the following requirements are satisfied. First, the transfer is not a reportable policy sale. Second, the basis of the interest, for the purpose of determining gain or loss with respect to the transferee, is determinable in whole or in part by reference to the basis of the interest in the hands of the transferor (see section 101(a)(2)(A)). Third, paragraph (b)(1)(ii)(B) of this section does not apply. In the case of a transfer described in this paragraph (b)(1)(ii)(A), the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount that would have been excludable by the transferor if the transfer had not occurred and the premiums and other amounts subsequently paid by the transferee with respect to the interest. The preceding sentence applies without regard to whether the interest previously has been transferred and the nature of any prior transfer of the interest.

(B) *Exception for transfers to certain persons*—(*1*) *In general.* The limitation described in paragraph (b)(1)(i) of this section does not apply to the transfer of an interest in a life insurance contract for valuable consideration if both of the following requirements are satisfied. First, the transfer is not a reportable policy sale and the interest was not previously transferred for valuable consideration in a reportable policy sale. Second, the interest is transferred to the insured, a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer (see section 101(a)(2)(B)).

(*2*) *Transfers to certain persons subsequent to a reportable policy sale.* Except as provided in paragraph (b)(1)(ii)(B)(*3*) of this section, if a transfer of an interest in a life insurance contract would be described in paragraph (b)(1)(ii)(B)(*1*) of this section, but for the fact that the interest previously was transferred for valuable consideration in a reportable policy sale (whether in the immediately preceding transfer or an earlier transfer), then the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of—

(*i*) The higher of the amount that would have been excludable by the transferor if the transfer had not occurred or the actual value of the consideration for the transfer paid by the transferee; and

(*ii*) The premiums and other amounts subsequently paid by the transferee with respect to the interest.

(*3*) *Transfers to the insured subsequent to a reportable policy sale*—(*i*) Except as provided in paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section, to the extent that an interest (or portion of an interest) in a life insurance contract that was transferred for valuable consideration in a reportable policy sale subsequently is transferred to the insured for valuable consideration, the limitations described in paragraph (b)(1)(i) of this section and paragraph (b)(1)(ii)(B)(*2*) of this section do not apply. To the extent that fair market value is not paid by the insured for the transferred interest, the transfer of the portion of the interest with a value in excess of the consideration paid will be treated as a gift under the bargain sale rule in paragraph (b)(2)(iii) of this section.

(*ii*) This paragraph (b)(1)(ii)(B)(*3*)(*ii*) applies with respect to an interest described in paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section (or portion of such an interest) that subsequently is transferred by the insured to any other person. If all subsequent transfers of the interest (or portion of the interest) are gratuitous transfers that are not reportable policy sales, the amount of the proceeds excluded from gross income is determined under paragraph (b)(2)(i) of this section, taking into account the application of paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section to the insured's acquisition of the interest. If any subsequent transfer of the interest (or portion of the interest) is for valuable consideration or is a reportable policy sale, the amount of the policy proceeds excludable from gross income is determined in accordance with paragraph (b) of this section; if the amount that would have been excludable from gross income by the insured following the transaction described in paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section if no subsequent transfer had occurred is relevant, that amount is determined under paragraph (b)(1)(ii)(B)(*2*) of this section. Paragraph (g)(8) (*Example 8*) of this section and paragraph (g)(9) (*Example 9*) of this section illustrate the application of this paragraph (b)(1)(ii)(B)(*3*)(*ii*).

(2) *Other transfers*—(i) *Gratuitous transfer of an interest in a life insurance contract.* To the extent that a transfer of an interest in a life insurance contract is gratuitous, including a reportable policy sale that is not for valuable consideration, the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1) is limited to the sum of the amount of the proceeds attributable to the gratuitously transferred interest that would have been excludable by the transferor if the transfer had not occurred and the premiums and other amounts subsequently paid by the transferee with respect to the interest. However, if an interest in a life insurance contract is transferred gratuitously to the insured, and that interest has not previously been transferred for value in a reportable policy sale, the entire amount of the proceeds attributable to the interest transferred to the insured is excludable from gross income.

(ii) *Partial transfers.* When only part of an interest in a life insurance contract is transferred, the transferor's exclusion is ratably apportioned between or among the several parts. If multiple parts of an interest are transferred, the transfer of each part is treated as a separate transaction, with each transaction subject to the rule under paragraph (b) of this section that is applicable to the type of transfer involved.

(iii) *Bargain sales.* When the transfer of an interest in a life insurance contract is in part a transfer for valuable consideration and in part a gratuitous transfer, the transfer of each part is treated as a separate transaction for purposes of determining the amount of the proceeds attributable to the interest that is excludable from gross income under section 101(a)(1). Each separate transaction is subject to the rule under paragraph (b) of this section that is applicable to the type of transfer involved.

(3) *Determination of amounts paid by the transferee.* For purposes of paragraphs (b)(1) and (2) of this section, in determining the amounts, if any, of consideration paid by the transferee for the transfer of an interest in a life insurance contract and premiums and other amounts subsequently paid by the transferee with respect to that interest, the amounts paid by the transferee are reduced, but not below zero, by

amounts received by the transferee under the life insurance contract that are not received as an annuity, to the extent excludable from gross income under section 72(e).

(c) *Reportable policy sale*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, a reportable policy sale for purposes of this section and section 6050Y is any direct or indirect acquisition of an interest in a life insurance contract if the acquirer has, at the time of the acquisition, no substantial family, business, or financial relationship with the insured apart from the acquirer's interest in the life insurance contract.

(2) *Exceptions.* None of the following transactions is a reportable policy sale:

(i) A transfer of an interest in a life insurance contract between entities with the same beneficial owners, if the ownership interest of each beneficial owner in the transferor entity does not vary by more than a 20 percent ownership interest from that beneficial owner's ownership interest in the transferee entity. In a series of transfers, the prior sentence is applied by comparing the beneficial owners' ownership interest in the first transferor entity and the last transferee entity. For purposes of this paragraph (c)(2)(i), each beneficial owner of a trust is deemed to have an ownership interest determined by the broadest possible exercise of a trustee's discretion in that beneficial owner's favor. Paragraph (g)(13) (*Example 13*) of this section provides an illustration of the application of this paragraph (c)(2)(i).

(ii) A transfer between corporations that are members of an affiliated group (as defined in section 1504(a)) that files a consolidated U.S. income tax return for the taxable year in which the transfer occurs.

(iii) The indirect acquisition of an interest in a life insurance contract by a person if—

(A) A partnership, trust, or other entity in which an ownership interest is being acquired directly or indirectly holds the interest in the life insurance contract and acquired that interest before January 1, 2019, or acquired that interest in a reportable policy sale reported in compliance with section 6050Y(a) and § 1.6050Y–2; or

(B) Immediately before the acquisition, no more than 50 percent of the gross value of the assets (as determined under paragraph (f)(4) of this section) of the partnership, trust, or other entity that directly or indirectly holds the interest in the life insurance contract, and in which an ownership interest is being directly acquired, consists of life insurance contracts, provided that, after the acquisition, with respect to that partnership, trust, or other entity, the person indirectly acquiring the interest in the life insurance contract and his or her family members own, in the aggregate—

(*1*) With respect to an S corporation, stock possessing 5 percent or less of the total combined voting power of all classes of stock entitled to vote and 5 percent or less of the total value of shares of all classes of stock of the S corporation;

(*2*) With respect to a trust or decedent's estate, 5 percent or less of the corpus and 5 percent or less of the annual income (taking into account, for the purpose of determining any person's ownership interest, the maximum amount of income and corpus that could be distributed to or held for the benefit of that person); or

(*3*) With respect to a partnership or other entity that is not a corporation or a trust, 5 percent or less of the capital interest and 5 percent or less of the profits interest.

(iv) The acquisition of a life insurance contract by an insurance company that issues a life insurance contract in an exchange pursuant to section 1035.

(v) The acquisition of a life insurance contract by a policyholder in an exchange pursuant to section 1035, if the policyholder has a substantial family, business, or financial relationship with the insured, apart from its interest in the life insurance contract, at the time of the exchange.

(d) *Substantial relationship*—(1) *Substantial family relationship.* For purposes of this section, a substantial family relationship means the relationship between an individual and any family member of that individual as defined in paragraph (f)(3) of this section. In addition, a substantial family relationship exists between an individual and his or her former spouse with regard to the transfer of an interest in a life insurance contract to (or in trust for the benefit of) that former spouse incident to divorce.

(2) *Substantial business relationship.* For purposes of this section, a substantial business relationship between the insured and the acquirer exists in each of the following situations:

(i) The insured is a key person (as defined in section 264) of, or materially participates (within the meaning of section 469) in, an active trade or business as an owner, employee, or contractor, and at least 80 percent of that trade or business is owned (directly or indirectly, through one or more partnerships, trusts, or other entities) by the acquirer or the beneficial owners of the acquirer.

(ii) The acquirer acquires an active trade or business and acquires the interest in the life insurance contract either as part of that acquisition or from a person owning significant property leased to the acquired trade or business or life insurance policies held to facilitate the succession of the ownership of the business if—

(A) The insured—

(*1*) Is an employee within the meaning of section 101(j)(5)(A) of the acquired trade or business immediately preceding the acquisition; or

(*2*) Was a director, highly compensated employee, or highly compensated individual within the meaning of section 101(j)(2)(A)(ii) of the acquired trade or business, and the acquirer, immediately after the acquisition, has ongoing financial obligations to the insured with respect to the insured's employment by the trade or business (for example, the life insurance contract is maintained by the acquirer to fund current or future retirement, pension, or survivorship obligations based on the insured's relationship with the entity or to fund a buy-out of the insured's interest in the acquired trade or business); and

(B) The acquirer either carries on the acquired trade or business or uses a significant portion of the acquired business assets in an active trade or business that does not include investing in interests in life insurance contracts.

(3) *Substantial financial relationship.* For purposes of this section, a substantial financial relationship between the insured and the acquirer exists in each of the following situations:

(i) The acquirer (directly or indirectly, through one or more partnerships, trusts, or other entities of which it is a beneficial owner) has, or the beneficial owners of the acquirer have, a common investment (other than the interest in the life insurance contract) with the insured and a buy-out of the insured's interest in the common investment by the co-investor(s) after the insured's death is reasonably foreseeable.

(ii) The acquirer maintains the life insurance contract on the life of the insured to provide funds to purchase assets of or to satisfy liabilities of the insured or the insured's estate, heirs, legatees, or other successors in interest, or to satisfy other liabilities arising upon or by reason of the death of the insured.

(iii) The acquirer is an organization described in sections 170(c), 2055(a), and 2522(a) that previously received from the insured either financial support in a substantial amount or

significant volunteer support or that meets other requirements prescribed in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter) for establishing that a substantial financial relationship exists between the insured and the organization.

(4) *Special rules.* Paragraphs (d)(4)(i), (ii), and (iii) of this section apply for purposes of determining whether a substantial relationship (whether family, business, or financial) exists under paragraph (d)(1), (2), or (3) of this section, respectively.

(i) *Indirect acquisitions.* The acquirer of an interest in a life insurance contract in an indirect acquisition is deemed to have a substantial business or financial relationship with the insured if the direct holder of the interest in the life insurance contract has a substantial business or financial relationship with the insured immediately before and after the date the acquirer acquires its interest.

(ii) *Acquisitions by certain persons.* The sole fact that an acquirer is a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer, is not sufficient to establish a substantial business or financial relationship with the insured. In addition, an acquirer need not be a partner of the insured, a partnership in which the insured is a partner, or a corporation in which the insured is a shareholder or officer to have a substantial business or financial relationship with the insured.

(iii) *Acquisitions by those with differing types of substantial relationships.* A substantial family, business, or financial relationship exists between the insured and a partnership, trust, or other entity if each beneficial owner of that partnership, trust, or other entity has a substantial family, business, or financial relationship with the insured. For example, a substantial family, business, or financial relationship exists between the insured and a trust if each trust beneficiary is a family member of the insured or an organization described in paragraph (d)(3)(iii) of this section.

(e) *Interest in a life insurance contract*—(1) *Definition.* For purposes of this section and section 6050Y, the term *interest in a life insurance contract* means the interest held by any person that has taken title to or possession of the life insurance contract (also referred to as a life insurance policy), in whole or part, for state law purposes, including any person that has taken title or possession as nominee for another person, and the interest held by any person that has an enforceable right to receive all or a part of the proceeds of a life insurance contract or to any other economic benefits of the policy as described in § 20.2042–1(c)(2) of this chapter, such as the enforceable right to designate a contract beneficiary. Any person named as the owner in the life insurance contract generally is the owner (or an owner) of the contract and holds an interest in the contract.

(2) *Transfer of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the term *transfer of an interest in a life insurance contract* means the transfer of any interest in the life insurance contract, including any transfer of title to, possession of, or legal or beneficial ownership of the life insurance contract itself. The creation of an enforceable right to receive all or a part of the proceeds of a life insurance contract constitutes the transfer of an interest in the life insurance contract. The following events are not a transfer of an interest in a life insurance contract: The revocable designation of a beneficiary of the policy proceeds (until the designation becomes irrevocable other than by reason of the death of the insured); the pledging or assignment of a policy as collateral security; and the issuance of a life insurance contract to a policyholder, other than the issuance of a policy in an exchange pursuant to section 1035.

(3) *Acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the acquisition of an interest in a life insurance contract may be direct or indirect.

(i) *Direct acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, the transfer of an interest in a life insurance contract results in the direct acquisition of the interest by the transferee (acquirer).

(ii) *Indirect acquisition of an interest in a life insurance contract.* For purposes of this section and section 6050Y, an indirect acquisition of an interest in a life insurance contract occurs when a person (acquirer) becomes a beneficial owner of a partnership, trust, or other entity that holds (whether directly or indirectly) the interest (whether legal or beneficial) in the life insurance contract. For purposes of this paragraph (e)(3)(ii), the term *other entity* does not include a C corporation, unless more than 50 percent of the gross value of the assets of the C corporation consists of life insurance contracts (as determined under paragraph (f)(4) of this section) immediately before the indirect acquisition.

(f) *Definitions.* The following definitions apply for purposes of this section:

(1) *Beneficial owner.* A beneficial owner of a partnership, trust, or other entity is an individual or C corporation with an ownership interest in that entity. The interest may be held directly or indirectly, through one or more other partnerships, trusts, or other entities. For instance, an individual that directly owns an interest in a partnership (P1), which directly owns an interest in another partnership (P2), is an indirect beneficial owner of P2 and any assets or other entities owned by P2 directly or indirectly. For purposes of this paragraph (f)(1), the beneficial owners of a trust include those who may receive current distributions of trust income or corpus and those who could receive distributions if the trust were to terminate currently.

(2) *C corporation.* The term *C corporation* has the meaning given to it in section 1361(a)(2).

(3) *Family member.* With respect to any individual, the term *family member* refers to any person described in paragraphs (f)(3)(i) through (vi) of this section. For purposes of this paragraph (f)(3), full effect is given to a legal adoption, and a step-child is deemed to be a descendant. The family members of an individual include:

(i) The individual;

(ii) The individual's spouse or a person with whom the individual is in a registered domestic partnership, civil union, or other similar relationship established under state law;

(iii) Any parent, grandparent, or great-grandparent of the individual or of the person described in paragraph (f)(3)(ii) of this section and any spouse of such parent, grandparent, or great-grandparent, or person with whom the parent, grandparent, or great-grandparent is in a registered domestic partnership, civil union, or other similar relationship established under state law;

(iv) Any lineal descendant of the individual or of any person described in paragraph (f)(3)(ii) or (iii) of this section;

(v) Any spouse of a lineal descendant described in paragraph (f)(3)(iv) of this section and any person with whom such a lineal descendant is in a registered domestic partnership, civil union, or other similar relationship established under state law; and

(vi) Any lineal descendant of a person described in paragraph (f)(3)(v) of this section.

(4) *Gross value of assets*—(i) *Determination of gross value of assets.* Except as provided in paragraph

(f)(4)(ii) or (iii) of this section, for purposes of paragraphs (c)(2)(iii)(B) and (e)(3)(ii) of this section, the term *gross value of assets* means, with respect to any entity, the fair market value of the entity's assets, including assets beneficially owned by the entity under paragraph (f)(1) of this section as a beneficial owner of a partnership, trust, or other entity.

(ii) *Determination of gross value of assets of publicly traded entity.* For purposes of determining the gross value of assets of an entity that is publicly traded, if the entity's annual Form 10–K filed with the United States Securities and Exchange Commission (or equivalent annual filing if the entity is publicly traded in a non-U.S. jurisdiction) for the period immediately preceding a person's acquisition of an ownership interest in the entity does not contain information demonstrating that more than 50 percent of the gross value of the entity's assets consist of life insurance contracts, that person may assume that no more than 50 percent of the gross value of the entity's assets consists of life insurance contracts, unless that person has actual knowledge or reason to know that more than 50 percent of the gross value of the entity's assets consists of life insurance contracts.

(iii) *Safe harbor definition of gross value of assets.* An entity may choose to determine the gross value of all the entity's assets for purposes of this section using the following alternative definition of *gross value of assets:*

(A) In the case of assets that are life insurance policies or annuity or endowment contracts that have cash values, the cash surrender value as defined in section 7702(f)(2)(A); and

(B) In the case of assets not described in paragraph (f)(4)(iii)(A) of this section, the adjusted bases (within the meaning of section 1016) of such assets.

(5) *Transfer for valuable consideration.* A transfer for valuable consideration means any transfer of an interest in a life insurance contract for cash or other consideration reducible to a money value.

(g) *Examples.* The application of this section is illustrated by the following examples. Each example assumes that the transferee did not receive any amounts under the life insurance contract other than the amounts described in the examples. With the exception of paragraph (g)(7) (*Example 7*) of this section, the bargain sale rules set forth in paragraph (b)(2)(iii) of this section do not apply in the examples because the consideration paid for the policy transferred is fair market value:

(1) *Example 1.* A is the initial policyholder of a $100,000 insurance policy on A's life. A sells the policy to B, A's child, for $6,000, its fair market value. B is not a partner in a partnership in which A is a partner. B receives the proceeds of $100,000 upon the death of A. Because the transfer to B was for valuable consideration, and none of the exceptions in paragraph (b)(1)(ii) of this section applies, the amount of the proceeds B may exclude from B's gross income under this section is limited under paragraph (b)(1)(i) of this section to $6,000 plus any premiums and other amounts paid by B with respect to the policy subsequent to the transfer.

(2) *Example 2.* The facts are the same as in *Example 1* in paragraph (g)(1) of this section except that, before A's death, B gratuitously transfers the policy back to A. A's estate receives the proceeds of $100,000 on A's death. Because the transfer from B to A is a gratuitous transfer to the insured, and the preceding transfer from A to B was not a reportable policy sale, the amount of the proceeds A's estate may exclude from gross income under this section is not limited by paragraph (b)(2)(i) of this section.

(3) *Example 3.* The facts are the same as in *Example 1* in paragraph (g)(1) of this section except that, before A's death, B sells the policy back to A for its fair market value. A's estate receives the proceeds of $100,000 on A's death. The transfer from A to B is not a reportable policy sale because the acquirer B has a substantial family relationship with the insured, A. The transfer from B to A also is not a reportable policy sale because the acquirer A has a substantial family relationship with the insured, A. Accordingly, paragraph (b)(1)(ii)(B)(*1*) of this section applies to the transfer to A, and the amount of the proceeds A's estate may exclude from gross income is not limited by paragraph (b) of this section.

(4) *Example 4.* A is the initial policyholder of a $100,000 insurance policy on A's life. A transfers the policy for $6,000, its fair market value, to an individual, C, who does not have a substantial family, business, or financial relationship with A. The transfer from A to C is a reportable policy sale. C receives the proceeds of $100,000 on A's death. The amount of the proceeds C may exclude from C's gross income under this section is limited under paragraph (b)(1)(i) of this section to $6,000 plus any premiums and other amounts paid by C with respect to the policy subsequent to the transfer.

(5) *Example 5.* The facts are the same as in *Example 4* in paragraph (g)(4) of this section, except that before A's death, C transfers the policy to D, a partner of A who co-owns real property with A, for $8,000, the policy's fair market value. D receives the proceeds of $100,000 on A's death. The transfer from C to D is not a reportable policy sale because the acquirer D has a substantial financial relationship with the insured, A. However, because that transfer follows a reportable policy sale (the transfer from A to C), the amount of the proceeds that D may exclude from gross income under this section is limited by paragraph (b)(1)(ii)(B)(*2*) of this section to the sum of—

(i) The higher of the amount C could have excluded had the transfer to D not occurred ($6,000 plus any premiums and other amounts paid by C with respect to the policy subsequent to the transfer to C, as described in *Example 4* in paragraph (g)(4) of this section) or the actual value of the consideration for that transfer paid by D ($8,000); and

(ii) Any premiums and other amounts paid by D with respect to the policy subsequent to the transfer to D.

(6) *Example 6.* The facts are the same as in *Example 4* in paragraph (g)(4) of this section, except that before A's death, C transfers the policy back to A for $8,000, its fair market value. A's estate receives the proceeds of $100,000 on A's death. The transfer from C to A is not a reportable policy sale because the acquirer A has a substantial family relationship with the insured, A. Although the transfer follows a reportable policy sale (the initial transfer from A to C), A's estate may exclude all of the policy proceeds from gross income because paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section applies and, therefore, the amount of the proceeds that A may exclude from gross income is not limited by paragraph (b)(1)(i) of this section or (b)(1)(ii)(B)(*2*) of this section.

(7) *Example 7.* The facts are the same as in *Example 6* in paragraph (g)(6) of this section, except that C transfers the policy back to A for $4,000, rather than its fair market value of $8,000. A's estate receives the proceeds of $100,000 on A's death. Because A did not pay fair market value for the policy, the transfer is bifurcated and treated as a bargain sale under paragraph (b)(2)(iii) of this section. A therefore is treated as having purchased 50% of the policy interest for valuable consideration equal to fair market value and as having received 50% of the policy interest in a gratuitous transfer. The transfer from C to A is not a reportable policy sale because the acquirer, A, has a substantial family relationship with the insured, A, but the transfer from C to A follows a reportable policy sale (the transfer from A to C).

(i) *Treatment of policy interest purchased by A.* A's estate may exclude from income all of the policy proceeds related to the 50% policy interest transferred for valuable consideration ($50,000) because, under paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section, the amount of the proceeds that may be excluded from gross income is not limited by paragraph (b)(1)(i) of this section or (b)(1)(ii)(B)(*2*) of this section.

(ii) *Treatment of policy interest gratuitously transferred to A.* The amount of the policy proceeds related to the 50% policy interest transferred gratuitously that A's estate may exclude from income is limited under paragraph (b)(2)(i) of this section to the sum of the amount C could have excluded with respect to 50% of the policy had the transfer back to A not occurred (that is, 50% of the $6,000 that C paid A for the policy, plus 50% of any premiums and other amounts paid by C with respect to the policy subsequent to the transfer to C), plus 50% of any premiums and other amounts paid by A with respect to the policy subsequent to the transfer to A.

(8) *Example 8.* The facts are the same as in *Example 6* in paragraph (g)(6) of this

section, except that, before A's death, A gratuitously transfers 50% of the policy interest to B, A's child, and sells 50% of the policy interest for its fair market value to an individual, E, who does not have a substantial family, business, or financial relationship with A. B and E each receive $50,000 of the proceeds on A's death. Paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section applies to determine the amount of the proceeds that B and E may exclude from gross income because the policy interests transferred to B and E were first transferred for valuable consideration in a reportable policy sale (the transfer by A to C) and then transferred to the insured, A, for fair market value.

(i) *Treatment of policy interest transferred to B.* With respect to the portion of the policy interest transferred to B, because the transfer to B was the only transfer subsequent to the transfer to A and the transfer to B was gratuitous and not a reportable policy sale, under paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section, the amount of the policy proceeds excludable from gross income by B is determined under paragraph (b)(2)(i) of this section, taking into account the application of paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section to A's acquisition of the interest. Under paragraph (b)(2)(i) of this section, the amount of the proceeds B may exclude is limited to the sum of the amount A could have excluded had the transfer to B not occurred, and any premiums and other amounts paid by B with respect to the policy subsequent to the transfer to B. As described in *Example 6* in paragraph (g)(6) of this section, under paragraph (b)(1)(ii)(B)(*3*)(*i*) of this section, the amount of the proceeds that A may exclude from gross income is not limited by paragraph (b)(1)(i) of this section or (b)(1)(ii)(B)(*2*) of this section. Accordingly, the amount of the proceeds that B may exclude from gross income is not limited by paragraph (b) of this section.

(ii) *Treatment of policy interest transferred to E.* With respect to the portion of the policy interest transferred to E, because the transfer to E was not gratuitous and was a reportable policy sale, under paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section, the amount of the policy proceeds excludable from gross income by E is determined in accordance with paragraph (b) of this section. Accordingly, because the transfer to E was for valuable consideration, the amount excludable from gross income by E is limited by paragraph (b)(1)(i) of this section unless an exception in paragraph (b)(1)(ii) of this section applies. Because the transfer from A to E is a reportable policy sale, none of the exceptions in paragraph (b)(1)(ii) of this section apply. Therefore, the amount of the proceeds E may exclude from gross income under this section is limited by paragraph (b)(1)(i) of this section to the sum of the consideration paid by E and the premiums and other amounts paid by E with respect to the policy subsequent to the transfer to E.

(9) *Example 9.* The facts are the same as in *Example 8* in paragraph (g)(8) of this section, except that, before A's death, B transfers B's policy interest to Partnership F, whose partners are A and other family members of A, in exchange for a partnership interest in Partnership F. Partnership F receives $50,000 of the proceeds on A's death. With respect to the policy interest transferred to Partnership F, paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section applies to determine the amount of the proceeds that Partnership F may exclude from gross income for the reasons described in *Example 8* in paragraph (g)(8) of this section.

(i) *Treatment of policy interest transferred to Partnership F.* The transfer to Partnership F was not a reportable policy sale. However, because the transfer to Partnership F was not gratuitous, the amount of the policy proceeds excludable from gross income by Partnership F is determined in accordance with paragraph (b) of this section as if the amount that would have been excludable from gross income by A following the transfer to A, if no subsequent transfer had occurred, was determined under paragraph (b)(1)(ii)(B)(*2*) of this section. Because B's transfer to Partnership F was a transfer for valuable consideration to a partnership in which the insured is a partner that was preceded by a reportable policy sale (the transfer to C), the amount of the proceeds Partnership F may exclude from gross income under this section is limited under paragraph (b)(1)(ii)(B)(*2*) of this section to the higher of the amount that would have been excludable by B if the transfer to Partnership F had not occurred or the actual value of the consideration for the policy paid by Partnership F, plus any premiums and other amounts paid by Partnership F with respect to the policy subsequent to the transfer to Partnership F.

(ii) *Amount that B could have excluded.* Because the transfer from A to B was a gratuitous transfer, the amount of the proceeds B could have excluded from gross income under this section if the transfer to Partnership F had not occurred is limited under paragraph (b)(2)(i) of this section to the sum of the amount A could have excluded had the transfer to B not occurred, and any premiums and other amounts paid by B with respect to the policy subsequent to the transfer to B.

(iii) *Amount that A could have excluded.* As described in paragraph (g)(9)(i) of this section, the amount of the proceeds A could have excluded under this section if the transfer to B had not occurred must be determined under paragraph (b)(1)(ii)(B)(*2*) of this section in accordance with paragraph (b)(1)(ii)(B)(*3*)(*ii*) of this section. Under paragraph (b)(1)(ii)(B)(*2*) of this section, the amount that would have been excludable by A is limited to the higher of the amount that would have been excludable by C if the transfer to A had not occurred ($6,000 plus premiums and other amounts subsequently paid by C) or the actual value of the consideration for the policy paid by A ($8,000), plus any premiums and other amounts paid by A with respect to the policy subsequent to the transfer to A.

(10) *Example 10.* A is the initial policyholder of a $100,000 insurance policy on A's life. A contributes the policy to Corporation X in exchange for stock. Corporation X's basis in the policy is determinable in whole or in part by reference to A's basis in the policy. Corporation X conducts an active trade or business that it wholly owns, and A materially participates in that active trade or business as an employee of Corporation X. Corporation X receives the proceeds of $100,000 on A's death. A's contribution of the policy to Corporation X is not a reportable policy sale because Corporation X has a substantial business relationship with A under paragraph (d)(2)(i) of this section. Although Corporation X's basis in the policy is determinable in whole or in part by reference to A's basis in the policy, paragraph (b)(1)(ii)(A) of this section does not apply because the insured, A, is a shareholder of Corporation X and the other requirements under paragraph (b)(1)(ii)(B) of this section are satisfied. Accordingly, paragraph (b)(1)(ii)(B) of this section applies, and paragraph (b)(1)(ii)(A) of this section is inapplicable. Under paragraph (b)(1)(ii)(B)(*1*) of this section, Corporation X's exclusion is not limited by paragraph (b) of this section.

(11) *Example 11.* The facts are the same as in *Example 10* in paragraph (g)(10) of this section, except that Corporation X transfers its active trade or business and the policy on A's life to Corporation Y in a tax-free reorganization at a time when A is still employed by Corporation X, but is no longer a shareholder of Corporation X. Corporation Y's basis in the policy is determinable in whole or in part by reference to Corporation X's basis in the policy, and Corporation Y carries on the trade or business acquired from Corporation X. Corporation Y receives the proceeds of $100,000 on A's death. The transfer from Corporation X to Corporation Y is not a reportable policy sale because Corporation Y has a substantial business relationship with A under paragraph (d)(2)(ii) of this section. The amount of the proceeds that Corporation Y may exclude from gross income is limited under paragraph (b)(1)(ii)(A) of this section to the sum of the amount that would have been excludable by Corporation X had the transfer to Corporation Y not occurred, plus any premiums and other amounts paid by Corporation Y with respect to the policy subsequent to the transfer. Accordingly, because Corporation X's exclusion is not limited by paragraph (b) of this section, as described in *Example 10* in paragraph (g)(10) of this section, Corporation Y's exclusion is not limited by paragraph (b) of this section.

(12) *Example 12.* A is the initial policyholder of a $100,000 insurance policy on A's life. A contributes the policy to a C corporation, Corporation W, in exchange for stock. After the acquisition, A owns less than 20% of the outstanding stock of Corporation W and owns stock possessing less than 20% of the total combined voting power of all stock of Corporation W and is therefore not a key person with respect to Corporation W under section 264(e)(3). Corporation W's basis in the policy is determinable in whole or in part by reference to A's basis in the policy. However, no substantial family, business, or financial relationship exists between A and Corporation W, so A's contribution of the policy to Corporation W is a reportable policy sale. Corporation W receives the proceeds of $100,000 on A's death. Under paragraph (b)(1)(i) of this section, the amount of the proceeds

Corporation W may exclude from gross income is limited to the actual value of the stock exchanged for the policy, plus any premiums and other amounts paid by Corporation W with respect to the policy subsequent to the transfer. The exceptions in paragraph (b)(1)(ii) of this section do not apply because the transfer to Corporation W is a reportable policy sale.

(13) *Example 13.* Partnership X and Partnership Y are owned by individuals A, B, and C. A holds 40% of the capital and profits interest of Partnership X and 20% of the capital and profits interest of Partnership Y. B holds 35% of the capital and profits interest of Partnership X and 40% of the capital and profits interest of Partnership Y. C holds 25% of the capital and profits interest of Partnership X and 40% of the capital and profits interest of Partnership Y. Partnership X is the initial policyholder of a $100,000 insurance policy on the life of A. Partnership Y purchases the policy from Partnership X. Under paragraph (c)(2)(i) of this section, this transfer is not a reportable policy sale because the ownership interest of each beneficial owner in Partnership X does not vary from that owner's interest in Partnership Y by more than a 20% ownership interest. A's ownership varies by a 20% interest, B's ownership varies by a 5% interest, and C's ownership varies by a 15% interest.

(14) *Example 14.* Partnership X conducts an active trade or business and is the initial policyholder of a $100,000 insurance policy on the life of its full-time employee, A. A materially participates in Partnership X's active trade or business in A's capacity as an employee. Individual B acquires a 10% profits interest in Partnership X in exchange for a cash payment of $1,000,000. Under paragraphs (d)(1) through (3) of this section, B does not have a substantial family, business, or financial relationship with A. Under paragraph (d)(4)(i) of this section, however, B is deemed to have a substantial business relationship with A because, under paragraph (d)(2)(i) of this section, Partnership X (the direct policyholder) has a substantial business relationship with A. Accordingly, although the acquisition of the 10% partnership interest by B is an indirect acquisition of a 10% interest in the insurance policy covering A's life, the acquisition is not a reportable policy sale.

(15) *Example 15.* The facts are the same as in *Example 14* in paragraph (g)(14) of this section, except that A is no longer an employee of Partnership X, and Partnership X has no substantial family, business, or financial relationship with A, when B acquires the profits interest in Partnership X. Also, B acquires only a 5% profits interest in exchange for a cash payment of $500,000. Partnership X does not own an interest in any other life insurance policies, and the gross value of its assets is $10 million. Although neither Partnership X nor B has a substantial family, business, or financial relationship with A at the time of B's indirect acquisition of an interest in the policy covering A's life, because B's profits interest in Partnership X does not exceed 5%, and because no more than 50% of Partnership X's asset value consists of life insurance contracts, the exception in paragraph (c)(2)(iii)(B) of this section applies, and B's indirect acquisition of an interest in the policy covering A's life is not a reportable policy sale.

(16) *Example 16.* A is the initial policyholder of a $100,000 insurance policy on A's life. A sells the policy for its fair market value. As a result of the sale, Bank X holds legal title to the life insurance contract as the nominee of Partnership B, and Partnership B has the enforceable right to designate the contract beneficiary. Under paragraphs (d)(1) through (4) of this section, neither Bank X nor Partnership B has a substantial family, business, or financial relationship with the insured, A, at the time of the sale. Accordingly, the transfer of legal title to the policy to Bank X is a reportable policy sale under paragraph (c)(1) of this section, unless an exception set forth in paragraph (c)(2) of this section applies. The same is true of the transfer of the economic benefits of the policy to Partnership B. At a later date, Partnership B sells its economic interest in the policy to Partnership C for fair market value. Bank X continues to hold legal title to the life insurance contract, but now holds it as Partnership C's nominee. Partnership C has no substantial family, business, or financial relationship with the insured, A, under paragraphs (d)(1) through (4) of this section at the time of the transfer. Accordingly, Partnership C's acquisition of the economic interest in the policy from Partnership B is a reportable policy sale under paragraph (c)(1) of this section, unless an exception set forth in paragraph (c)(2) of this section applies.

■ **Par. 3.** Section 1.101–6 is amended by revising paragraph (b) to read as follows:

§ 1.101–6 Effective date.

* * * * *

(b) Notwithstanding paragraph (a) of this section, for purposes of determining whether a transfer of an interest in a life insurance contract is a reportable policy sale or a payment of death benefits is a payment of reportable death benefits subject to the reporting requirements of section 6050Y and §§ 1.6050Y–1 through 1.6050Y–4, § 1.101–1(b) through (g) apply to reportable policy sales made after December 31, 2018, and to reportable death benefits paid after December 31, 2018. For any other purpose, including for purposes of determining the amount of the proceeds of life insurance contracts payable by reason of death excluded from gross income under section 101, § 1.101–1(b) through (g) apply to amounts paid by reason of the death of the insured under a life insurance contract, or interest therein, transferred after October 31, 2019. However, under section 7805(b)(7), a taxpayer may apply the rules set forth in § 1.101–1(b) through (g) of the final regulations, in their entirety, with respect to all amounts paid by reason of the death of the insured under a life insurance contract, or interest therein, transferred after December 31, 2017, and on or before October 31, 2019.

■ **Par. 4.** Section 1.6050Y–1 is added to read as follows:

§ 1.6050Y–1 Information reporting for reportable policy sales, transfers of life insurance contracts to foreign persons, and reportable death benefits.

(a) *Definitions.* The following definitions apply for purposes of this section and §§ 1.6050Y–2 through 1.6050Y–4:

(1) *Acquirer.* The term *acquirer* means any person that acquires an interest in a life insurance contract (through a direct acquisition or indirect acquisition of the interest) in a reportable policy sale.

(2) *Buyer.* The term *buyer* means, with respect to any interest in a life insurance contract that has been transferred in a reportable policy sale, the person that was the most recent acquirer of that interest in a reportable policy sale as of the date reportable death benefits are paid under the contract.

(3) *Direct acquisition of an interest in a life insurance contract.* The term *direct acquisition of an interest in a life insurance contract* has the meaning given to it in § 1.101–1(e)(3)(i).

(4) *Foreign person.* The term *foreign person* means a person that is not a United States person, as defined in section 7701(a)(30).

(5) *Indirect acquisition of an interest in a life insurance contract.* The term *indirect acquisition of an interest in a life insurance contract* has the meaning given to it in § 1.101–1(e)(3)(ii).

(6) *Interest in a life insurance contract.* The term *interest in a life insurance contract* has the meaning given to it in § 1.101–1(e)(1).

(7) *Investment in the contract*—(i) *Definition of investment in the contract.* With respect to the original policyholder of a life insurance contract, the term *investment in the contract* on any date means that person's investment in the contract under section 72(e)(6) on that date. With respect to any other person, the term *investment in the contract* on any date means the *estimate of investment in the contract* on that date.

(ii) *Definition of estimate of investment in the contract.* The term *estimate of investment in the contract* with respect to any person, other than the original policyholder, means, on any date, the aggregate amount of premiums paid for the contract by that person before that date, less the aggregate amount received under the contract by that person before that date to the extent such information is known to or can

reasonably be estimated by the issuer or payor.

(8) *Issuer*—(i) *In general.* Except as provided in paragraph (a)(8)(ii) or (iii) of this section, the term *issuer* generally means, on any date, with respect to any interest in a life insurance contract, any person that bears any part of the risk with respect to the contract on that date and any person responsible on that date for administering the contract, including collecting premiums and paying death benefits. For instance, if a reinsurer reinsures on an indemnity basis all or a portion of the risks that the original issuer (and continuing contract administrator) of the contract might otherwise have incurred with respect to the contract, both the reinsurer and the original issuer of the contract are issuers of the contract for purposes of this paragraph (a)(8)(i). Any designee of an issuer of a contract is also considered an issuer of the contract for purposes of this paragraph (a)(8)(i).

(ii) *6050Y(a) issuer.* For purposes of information reporting under section 6050Y(a) and § 1.6050Y–2, the 6050Y(a) issuer is the issuer that is responsible for administering the life insurance contract, including collecting premiums and paying death benefits under the contract, on the date of the reportable policy sale. In the case of the issuance of a life insurance contract to a policyholder in an exchange pursuant to section 1035, the 6050Y(a) issuer is the issuer that issues the new contract.

(iii) *6050Y(b) issuer.* For purposes of information reporting under section 6050Y(b) and § 1.6050Y–3, a 6050Y(b) issuer is:

(A) Any person that receives an RPSS with respect to a life insurance contract or interest therein (or, in the case of a designee, receives notice that the issuer for whom it serves as designee received an RPSS), and is or was, on or before the date of receipt of the RPSS, an issuer with respect to the contract; or

(B) Any person that receives notice of a transfer to a foreign person of a life insurance contract, provided that the person is or was, on the date of transfer or on the date of receipt of the notice, an issuer with respect to the contract, and provided that the information is not received from the issuer responsible for administering the contract (or its designee), unless:

(*1*) That person (or, in the case of a designee, the issuer for whom it serves as designee) is not responsible for administering the contract, including collecting premiums and paying death benefits under the contract, on the date the notice of a transfer to a foreign person is received; and

(*2*) That person, or its designee, provides the issuer that is responsible on that date for administering the contract, including collecting premiums and paying death benefits under the contract, with such notice and with any available information necessary to accomplish reporting under section 6050Y(b) and § 1.6050Y–3.

(iv) *Designee.* A person is treated as the designee of an issuer for purposes of this paragraph (a)(8) only if so designated in writing, including electronically. The designation must be signed and acknowledged, in writing or electronically, by the person named as designee, or that person's representative, and by the issuer making the designation, or its representative.

(9) *Life insurance contract.* The term *life insurance contract* has the meaning given to it in section 7702(a). A life insurance contract may also be referred to as a life insurance policy.

(10) *Notice of a transfer to a foreign person.* The term *notice of a transfer to a foreign person* means any notice of a transfer of title to, possession of, or legal ownership of a life insurance contract received by a 6050Y(b) issuer that includes foreign indicia, including information provided for nontax purposes such as a change of address notice for purposes of sending statements or for other purposes, and information relating to loans, premiums, or death benefits with respect to the contract, unless the 6050Y(b) issuer knows that no transfer of the contract has occurred or knows that the transferee is a United States person. For this purpose, a 6050Y(b) issuer may rely on a Form W–9, Request for Taxpayer Identification Number and Certification, or a valid substitute form that meets the requirements of § 1.1441–1(d)(2) (substituting ''6050Y(b) issuer'' for ''withholding agent''), that indicates the transferee is a United States person. For instance, a change of address notice that changes the address to a foreign address or other updates to the information relating to the payment of premiums that includes foreign banking or other foreign financial institution information is notice of a transfer to a foreign person unless the 6050Y(b) issuer knows that no transfer has occurred or the transferee is a United States person.

(11) *Payor.* The term *payor* means any person making a payment of reportable death benefits.

(12) *Reportable death benefits.* The term *reportable death benefits* means amounts paid by reason of the death of the insured under a life insurance contract that are attributable to an interest in the contract that was transferred in a reportable policy sale.

(13) *Reportable death benefits payment recipient.* The term *reportable death benefits payment recipient* means any person that receives reportable death benefits as a beneficiary under a life insurance contract or as the holder of an interest in a life insurance contract.

(14) *Reportable policy sale.* The term *reportable policy sale* has the meaning given to it in § 1.101–1(c).

(15) *Reportable policy sale payment.* The term *reportable policy sale payment* generally means the total amount of cash and the fair market value of any other consideration reducible to a money value transferred, or to be transferred, in a reportable policy sale, including any amount of a reportable policy sale payment recipient's debt assumed by the acquirer in a reportable policy sale. In the case of an indirect acquisition of an interest in a life insurance contract that is a reportable policy sale, the reportable policy sale payment is the total amount of cash and the fair market value of any other consideration reducible to a money value transferred, or to be transferred, for the ownership interest in the entity, including the amount of any debt assumed by the acquirer, that is appropriately allocable to the interest in the life insurance contract held by the entity.

(16) *Reportable policy sale payment recipient*—(i) Except as provided in paragraph (a)(16)(ii) of this section, the term *reportable policy sale payment recipient* means any person that receives a reportable policy sale payment in a reportable policy sale. A broker or other intermediary that retains a portion of the cash or other consideration transferred in a reportable policy sale is also a reportable policy sale payment recipient.

(ii) A person other than the seller is not a reportable policy sale payment recipient with respect to a reportable policy sale if that person receives aggregate payments of less than $600 with respect to that reportable policy sale.

(17) *Reportable policy sale statement.* The term *reportable policy sale statement (RPSS)* means a statement furnished by an acquirer to an issuer under section 6050Y(a)(2) and § 1.6050Y–2(d)(2)(i).

(18) *Seller.* The term *seller* means any person that—

(i) Holds an interest in a life insurance contract and transfers that interest, or any part of that interest, to an acquirer in a reportable policy sale; or

(ii) Owns a life insurance contract and transfers title to, possession of, or legal

ownership of that contract to a foreign person.

(19) *Transfer of an interest in a life insurance contract.* The term *transfer of an interest in a life insurance contract* has the meaning given to it in § 1.101–1(e)(2).

(20) *United States person.* The term *United States person* has the meaning given to it in section 7701(a)(30).

(b) *Applicability date.* This section and §§ 1.6050Y–2 through 1.6050Y–3 apply to reportable policy sales made after December 31, 2018. This section and § 1.6050Y–4 apply to reportable death benefits paid after December 31, 2018. However, for reportable policy sales and payments of reportable death benefits occurring after December 31, 2018, and on or before October 31, 2019, transition relief is provided as follows:

(1) Statements required to be furnished to issuers under section 6050Y(a)(2) and § 1.6050Y–2(d)(2)(i) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–2(d)(2)(ii) or December 30, 2019.

(2) Statements required to be furnished to reportable policy sale payment recipients under section 6050Y(a)(2) and § 1.6050Y–2(d)(1)(i) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–2(d)(1)(ii) or February 28, 2020.

(3) Statements required to be furnished to sellers under section 6050Y(b)(2) and § 1.6050Y–3(d)(1) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–3(d)(2) or February 28, 2020.

(4) Statements required to be furnished to reportable death benefits payment recipients under section 6050Y(c)(2) and § 1.6050Y–4(c)(1) must be furnished by the later of the applicable deadline set forth in § 1.6050Y–4(c)(2) or February 28, 2020.

(5) Returns required to be filed under section 6050Y(a)(1) and § 1.6050Y–2(a), section 6050Y(b)(1) and § 1.6050Y–3(a), and section 6050Y(c)(1) and § 1.6050Y–4 must be filed by the later of the applicable deadline set forth in § 1.6050Y–2(c), § 1.6050Y–3(c), and § 1.6050Y–4(b) or February 28, 2020.

■ **Par. 5.** Section 1.6050Y–2 is added to read as follows:

§ 1.6050Y–2 Information reporting by acquirers for reportable policy sale payments.

(a) *Requirement of reporting.* Except as provided in paragraph (f) of this section, every person that is an acquirer in a reportable policy sale during any calendar year must file a separate information return with the Internal Revenue Service (IRS) in the form and manner as required by the IRS for each reportable policy sale payment recipient, including any seller that is a reportable policy sale payment recipient. Each return must include the following information with respect to the seller or other reportable policy sale payment recipient to which the return relates:

(1) The name, address, and taxpayer identification number (TIN) of the acquirer;

(2) The name, address, and TIN of the seller or other reportable policy sale payment recipient to which the return relates;

(3) The date of the reportable policy sale;

(4) The name of the 6050Y(a) issuer of the life insurance contract acquired and the policy number of the life insurance contract;

(5) The aggregate amount of reportable policy sale payments made, or to be made, to the seller or other reportable policy sale payment recipient to which the return relates with respect to the reportable policy sale; and

(6) Any other information that is required by the form or its instructions.

(b) *Unified reporting.* The information reporting requirement of paragraph (a) of this section applies to each acquirer in a series of prearranged transfers of an interest in a life insurance contract, as well as each acquirer in a simultaneous transfer of different interests in a single life insurance contract. In either case, an acquirer's reporting obligation is deemed satisfied if the information required by paragraph (a) of this section with respect to that acquirer is timely reported on behalf of that acquirer in a manner that is consistent with forms, instructions, and other IRS guidance by one or more other acquirers or by a third party information reporting contractor.

(c) *Time and place for filing.* Returns required to be made under paragraph (a) of this section must be filed with the Internal Revenue Service Center designated on the prescribed form or in its instructions on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reportable policy sale occurred. However, see § 1.6050Y–1(b)(5) for transition rules.

(d) *Requirement of and time for furnishing statements*—(1) *Statements to reportable policy sale payment recipients*—(i) *Requirement of furnishing statement.* Every person required to file an information return under paragraph (a) of this section with respect to a reportable policy sale payment recipient must furnish in the form and manner prescribed by the IRS to the reportable policy sale payment recipient whose name is set forth in that return a written statement showing the information required by paragraph (a) of this section with respect to the reportable policy sale payment recipient and the name, address, and phone number of the information contact of the person furnishing the written statement. The contact information of the person furnishing the written statement must provide direct access to a person that can answer questions about the statement. The statement is not required to include information with respect to any other reportable policy sale payment recipient in the reportable policy sale or information about reportable policy sale payments to any other reportable policy sale payment recipient.

(ii) *Time for furnishing statement.* Each statement required by paragraph (d)(1)(i) of this section to be furnished to any reportable policy sale payment recipient must be furnished on or before February 15 of the year following the calendar year in which the reportable policy sale occurred. However, see § 1.6050Y–1(b)(2) for transition rules.

(2) *Statements to 6050Y(a) issuers*—(i) *Requirement of furnishing RPSS*—(A) *In general.* Except as provided in paragraph (d)(2)(i)(B) of this section, every person required to file a return under paragraph (a) of this section must furnish in the form and manner prescribed by the IRS to the 6050Y(a) issuer whose name is required to be set forth in the return an RPSS with respect to each reportable policy sale payment recipient that is also a seller. Each RPSS must show the information required by paragraph (a) of this section with respect to the seller named therein, except that the RPSS is not required to set forth the amount of any reportable policy sale payment. Each RPSS must also show the name, address, and phone number of the information contact of the person furnishing the RPSS. This contact information must provide direct access to a person that can answer questions about the RPSS.

(B) *Exception from reporting.* An RPSS is not required to be furnished to the 6050Y(a) issuer by an acquirer acquiring an interest in a life insurance contract in an indirect acquisition.

(ii) *Time for furnishing RPSS.* Except as provided in this paragraph (d)(2)(ii), each RPSS required by paragraph (d)(2)(i) of this section to be furnished to a 6050Y(a) issuer must be furnished by the later of 20 calendar days after the reportable policy sale, or 5 calendar days after the end of the applicable state law rescission period. However, if the later date is after January 15 of the year

following the calendar year in which the reportable policy sale occurred, the RPSS must be furnished by January 15 of the year following the calendar year in which the reportable policy sale occurred. However, see § 1.6050Y–1(b)(1) for transition rules.

(3) *Unified reporting.* The information reporting requirements of paragraphs (d)(1)(i) and (d)(2)(i) of this section apply to each acquirer in a series of prearranged transfers of an interest in a life insurance contract, as well as each acquirer in a simultaneous transfer of different interests in a single life insurance contract, as described in paragraph (b) of this section. In either case, an acquirer's obligation to furnish statements is deemed satisfied if the information required by paragraphs (d)(1)(i) and (d)(2)(i) of this section with respect to that acquirer is timely reported on behalf of that acquirer consistent with forms, instructions, and other IRS guidance by one or more other acquirers or by a third party information reporting contractor.

(e) *Notice of rescission of a reportable policy sale.* Any person that has filed a return required by section 6050Y(a)(1) and this section with respect to a reportable policy sale must file a corrected return within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale. Any person that has furnished a written statement under section 6050Y(a)(2) and this section with respect to the reportable policy sale must furnish the recipient of that statement with a corrected statement within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale.

(f) *Exceptions to requirement to file*—(1) An acquirer that is a foreign person is not required to file an information return under paragraph (a) of this section with respect to a reportable policy sale unless—

(i) The life insurance contract (or interest therein) transferred in the sale is on the life of an insured who is a United States person at the time of the sale; or

(ii) The sale is subject to the laws of one or more States of the United States that pertain to acquisitions or sales of life insurance contracts (or interests therein).

(2) An acquirer is not required to file an information return under paragraph (a) of this section with respect to a reportable policy sale payment to a reportable policy sale payment recipient other than the seller if the reportable policy sale payment is reported by the acquirer under section 6041 or 6041A.

(3) An acquirer is not required to file an information return under paragraph (a) of this section with respect to the issuance of a life insurance contract in an exchange pursuant to section 1035. However, the acquirer is required to furnish the 6050Y(a) issuer with the statement required under paragraph (d)(2) of this section as if the acquirer were required to file an information return under paragraph (a) of this section.

(g) *Cross-reference to penalty provisions*—(1) *Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(a)(1) and this section, see section 6721 and § 301.6721–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish timely a correct statement to identified persons under section 6050Y(a)(2) and this section, see section 6722 and § 301.6722–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

■ **Par. 6.** Section 1.6050Y–3 is added to read as follows:

§ 1.6050Y–3 Information reporting by 6050Y(b) issuers for reportable policy sales and transfers of life insurance contracts to foreign persons.

(a) *Requirement of reporting.* Except as provided in paragraph (f) of this section, each 6050Y(b) issuer that receives an RPSS or any notice of a transfer to a foreign person must file an information return with the Internal Revenue Service (IRS) with respect to each seller in the form and manner prescribed by the IRS. The return must include the following information with respect to the seller:

(1) The name, address, and taxpayer identification number (TIN) of the seller;

(2) The investment in the contract with respect to the seller;

(3) The amount the seller would have received if the seller had surrendered the life insurance contract on the date of the reportable policy sale or the transfer of the contract to a foreign person, or if the date of the transfer to a foreign person is not known to the 6050Y(b) issuer, the date the 6050Y(b) issuer received notice of the transfer; and

(4) Any other information that is required by the form or its instructions.

(b) *Unified reporting.* Each 6050Y(b) issuer subject to the information reporting requirement of paragraph (a) of this section must satisfy that requirement, but a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by paragraph (a) of this section with respect to that 6050Y(b) issuer is timely reported on behalf of that 6050Y(b) issuer in a manner that is consistent with forms, instructions, and other IRS guidance by one or more other 6050Y(b) issuers or by a third party information reporting contractor.

(c) *Time and place for filing.* Except as provided in this paragraph (c), returns required to be made under paragraph (a) of this section must be filed with the Internal Revenue Service Center designated on the prescribed form or in its instructions on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the reportable policy sale or the transfer to a foreign person occurred. If the 6050Y(b) issuer does not receive notice of a transfer to a foreign person until after January 31 of the calendar year following the year in which the transfer occurred, returns required to be made under paragraph (a) of this section must be filed by the later of February 28 (March 31 if filed electronically) of the calendar year following the year in which the transfer occurred or thirty days after the date notice is received. However, see § 1.6050Y–1(b)(5) for transition rules.

(d) *Requirement of and time for furnishing statements*—(1) *Requirement of furnishing statement.* Every 6050Y(b) issuer filing a return required by paragraph (a) of this section must furnish to each seller that is a reportable policy sale payment recipient or makes a transfer to a foreign person and whose name is required to be set forth in the return a written statement showing the information required by paragraph (a) of this section with respect to that seller and the name, address, and phone number of the information contact of the person filing the return. This contact information must provide direct access to a person that can answer questions about the statement.

(2) *Time for furnishing statement.* Except as provided in this paragraph (d)(2), each statement required by paragraph (d)(1) of this section to be furnished to any seller must be furnished on or before February 15 of the year following the calendar year in which the reportable policy sale or transfer to a foreign person occurred. If a 6050Y(b) issuer does not receive notice of a transfer to a foreign person until after January 31 of the calendar

year following the year in which the transfer occurred, each statement required to be made under paragraph (d) of this section must be furnished by the date thirty days after the date notice is received. However, see § 1.6050Y–1(b)(3) for transition rules.

(3) *Unified reporting.* Each 6050Y(b) issuer subject to the information reporting requirement of paragraph (d)(1) of this section must satisfy that requirement, but a 6050Y(b) issuer's reporting obligation is deemed satisfied if the information required by paragraph (d)(1) of this section with respect to that 6050Y(b) issuer is timely reported on behalf of that 6050Y(b) issuer consistent with forms, instructions, and other IRS guidance by one or more other 6050Y(b) issuers or by a third party information reporting contractor.

(e) *Notice of rescission of a reportable policy sale or transfer of an insurance contract to a foreign person.* Any 6050Y(b) issuer that has filed a return required by section 6050Y(b)(1) and this section with respect to a reportable policy sale or transfer of an insurance contract to a foreign person must file a corrected return within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale or transfer of the insurance contract to a foreign person. Any 6050Y(b) issuer that has furnished a written statement under section 6050Y(b)(2) and this section with respect to the reportable policy sale or transfer of the insurance contract to a foreign person must furnish the recipient of that statement with a corrected statement within 15 calendar days of the receipt of notice of the rescission of the reportable policy sale or transfer of the insurance contract to a foreign person.

(f) *Exceptions to requirement to file.* A 6050Y(b) issuer is not required to file an information return under paragraph (a) of this section if paragraph (f)(1), (2), or (3) of this section applies.

(1) Except as provided in this paragraph (f)(1), the 6050Y(b) issuer obtains documentation upon which it may rely to treat a seller of a life insurance contract or interest therein as a foreign beneficial owner in accordance with § 1.1441–1(e)(1)(ii), applying in such case the provisions of § 1.1441–1 by substituting the term ''6050Y(b) issuer'' for the term ''withholding agent'' and without regard to the fact that that these provisions apply only to amounts subject to withholding under chapter 3 of subtitle A of the Internal Revenue Code. A 6050Y(b) issuer may also obtain from a seller that is a partnership or trust, in addition to documentation establishing the entity's foreign status, a written certification from the entity that no beneficial owner of any portion of the proceeds of the sale is a United States person. In such a case, the issuer may rely upon the written certification to treat the partnership or trust as a foreign beneficial owner for purposes of this paragraph (f)(1) provided that the seller does not have actual knowledge that a United States person is the beneficial owner of all or a portion of the proceeds of the sale. See § 1.1441–1(c)(6)(ii) for the definition of beneficial owner that applies for purposes of this paragraph (f)(1). Additionally, for certifying its status as a foreign beneficial owner (as applicable) for purposes of this paragraph (f)(1), a seller that is required to report any of the income from the sale as effectively connected with the conduct of a trade or business in the United States under section 864(b) is required to provide to the 6050Y(b) issuer a Form W–8ECI, Certificate of Foreign Person's Claim that Income is Effectively Connected with the Conduct of a Trade or Business in the United States. If a 6050Y(b) issuer obtains a Form W–8ECI from a seller with respect to the sale or has reason to know that income from the sale is effectively connected with the conduct of a trade or business in the United States under section 864(b), the exception to reporting described in this paragraph (f)(1) does not apply.

(2) The 6050Y(b) issuer receives notice of a transfer to a foreign person, but does not receive an RPSS with respect to the transfer, provided that, at the time the notice is received—

(i) The 6050Y(b) issuer is not a United States person;

(ii) The life insurance contract (or interest therein) transferred is not on the life of a United States person; and

(iii) The 6050Y(b) issuer has not classified the seller as a United States person in its books and records.

(3) The RPSS received by the 6050Y(b) issuer is with respect to the 6050Y(b) issuer's issuance of a life insurance contract to a policyholder in an exchange pursuant to section 1035.

(g) *Cross-reference to penalty provisions*—(1) *Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(b)(1) and this section, see section 6721 and § 301.6721–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish timely a correct statement to identified persons under section 6050Y(b)(2) and this section, see section 6722 and § 301.6722–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

■ **Par. 7.** Section 1.6050Y–4 is added to read as follows:

§ 1.6050Y–4 Information reporting by payors for reportable death benefits.

(a) *Requirement of reporting.* Except as provided in paragraph (e) of this section, every person that is a payor of reportable death benefits during any calendar year must file a separate information return for such calendar year with the Internal Revenue Service (IRS) for each reportable death benefits payment recipient in the form and manner prescribed by the IRS. The return must include the following information with respect to the reportable death benefits payment recipient to which the return relates:

(1) The name, address, and taxpayer identification number (TIN) of the payor;

(2) The name, address, and TIN of the reportable death benefits payment recipient;

(3) The date of the payment;

(4) The gross amount of reportable death benefits paid to the reportable death benefits payment recipient during the taxable year;

(5) The payor's estimate of investment in the contract with respect to the buyer, limited to the payor's estimate of the buyer's investment in the contract with respect to the interest for which the reportable death benefits payment recipient was paid; and

(6) Any other information that is required by the form or its instructions.

(b) *Time and place for filing.* Returns required to be made under this section must be filed with the Internal Revenue Service Center designated in the instructions for the form on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the payment of reportable death benefits was made. However, see § 1.6050Y–1(b)(5) for transition rules.

(c) *Requirement of and time for furnishing statements*—(1) *Requirement of furnishing statement.* Every person required to file an information return under paragraph (a) of this section must furnish to each reportable death benefits payment recipient whose name is required to be set forth in that return a written statement showing the information required by paragraph (a) of

this section with respect to that reportable death benefits payment recipient and the name, address, and phone number of the information contact of the payor. This contact information must provide direct access to a person that can answer questions about the statement.

(2) *Time for furnishing statement.* Each statement required by paragraph (c)(1) of this section to be furnished to any reportable death benefits payment recipient must be furnished on or before January 31 of the year following the calendar year in which the payment of reportable death benefits was made. However, see § 1.6050Y–1(b)(4) for transition rules.

(d) *Notice of rescission of a reportable policy sale.* Any person that has filed a return required by section 6050Y(c) and this section with respect to a payment of reportable death benefits must file a corrected return within 15 calendar days of recovering any portion of the reportable death benefits payment from the reportable death benefits payment recipient as a result of the rescission of the reportable policy sale. Any person that has furnished a written statement under section 6050Y(c)(2) and this section with respect to a payment of reportable death benefits must furnish the recipient of that statement with a corrected statement within 15 calendar days of recovering any portion of the reportable death benefits payment from the reportable death benefits payment recipient as a result of the rescission of the reportable policy sale.

(e) *Exceptions to requirement to file.* A payor is not required to file an information return under paragraph (a) of this section with respect to a payment of reportable death benefits if paragraph (e)(1), (2), or (3) of this section applies.

(1) Except as provided in this paragraph (e)(1), the payor obtains documentation in accordance with § 1.1441–1(e)(1)(ii) upon which it may rely to treat the reportable death benefits payment recipient as a foreign beneficial owner of the reportable death benefits, applying in such case the provisions of § 1.1441–1 by substituting the term ''payor'' for the term ''withholding agent'' and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of subtitle A of the Internal Revenue Code. A payor may also obtain from a partnership or trust that is a reportable death benefits recipient, in addition to documentation establishing the entity's foreign status, a written certification from the entity that no beneficial owner of any portion of the reportable death benefits payment is a United States person. In such a case, a payor may rely upon the written certification to treat the partnership or trust as a foreign beneficial owner for purposes of this paragraph (e)(1) provided that the payor does not have actual knowledge that a United States person is the beneficial owner of all or a portion of the reportable death benefits payment. See § 1.1441–1(c)(6)(ii) for the definition of beneficial owner that applies for purposes of this paragraph (e)(1). Other due diligence or reporting requirements may, however, apply to a payor that relies on the exception set forth in this paragraph (e)(1). See § 1.1441–5(c) and (e) (determination of payees of foreign partnerships and certain foreign trusts for amounts subject to withholding under § 1.1441–2(a)) and § 1.1461–1(b) and (c) (amounts subject to reporting for chapter 3 purposes).

(2) The buyer obtained the life insurance contract (or interest therein) under which reportable death benefits are paid in a reportable policy sale to which the exception to reporting described in § 1.6050Y–3(f)(2) applies.

(3) The payor never received, and has no knowledge of any issuer having received, an RPSS with respect to the interest in a life insurance contract with respect to which the reportable death benefits are paid.

(f) *Cross-reference to penalty provisions*—(1) *Failure to file correct information return.* For provisions relating to the penalty provided for failure to file timely a correct information return required under section 6050Y(c)(1) and this section, see section 6721 and § 301.6721–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

(2) *Failure to furnish correct statement.* For provisions relating to the penalty provided for failure to furnish timely a correct statement to identified persons under section 6050Y(c)(2) and this section, see section 6722 and § 301.6722–1 of this chapter. See section 6724(a) and § 301.6724–1 of this chapter for the waiver of a penalty if the failure is due to reasonable cause and is not due to willful neglect.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: October 15, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–23559 Filed 10–25–19; 4:15 pm]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 211 October 31, 2019

Part III

Federal Deposit Insurance Corporation

12 CFR Parts 303, 326, 337, *et al.*

Removal of Transferred OTS Regulations Regarding Certain Regulations for the Operations of State Savings Associations; Proposed Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 326, 337, 353, 390

RIN 3064–AF14

Removal of Transferred OTS Regulations Regarding Certain Regulations for the Operations of State Savings Associations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking (NPR), the Federal Deposit Insurance Corporation (FDIC) proposes to rescind and remove certain regulations transferred in 2011 to the FDIC from the former Office of Thrift Supervision pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act). In addition to the removal of part 390, subpart S, the FDIC proposes to make technical changes to other parts of the FDIC's regulations so that they may be applicable on their terms to State savings associations. Following the removal of the identified regulations, the regulations governing the operations of State savings associations will be substantially the same as those for all other FDIC-supervised institutions. The FDIC invites comments on all aspects of this proposed rulemaking.

DATES: Comments must be received on or before December 2, 2019.

ADDRESSES: You may submit comments by any of the following methods:

- *FDIC Website: https://www.fdic.gov/regulations/laws/federal/.* Follow instructions for submitting comments on the agency website.
- *Email: Comments@fdic.gov.* Include RIN 3064–AF14 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery to FDIC:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please include your name, affiliation, address, email address, and telephone number(s) in your comment. All statements received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. You should submit only information that you wish to make publicly available.

Please note: All comments received will be posted generally without change to *https://www.fdic.gov/regulations/laws/federal/,* including any personal information provided. Paper copies of public comments may be requested from the Public Information Center by telephone at 877–275–3342 or 703–562–2200.

FOR FURTHER INFORMATION CONTACT: Karen J. Currie, Senior Examination Specialist, 202–898–3981, *kcurrie@fdic.gov,* Division of Risk Management Supervision; Cassandra Duhaney, Senior Policy Analyst, 202–898–6804, Division of Depositor and Consumer Protection; Gregory Feder, Counsel, 202–898–8724; Suzanne Dawley, Counsel, 202–898–6509; or Linda Hubble Ku, Counsel, 202–898–6634, Legal Division.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Dodd-Frank Act

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) [1] provided for a substantial reorganization of the regulation of State and Federal savings associations and their holding companies. Beginning July 21, 2011, the transfer date established by section 311 of the Dodd-Frank Act,[2] the powers, duties, and functions of the former Office of Thrift Supervision (OTS) were divided among the FDIC, as to State savings associations, the Office of the Comptroller of the Currency (OCC), as to Federal savings associations, and the Board of Governors of the Federal Reserve System (FRB), as to savings and loan holding companies. Section 316(b) of the Dodd-Frank Act,[3] provides the manner of treatment for all orders, resolutions, determinations, regulations, and advisory materials that had been issued, made, prescribed, or allowed to become effective by the OTS.[4] The section provides that if such issuances were in effect on the day before the transfer date, they continue in effect and are enforceable by or against the appropriate successor agency until they are modified, terminated, set aside, or superseded in accordance with applicable law by such successor agency, by any court of competent jurisdiction, or by operation of law.

The Dodd-Frank Act directed the FDIC and the OCC to consult with one another and to publish a list of the continued OTS regulations to be enforced by each respective agency. The list was published by the FDIC and OCC as a Joint Notice in the **Federal Register** on July 6, 2011,[5] and shortly thereafter, the FDIC published its transferred OTS regulations as new FDIC regulations in 12 CFR parts 390 and 391.[6] When it republished the transferred OTS regulations, the FDIC noted that its staff would evaluate the transferred OTS regulations and might later recommend incorporating the transferred OTS rules into other FDIC rules, amending them or rescinding them, as appropriate.

Section 312(b)(2)(C) of the Dodd-Frank Act [7] amended the definition of ''appropriate Federal banking agency'' contained in section 3(q) of the Federal Deposit Insurance Act (FDI Act) [8] to add State savings associations to the list of entities for which the FDIC is designated as the ''appropriate Federal banking agency.'' As a result, when the FDIC acts as the designated ''appropriate Federal banking agency'' (or under similar terminology) for State savings associations, as it does here, the FDIC is authorized to issue, modify, and rescind regulations involving such associations and for State nonmember banks and insured branches of foreign banks.

B. 12 CFR Part 390, Subpart S

One of the rules of the former OTS that was transferred to the FDIC, 12 CFR part 563, governs many of the operations of State savings associations. The former OTS's rule was transferred to the FDIC with nominal changes and is now found in the FDIC's rules at part 390, subpart S, entitled ''*State Savings Associations—Operations.*'' [9] Subpart S governs a wide range of operations of State savings associations, as further discussed below.[10]

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[2] 12 U.S.C. 5411.

[3] 12 U.S.C. 5414(b).

[4] 12 U.S.C. 5414(b).

[5] List of Office of Thrift Supervision Regulations to be Enforced by the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, 76 FR 39246 (Jul. 6, 2011).

[6] Transfer and Redesignation of Certain Regulations Involving State Savings Associations Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, 76 FR 47652 (Aug. 5, 2011).

[7] 12 U.S.C. 5412(b)(2)(C).

[8] 12 U.S.C. 1813(q).

[9] 12 CFR part 390, subpart S.

[10] The transferred OTS provision governing the frequency of safety and soundness examinations of State savings associations, 12 CFR 390.351, was rescinded and removed by the final rule that amended 12 CFR 337.12 to reflect the authority of the FDIC under section 4(a) of HOLA to provide for the examination of safe and sound operation of State savings associations. *See* Expanded Examination Cycle for Certain Small Insured Depository Institutions and U.S. Branches and

II. The Proposal

Section 316(b)(3) of the Dodd-Frank Act in pertinent part, provides that the regulations of the former OTS, as they apply to State savings associations, will be enforceable by the FDIC until they are modified, terminated, set aside, or superseded in accordance with applicable law.[11] Consistent with the FDIC's stated intention to evaluate transferred OTS regulations before taking action on them, the FDIC has carefully reviewed the provisions of subpart S, and proposes to take action as described below with respect to certain sections of this subpart.

A. Section 390.330—Chartering Documents

Section 390.330 requires a de novo State savings association, prior to commencing operations, to file its charter and bylaws with the FDIC for approval. This section also requires a de novo State savings association to certify to the FDIC that its charter and bylaws are permissible under all applicable laws, rules, and regulations. In addition, this section requires each State savings association to make available to its accountholders a copy of its charter and bylaws, including amendments thereto, in each office or by request.

Unlike the OCC or state banking supervisors, the FDIC does not charter insured depository institutions. Thus, as it does with State nonmember banks, the FDIC proposes to defer to state law as to whether and how a State savings association should disclose or provide copies of its organizational documents to interested parties. Consistent with this position, the FDIC proposes to rescind and remove this section of Subpart S.

B. Section 390.331—Securities: Statement of Non-Insurance

Section 390.331 requires that every security issued by a State savings association include in its provisions a clear statement that the security is not insured by the FDIC. Although the FDIC does not have an identical companion rule to § 390.331, provisions of the Federal Deposit Insurance Act (the FDI Act), and the FDIC regulations clarify (and require FDIC-supervised institutions to clarify) that securities are not deposits under the FDI Act and are not insured by the FDIC.

Section 3(*l*) of the FDI Act defines ''deposit'' for the purposes of the FDI Act and does not include any securities, regardless of issuer.[12] The definition of ''insured deposit'' at section 3(m) of the FDI Act, also does do not include securities, including those issued by a State savings association.[13]

Further, part 328 governs the use of the official sign of the FDIC and prescribes its use by insured depository institutions. It also provides the official advertising statement that insured depository institutions must include in their advertisements. For purposes of part 328, the term ''insured depository institution'' includes insured branches of a foreign depository institution, as well as State savings associations. In particular, the advertising of non-deposit products (which includes securities) is governed by § 328.3(e). That section prohibits an insured depository institution from including the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement that relates solely to non-deposit products.

Because § 390.331 largely is redundant to current FDIC rules and regulations that govern advertising of non-deposit products, including securities, for all insured depository institutions, the FDIC proposes to rescind and remove § 390.331.

C. 12 CFR 390.332—Merger, Consolidation, Purchase or Sale of Assets, or Assumption of Liabilities

Section 390.332 addresses the application requirements for mergers, consolidations, purchases or sales of assets, and assumptions of liabilities that apply to State savings associations. The FDIC proposes to rescind § 390.332 and to amend 12 CFR part 303, subpart D, the section of the FDIC's regulations governing merger transactions. The proposed amendments to subpart D would make that section applicable to any FDIC-supervised institution, including State savings associations, and would make other conforming changes. The proposed revisions to subpart D would make subpart D applicable to mergers in which the resulting institution is a State savings association, while observing the necessary requirements of the Bank Merger Act and Home Owners' Loan Act (HOLA).[14] The FDIC specifically proposes amending § 303.62(a)(1) of the FDIC's regulations to clarify that this section applies to merger transactions in which the resulting institution is either an insured State nonmember bank or a State savings association.

HOLA generally provides for a 60-day expedited processing period for applications involving State or Federal savings associations that acquire or are acquired by another insured depository institution.[15] The FDIC proposes to amend § 303.64 of its regulations to reflect HOLA's expedited statutory processing requirement as it applies to State savings associations. Specifically, a proposed new paragraph (c) of section 303.64 would clarify that the FDIC will act on merger applications submitted by State savings associations within 60 days after the date of the FDIC's receipt of a substantially complete merger application, subject to the FDIC's authority to extend such period by an additional 30 days in cases where material information is substantially inaccurate or incomplete.[16] Although the FDIC proposes to incorporate this 60-day processing requirement with respect to State savings associations, the FDIC proposes to rescind the provisions of § 390.332 that deem certain merger applications involving state savings associations to be automatically approved.[17] The FDIC does not consider such provisions to be statutorily required by the HOLA, and their inclusion in subpart D would be inconsistent with the treatment of State nonmember banks under subpart D, which clarifies that merger applications processed under expedited processing are not deemed to be automatically approved upon the conclusion of the expedited processing period.[18] After the proposed amendment to subpart D and proposed removal and rescission of § 390.332, all FDIC-supervised institutions would be subject, in substantially the same manner, to the regulations for merger applications found in part 303, subpart D.

The FDIC is including a technical amendment to § 303.62(b)(5) of the FDIC's regulations. Currently, § 303.62(b)(5) provides that an insured depository institution assuming deposit liabilities of another insured institution must provide certification of assumption of deposit liability to the FDIC in accordance with part 307. This provision no longer accurately reflects the requirements of part 307, which was amended to clarify that the transferring institution file the certification, rather than the assuming institution.[19]

Agencies of Foreign Banks, 81 FR 90949 (Dec. 16, 2016).

[11] 12 U.S.C. 5414(b)(3).

[12] 12 U.S.C. 1813(*l*).

[13] 12 U.S.C. 1813(m).

[14] 12 U.S.C. 1461 *et seq.*

[15] 12 U.S.C. 1467a(s)(2).

[16] 12 U.S.C. 1467a(s)(2)(B).

[17] *See* 12 CFR 390.332(f) and (h).

[18] 12 CFR 303.64(a)(3).

[19] 71 FR 8789 (Feb. 21, 2006), codified at 12 CFR 307.1 *et seq.*

D. 12 CFR 390.333—Advertising

Section 390.333 prohibits State savings associations from making inaccurate representations about services, contracts, investments, or financial condition in their advertising. It appears that the former OTS used this regulation sparingly. FDIC staff identified only ten occasions in which the former OTS cited this provision in guidance letters and no circumstances in which the former OTS cited the regulation in an adjudicated enforcement proceeding.

The prohibition of misrepresentations in advertising contained in § 390.333 is substantially similar to the more general prohibition of unfair or deceptive acts or practices under section 5(a) of the Federal Trade Commission Act (Section 5). The FDIC enforces this provision pursuant to its authority under Section 8 of the FDI Act.[20] Section 390.333 prohibits advertising and representations that are inaccurate or that misrepresent a State savings association's services, contracts, investments, or financial condition. The prohibition contained in Section 5 is broader than § 390.333 because it prohibits all ''unfair or deceptive acts or practices in or affecting commerce,'' and it applies to all FDIC-supervised institutions, not only State savings associations.[21] Because the narrower prohibitions of § 390.333 appear subsumed within the broader prohibitions of Section 5, the FDIC proposes to rescind and remove § 390.333.

In interpreting Section 5, the Federal Trade Commission (FTC) and the courts have concluded that an advertisement is not misleading unless the representation, omission, or practice is material, meaning that it is likely to affect a consumer's decision regarding a product or service.[22] Arguably, then, § 390.333 sets a higher standard than Section 5 because § 390.333 lacks an explicit materiality requirement. That is, if § 390.333 is read strictly, an advertisement could violate that section even if the misrepresentation in the advertisement is not material. As a practical matter, however, it is unlikely that the FDIC would cite a violation of § 390.333 for an immaterial misrepresentation. Therefore, the FDIC does not believe that § 390.333 provides additional meaningful supervisory or enforcement authority to regulate misrepresentations by State savings associations. As a result, the FDIC proposes to rescind and remove § 390.333.

E. 12 CFR 390.334—Directors, Officers, and Employees

Section 390.334 limits who may serve on the board of directors of a State savings association by providing that: A majority of the directors must not be employees of the State savings association or its affiliates; no more than two directors may come from the same family; and no more than one director may be an attorney with a particular law firm.

The FDIC proposes to remove and rescind § 390.334. The FDIC expects State nonmember banks to comply with the laws and regulations of their chartering authority regarding the composition of their boards of directors and will expect State savings associations to do the same. The provisions of § 390.334 are not statutorily mandated and were initially adopted in 1976 by the former OTS' precursor, the Federal Home Loan Bank Board (FHLBB) to increase the independence of boards of directors of insured institutions.[23]

The FDIC expects State savings associations to comply with the laws of their chartering authorities regarding the composition of boards of directors and to look to FDIC-issued guidance for examples of practices that the FDIC considers consistent with safety-and-soundness standards or other applicable laws and regulations. For example, the FDIC's Pocket Guide for Directors contains examples of appropriate conduct by directors' and boards' conduct.[24] The FDIC believes that this Statement of Policy adequately advances the policy objectives of § 390.334. Accordingly, the FDIC proposes to rescind and remove § 390.334.

F. 12 CFR 390.335—Tying Restriction Exception

Section 390.335 is entitled ''Tying restriction exception'' and refers solely to the regulations issued by the FRB. This section is a re-designation of the former OTS regulation 12 CFR 563.36. That section provided for an anti-tying safe harbor for discounts related to a customer's continued minimum balance in certain eligible products. This safe harbor was adopted to conform to a similar safe harbor adopted by the FRB. When the former OTS regulations were transferred to the FDIC, the FDIC replaced the substantive regulations of § 563.36 with the following statement: ''For applicable rules, see the regulations issued by the Board of Governors of the Federal Reserve System.'' This reflects the fact that section 312(b)(2) of the Dodd-Frank Act transferred the authority to grant exceptions from the anti-tying regulations of HOLA to the FRB in consultation with the FDIC or OCC as appropriate, rather than to the FDIC, upon the dissolution of the OTS.[25]

The FDIC proposes rescinding and removing § 390.335 because the FRB's Regulation LL[26] sets forth regulatory exceptions to the anti-tying provisions of HOLA.[27] The authority to grant such exceptions rests with the FRB, in consultation with the FDIC, and the FDIC retains the authority to enforce the anti-tying provisions of HOLA.[28] The FDIC, therefore, considers it appropriate to rescind and remove § 390.335 from the FDIC's rules and regulations.

G. 12 CFR 390.336—Employment Contracts

Section 390.336 sets forth requirements with which a State savings association must comply when entering into an employment contract with its officers and other employees. This section is a re-designation of the former OTS regulation 12 CFR 563.39, which relies on the general statutory authority in HOLA to promulgate regulations concerning the savings and loan industry.[29]

The FDIC proposes to rescind and remove § 390.336. State savings associations are subject to existing statutory authority regarding employment contracts with institution-affiliated parties. For instance, section 30 of the FDI Act prohibits an insured depository institution from entering into a contract with any person for services or goods if the contract would adversely affect the institution's safety or soundness.[30] Further, the FDIC expects that State savings associations will be guided by the Interagency Guidelines Establishing Standards for Safety and Soundness (the Interagency Safety and Soundness Guidelines) prescribed

[20] 12 U.S.C. 1818.

[21] 15 U.S.C. 45(a)(1).

[22] FTC Policy Statement on Deception, October 14, 1983 (appended to *Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174 (1984)); *Novartis Corp.* v. *F.T.C.,* 223 F.3d 783, 786 (D.C. Cir. 2000); *F.T.C.* v. *Pantron I Corp.,* 33 F.3d 1088, 1095 (9th Cir. 1994).

[23] Director Guidelines and Certain Prohibitions and Disclosures, 41 FR 35812, 35814 (Aug. 24, 1976).

[24] Available at *https://www.fdic.gov/regulations/resources/director/pocket/index.html* (last updated Dec. 13, 2007). *See also* Interagency Guidelines Establishing Standards for Safety and Soundness, 12 CFR part 364, app. A.

[25] 12 U.S.C. 5412(b)(2)(A).

[26] *See* 12 CFR 238.7.

[27] 12 U.S.C. 1464(q).

[28] 12 U.S.C. 1464(d).

[29] 12 U.S.C. 1464(a).

[30] 12 U.S.C. 1831g.

pursuant to section 39 of the FDI Act, which apply to all insured depository institutions, including State savings associations.[31] In addition, part 359 of the FDIC's regulations limits and/or prohibits troubled institutions from paying and making golden parachute and indemnification payments to an institution-affiliated party.

For the reasons stated above, the FDIC proposes to rescind and remove § 390.336.

H. 12 CFR 390.337—Transactions With Affiliates

Section 11(a) of HOLA [32] applies Sections 23A and 23B of the Federal Reserve Act [33] to every savings association in the same manner and to the same extent as if the savings association were a member bank with two additional restrictions. The first restriction prohibits State and Federal savings associations from making a loan or other extension of credit to any affiliate unless the affiliate is engaged only in activities which the FRB, by regulation, has determined to be permissible for bank holding companies under section 4(c) of the Bank Holding Company Act.[34] The second restriction prohibits State and Federal savings associations from entering into any transaction for the purchase or investment in securities issued by the affiliate with any affiliate other than with respect to the shares of a subsidiary.[35]

Similar to section 11 of HOLA, section 18(j) of the FDI Act applies sections 23A and 23B to every nonmember insured bank as if it were a member bank.[36] The scope of the FRB's affiliate transaction regulation, Regulation W, notes that both the FDI Act and HOLA make sections 23A and 23B applicable to insured State nonmember banks and insured savings associations, respectively.[37]

The OTS adopted 12 CFR 563.41 to implement affiliate transaction requirements for State and Federal savings associations and, in the regulation, referenced Regulation W.[38] This regulation was redesignated as 12 CFR 390.337 in the transfer of authority for State savings associations from the OTS to the FDIC. Section 390.337 states only that State savings associations should ''see the regulations issued by Board of Governors of the Federal Reserve System'' for the applicable rules for transactions with affiliates. The FDIC does not have a regulation comparable to § 390.337 that applies to State nonmember banks because the FDI Act specifically states that sections 23A and 23B of the Federal Reserve Act apply to State nonmember banks.[39] Because HOLA similarly applies sections 23A and 23B of the Federal Reserve Act to State savings associations [40] and because the FRB's Regulation W [41] addresses the additional restrictions of HOLA applicable to State and Federal savings associations' transactions with their affiliates, the FDIC believes there is no need to retain § 390.337.[42] The FDIC, therefore, proposes to rescind and remove this section.

I. 12 CFR 390.338—Loans by Savings Associations to Their Executive Officers, Directors and Principal Shareholders

Section 22(g) of the Federal Reserve Act [43] pertains to extensions of credit to executive officers of banks, while section 22(h) of the Federal Reserve Act [44] deals with extensions of credit by member banks to their to executive officers, directors, and principal shareholders (or to related interests of those individuals) (insiders). Section 18(j)(2) of the FDI Act [45] provides that both sections 22(g) and (h) of the Federal Reserve Act are applicable to insured nonmember banks in the same manner and to the same extent as if they were member banks. Section 11(b) of HOLA provides a similar result with respect to both State and Federal savings associations.[46]

The OTS implemented insider lending restrictions for savings associations at 12 CFR 563.43. That section cross-referenced the FRB's Regulation O,[47] with some additional modifications. Section 390.338 is the re-designation of 12 CFR 563.43, a transferred OTS regulation, and the rule merely directs the reader to the regulations issued by the FRB. Section 337.3 of the FDIC's regulations [48] implements these requirements in part by incorporation through reference to Regulation O, as previously accomplished by the OTS in § 563.43, and also by imposing direct regulatory requirements on State nonmember banks.

After careful comparison of § 337.3 with § 390.338, the FDIC has concluded that the transferred OTS rule governing insider loans is substantively redundant. Therefore, based on the foregoing, the FDIC proposes to rescind and remove § 390.338, to make minor conforming changes to § 337.3 to clarify its applicability to State savings associations, and to make technical amendments to § 337.3, discussed in further detail below. If the proposal is adopted in final form, FDIC-supervised institutions—including State savings associations—will be regulated in a uniform manner. As a result, the FDIC proposes to rescind and remove § 390.338 in its entirety.

The FDIC also proposes to amend § 337.3 to apply to ''FDIC-supervised institutions,'' meaning State nonmember banks, State savings associations, and foreign banks having an insured branch, to conform to and reflect the scope of the FDIC's current supervisory responsibilities as the appropriate Federal banking agency for both State savings associations and State nonmember banks. Finally, the proposal would make technical corrections and changes to § 337.3. Section 337.3(a) currently provides that, with the exception of certain specified sections (namely §§ 215.5(b), 215.5(c)(3), 215.5(c)(4), and 215.11), insured nonmember banks are subject to the restrictions contained in subpart A of Regulation O to the same extent and to the same manner as if they were member banks. The citations to Regulation O in § 337.3(a) are no longer accurate, however, because the FRB amended Regulation O to remove several statutory reporting requirements relating to insider lending consistent with section 601 of the Financial Services Regulatory Relief Act of 2006.[49] A 2006 FRB rulemaking reflected these statutory amendments.[50] Shortly after the FRB made amendments to Regulation O, the FDIC rescinded 12 CFR part 349, the agency's regulations governing reporting on lending by a State nonmember bank and its correspondent banks to executive officers and principal shareholders.[51] In addition to the Regulation O citations related to rescinded reporting requirements, the FDIC's current regulation contains an inaccurate reference to the Regulation O definition

[31] *See* 12 U.S.C. 1831p–1(c); 12 CFR part 364, App. A, § III.

[32] 12 U.S.C. 1468(a).

[33] 12 U.S.C. 371, 371c–1.

[34] 12 U.S.C. 1468(a)(1)(A), 12 U.S.C. 1843(c).

[35] 12 U.S.C. 1468(a)(1)(B).

[36] 12 U.S.C. 1828(j)(1)(A).

[37] 12 CFR 223.1(c).

[38] *Id.*

[39] 12 U.S.C. 1828(j)(1)(A).

[40] 12 U.S.C. 1468(a).

[41] The FDIC has interpreted the language ''in the same manner and to the same extent'' to include the application of Regulation W.

[42] 12 CFR 223.72.

[43] 12 U.S.C. 375a.

[44] 12 U.S.C. 375b.

[45] 12 U.S.C. 1828(j)(2).

[46] 12 U.S.C. 1468(b).

[47] 12 CFR part 215.

[48] 12 CFR 337.3.

[49] Public Law 109–351.

[50] *See* 71 FR 71472 (Dec. 11, 2006). See also 72 FR 30470 (June 1, 2007).

[51] *See* 71 FR 78337 (Dec. 29, 2006).

of ''unimpaired capital and unimpaired surplus'' in footnote 3 of § 337.3(b). The FDIC proposes to correct this error by adding a reference to the correct Regulation O subsection.

In addition to these proposed changes, the FDIC also is proposing another technical, conforming change to § 337.3: The elimination of transitional provisions that are now obsolete. These paragraphs were added to assist insured nonmember banks in complying with the statutory lending limits for executive officers of member banks, as required by the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).[52] To assist insured nonmember banks in making the transition, the FDIC specifically provided for the handling of loans made prior to application of the new restrictions, but which were still outstanding as of that event. These provisions are no longer needed. The FDIC, therefore, proposes to eliminate them.

In sum, if the proposal is finalized, oversight of insider loans in § 337.3 would apply to all FDIC-supervised institutions, including State savings associations; § 337.3 would reflect technical amendments; and § 390.338 would be rescinded and removed because it is largely duplicative of those rules found in § 337.3.

J. 12 CFR 390.339—Pension Plans

Section 390.339 prohibits State savings associations from sponsoring an employee pension plan which, because of unreasonable costs or for any other reason, could lead to material financial loss or damage to the sponsor. It further requires a State savings association that serves as a pension plan sponsor to retain detailed pension plan records and actuarial funding reports and to provide advance notice of a pension plan termination. The FDIC proposes to rescind and remove § 390.339 because the section is substantially similar to the existing compensation regulations contained in the Interagency Safety and Soundness Guidelines.[53]

The Interagency Safety and Soundness Guidelines apply to all insured depository institutions, including State savings associations. Section III of the Interagency Safety and Soundness Guidelines explicitly prohibits compensation that could lead to material financial loss as an unsafe and unsound practice. The Interagency Safety and Soundness Guidelines also address excessive compensation as an unsafe and unsound practice, taking into account factors such as compensation history, the institution's financial condition, comparable compensation practices, the projected costs and benefits of postemployment benefits, fraudulent or other inappropriate activity, and any other factors the agencies deem relevant. ''Compensation'' is defined as ''all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement Moreover, the requirements of the Employee Retirement Security Act of 1974 [54] and Internal Revenue Code [55] and the implementing regulations of the Pension Benefit Guaranty Corporation, including recordkeeping, would apply to any pension plan offered by an FDIC-supervised institution.[56] On this basis, FDIC staff proposes to rescind and remove § 390.339.

K. 12 CFR 390.340—Offers and Sales of Securities at an Office of a Savings Association

Section 390.340 generally prohibits the offer or sale of debt or equity securities issued by a State savings association or an affiliate of the State savings association at an office of the State savings association with the exception of equity securities issued in connection with the State savings association's conversion from mutual to stock form in a transaction that has been approved by the FDIC or if the sale is conducted in accordance with the conditions set forth in § 390.340. This section is a re-designation of former OTS regulation 12 CFR 563.76.

Section 563.76 was added to the former OTS' regulations in 1992 to minimize potential customer confusion and to promote understanding of the nature and risks associated with securities sold at a State savings association's offices, while still preserving an effective means for a State savings association to raise capital in the conversion process. The FDIC does not have a similar regulation but has published the NDIP Statement of Policy,[57] which addresses all sales of nondeposit products (such as annuities, mutual funds, and other securities) by depository institutions; disclosures and advertising; the setting and circumstances of sales of securities; qualification and training for personnel who sell securities; standards for suitability of the products for customers and sales practices; compensation practices; and compliance policies and procedures. In addition, the FDIC Statement of Policy Regarding the Use of Offering Circulars in Connection with Public Distribution of Bank Securities (Offering Circular Statement of Policy) addresses sales and distribution of bank securities and disclosures that should be included in offering circulars for bank securities to ensure disclosure of material facts to investors.

The content requirements in § 390.340 that are designed to prevent consumer confusion are included in these two Statements of Policy. It is the FDIC's view that specifically imposing these requirements on State savings associations through regulation is unnecessary. According, the FDIC proposes that § 390.340 be rescinded and removed.

L. 12 CFR 390.341—Inclusion of Subordinate Debt Securities and Mandatorily Redeemable Preferred Stock as Supplementary Capital

Section 403(b) of the National Housing Act, as amended, provided that no institution insured by the Federal Savings and Loan Insurance Corporation (FSLIC) may ''issue securities which guarantee a definite return or which have a definite maturity except with the specific approval of the'' FSLIC. Because a number of insured institutions had applied to the FSLIC for approval of the issuance of various types of subordinated debt securities to provide a broader base for capital operations, in 1972, the FHLBB, as the operating head of the FSLIC, adopted a number of rules to provide for uniform requirements for the issuance of such securities.[58] That rule was transferred to the OTS pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and codified at 12 CFR 563.81.[59]

In 2007, the OTS adopted a final rule amending 12 CFR 563.81 to delete several unnecessary or outdated requirements and to conform certain regulations, such as maturity period requirements and purchaser restrictions, to the rules issued by the other Federal

[52] Public Law 102–242.

[53] 12 CFR 364, App. A. III.

[54] Public Law 93–406, 88 Stat. 829, codified in part at 29 U.S.C. 1001, *et seq.*

[55] 26 U.S.C. 1, *et seq.*

[56] 29 U.S.C. 1003; 29 CFR 4000, *et seq.*

[57] Interagency Statement on Retail Sales of Nondeposit Investment Products (Feb.15, 1994), *https://www.fdic.gov/regulations/laws/rules/5000-4500.html.*

[58] 37 FR 21179 (Oct. 6, 1972).

[59] 54 FR 49411.

banking agencies. In addition, the rule reconciled conflicting rules, included appropriate statutory cross-references, and reflected plain language.

Section 390.341 is the re-designation of § 563.81. Section 390.341 provides application and notice procedures and form and content requirements for subordinate debt securities and mandatorily redeemable preferred stock that a State savings association seeks to include in its tier 2 capital. There is no corresponding requirement applicable to State nonmember banks. For the following reasons, the FDIC is proposing to rescind § 390.341.

The FDIC believes that it is not necessary for a State savings association to apply or provide notice to the FDIC before issuing subordinate debt securities or mandatorily redeemable preferred stock. Moreover, many of the form and content requirements in § 390.341 that are designed to prevent consumer confusion are included in the FDIC's Offering Circular Statement of Policy.[60] It is the FDIC's view that specifically imposing these requirements on State savings associations through a regulation is unnecessary.

Section 390.341 also includes a number of criteria that subordinate debt securities and mandatorily redeemable preferred stock must satisfy in order to qualify as tier 2 capital. The criteria for inclusion in tier 2 capital are included in the FDIC's capital rules in 12 CFR part 324.[61] Accordingly, it is not necessary to specify them separately in a regulation applicable to State savings associations alone. Therefore, the FDIC proposes to rescind and remove § 390.341.

M. 12 CFR 390.342–348—Capital Distributions

1. Regulations Governing Capital Distributions

Sections 390.342 through 390.348 govern capital distributions by State savings associations. Certain of these provisions were adopted by the OTS to implement statutory prompt corrective action (PCA) requirements that apply to all insured depository institutions, and others were adopted by the OTS for supervisory or policy reasons. The requirements that are statutorily mandated have analogous provisions in the FDIC's regulations implementing PCA with respect to State nonmember banks and insured branches of foreign banks. Other regulatory requirements that the FDIC has adopted with respect to State nonmember banks, including those related to retirements and reductions in capital, advance some of the policy objectives that underlay the non-statutorily mandated provisions that were previously adopted by the OTS. Therefore, and as more fully explained below, the FDIC proposes to rescind the provisions of subpart S that govern capital requirements and to revise the FDIC's regulations related to PCA, as well as those related to retirements and reductions of capital, so that State savings associations are subject to the same requirements that govern capital distributions by State nonmember banks.

2. Other FDIC Regulations

a. 12 CFR 303.203—Applications for Capital Distributions

Part 303 of the FDIC's regulations includes procedures to implement the filing requirements for capital distributions under section 38 of the FDI Act.[62] Section 38 applies to all insured depository institutions, and, among other things, generally prohibits an insured depository institution from making a capital distribution if, after making the distribution, the institution would be undercapitalized.[63] Section 38 provides an exception to this prohibition that authorizes the Federal banking agencies to permit certain repurchases, redemptions, retirements, or other acquisitions of shares or other ownership interests that are made in connection with the issuance of additional shares or obligations and that would reduce the institution's financial obligations or otherwise improve the institution's financial condition.[64] Section 38 defines a ''capital distribution'' to include certain dividends; repurchases, redemptions, retirements, or other acquisitions of shares or other ownership interests, including extensions of credit to finance an affiliated company's acquisition of such shares; and any other transaction that the Federal banking agencies find to be in substance a distribution of capital.[65]

Section 303.203 implements the above provisions of section 38 by requiring an insured State nonmember bank and any insured branch of a foreign bank to submit an application to the FDIC for a capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.[66] Section 303.203 sets forth the filing requirements for proposed capital distributions that are within the scope of section 38. Specifically, such filings must describe the nature of the proposal, including the shares or obligations that are the subject of the proposal, and must include an explanation of how the proposal would reduce the applicant institution's financial obligations or otherwise improve its financial condition.[67] Section 303.203 also clarifies that if a proposed action also requires an application under § 303.241, such an application should be filed concurrently with the application filed pursuant to section 38.[68]

Although section 38 applies to all insured depository institutions, Subpart K, including § 303.203, applies by its terms only to State nonmember banks and insured branches of foreign banks. As discussed below, the FDIC proposes to rescind the provisions related to capital distributions by State savings associations in Subpart S and to make State savings associations subject to the same capital distribution requirements that apply to State nonmember banks and insured branches of foreign banks. Accordingly, the FDIC proposes to amend § 303.203 so that it expressly applies to State savings associations. In addition, the FDIC proposes a corresponding technical change to the scope section of Subpart K, 12 CFR 303.200, so that it applies to State savings associations.[69] As noted, with respect to transactions that are subject to filing requirements under both section 38 and section 18(i), § 303.203(b) provides that applicants should file such applications concurrently or as part of the same application. For the reasons described below, the FDIC proposes replacing the reference to section 18(i) with a direct reference to § 303.241.

b. 12 CFR 303.241—Reduce or Retire Capital Stock or Capital Debt Instruments

Section 303.241 implements section 18(i)(1) of the FDI Act. Section 18(i)(1) generally prohibits an insured State nonmember bank from reducing the amount or retiring any part of its common or preferred capital stock or

[60] *See* 61 FR 46807 (Sept. 5, 1996).

[61] *See* 12 CFR 324.20(d)(1).

[62] 12 U.S.C. 1831*o*; *see also* 12 CFR 324.405.

[63] 12 U.S.C. 1831*o*(d)(1)(A).

[64] 12 U.S.C. 1831*o*(d)(1)(B).

[65] 12 U.S.C. 1831*o*(b)(2)(B).

[66] 12 CFR 303.203(a).

[67] 12 CFR 303.203(b).

[68] *Id.*

[69] The FDIC is also aware that this proposal, as well as other regulatory developments, would also necessitate certain technical changes to the FDIC's regulations related to annual independent audits and reporting requirements, 12 CFR part 363, including Table 1 to Appendix A of Part 363. The FDIC intends to address such technical changes in a separate notice.

retiring any part of its capital notes or debentures, without the prior consent of the FDIC.[70] In considering an application to reduce or retire such instruments, section 18(i)(4) directs the FDIC to consider various statutory factors, including those related to financial history and condition, capital adequacy, future earnings prospects, general character and fitness of management, the convenience and needs of the community to be served, and consistency with the purposes of the FDI Act.[71]

Section 303.241 sets forth various requirements related to the content of filings submitted to the FDIC pursuant to section 18(i)(1), including, where applicable: The type and amount of the change to the applicant's capital structure; a schedule detailing the applicant's present and proposed capital structure; the time period encompassed by the proposal; certain certifications related to the capital adequacy of the applicant; the repurchase price of capital instruments and the basis for establishing fair market value; a statement that the proposal is available to all holders of a particular class of instruments, and if not, the details of any restrictions; and the date that the applicant's board of directors approved the proposal.[72] Section 303.241 also authorizes the FDIC to seek additional information while processing applications under section 18(i)(1); permits applications that are subject to both section 18(i)(1) and section 38 to be filed concurrently, or as a single application; sets forth expedited processing procedures for eligible depository institutions, and provides that applications that qualify for, and are not removed from, expedited processing will be deemed approved 20 days after receipt of a substantially complete application; and sets forth standard processing procedures.[73]

Consistent with section 18(i)(1)'s specific applicability to State nonmember banks, § 303.241 by its terms applies only to State nonmember banks. However, the FDIC believes that, consistent with the FDIC's authority under section 39 of the FDI Act,[74] it would be a sound operational standard for the FDIC to consider transactions by State savings associations that would result in the reduction or retirement of capital stock or capital debt instruments. Reviewing proposals by State savings associations to reduce or retire capital stock or debt instruments would preserve the FDIC's ability to review such transactions by a State savings association, as currently required under § 390.345 of the FDIC's regulations. Because section 18(i)(1) by its terms applies only to State nonmember banks, the FDIC proposes to amend § 303.241 to clarify that § 303.241 applies to a State savings association seeking to reduce or retire any part of its common stock or preferred stock, or capital notes or debentures, as if the State savings association were a State nonmember bank subject to section 18(i)(1). Accordingly, in considering such an application by an insured State savings association, the FDIC would take into consideration the statutory factors enumerated in section 18(i)(4).[75] As noted above, § 303.241 permits applications that are subject to both section 18(i)(1) and section 38 to be filed concurrently, or as a single application. Because State savings associations are not technically subject to section 18(i)(1) and would be made subject to § 303.241 by the proposed rule under the FDIC's section 39 authority, the FDIC proposes to change this provision so that it refers directly to applications subject to § 303.241, rather than to section 18(i)(1). Furthermore, to achieve consistency with the filing procedures set forth in § 303.203, which states that filings subject to §§ 303.203 and 303.241 ''should'' be made concurrently or as part of the same application, the FDIC proposes to amend § 303.241 to advise institutions that filings subject to both §§ 303.203 and 303.241 should be filed concurrently or as part of the same application.

Question 1: Using the authority granted the FDIC as the appropriate Federal banking agency for State savings associations, is it appropriate for the FDIC to make § 303.241 applicable to State savings associations? Would doing so effectively maintain the FDIC's regulatory consideration of reductions or retirements of capital by State savings association currently provided for in 12 CFR 390.345?

3. 12 CFR 390.342—Capital Distributions by State Savings Associations

Section 390.342 states that §§ 390.342 through 390.348 apply to capital distributions by a State savings association.[76] Because the FDIC proposes to rescind all of these sections, the FDIC proposes that § 390.342 be rescinded and removed.

4. 12 CFR 390.343—What is a capital distribution?

Section 390.343 defines a ''capital distribution'' for the purposes of §§ 390.342–348. Section 390.343(a) defines a capital distribution as a distribution of cash or other property made to a savings association's owners on account of their ownership, but excludes dividends consisting of shares or rights to purchase shares, and also excludes a payment that a mutual State savings association is required to make under the terms of a deposit instrument and any other amount paid on deposits that the FDIC determines is not a capital distribution.[77] This prong of § 390.343's definition of ''capital distribution'' is mirrored in section 38's definition of ''capital distribution.''[78]

Section 390.343(b) includes within the definition of ''capital distribution'' a payment to repurchase, redeem, retire, or otherwise acquire any of a State savings association's shares or other ownership interests, any payment to repurchase, redeem, retire, or otherwise acquire debt instruments included in a savings association's total capital, and any extension of credit to finance an affiliate's acquisition of a State savings association's shares or interests.[79] This prong is also mirrored in section 38, except that section 38's analogous provision does not expressly extend to debt instruments that are included in an institution's total capital.

Section 390.343(c) further defines ''capital distribution'' to include any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring, including the payment of cash or property to shareholders of another savings association of its holding company to acquire ownership in that savings association, other than by a distribution of shares.[80] This prong of § 390.343's definition of ''capital distribution'' is not matched by an analogous prong in section 38. The OTS adopted this provision pursuant to the

[70] 12 U.S.C. 1828(i)(1).

[71] 12 U.S.C. 1828(i)(4).

[72] 12 CFR 303.241(c).

[73] 12 CFR 303.241(d)–(g).

[74] 12 U.S.C. 1831p–1.

[75] The statutory factors of section 18(i)(4) include: (A) The financial history and condition of the institution; (B) the adequacy of its capital structure; (C) its future earnings prospects; (D) the general character and fitness of its management; (E) the convenience and needs of the community to be served; and (F) whether or not its corporate powers are consistent with the purposes of [the FDI Act]. 12 U.S.C. 1828(i)(4).

[76] 12 CFR 390.342.

[77] 12 CFR 390.343(a)(2).

[78] FDI Act § 38(b)(2)(B), 12 U.S.C. 1831*o*(b)(2)(B).

[79] 12 CFR 390.343(b).

[80] 12 CFR 390.343(c).

authority under section 38(b)(2)(B)(iii), which authorizes the Federal banking agencies to, by order or regulation, consider a transaction that is in substance a distribution of capital to be deemed a ''capital distribution'' for the purposes of section 38.[81] OTS adopted this provision in order to capture certain corporate restructurings, such as cash-out mergers, based on the rationale that such transactions are in substance distributions of capital.[82]

Section 390.343(d) captures as a ''capital distribution'' any capital distribution that is charged against a State savings association's capital accounts if the State savings association would not be well capitalized following the distribution.[83] As with payments made in connection with a corporate restructuring, this element of § 390.343's regulatory definition is not expressly addressed in section 38. The OTS adopted this prong in its regulatory definition of ''capital distribution'' in order to capture distributions by a savings association's operating subsidiary to minority shareholders that would affect the capital accounts of the savings association.[84]

Lastly, § 390.343(e) incorporates FDI Act section 38(b)(2)(B)(iii), which authorizes the Federal banking agencies to, by order or regulation, deem as a ''capital distribution'' any transaction that the FDIC determines to be in substance a distribution of capital.[85]

The FDIC's PCA capital distribution filing procedures, 12 CFR 303, subpart K, do not adopt a regulatory definition of ''capital distribution'' specific to subpart K, but instead directly rely on the statutory definition of ''capital distribution'' found in section 38(b)(2)(B) of the FDI Act. As described above, the regulatory definition of ''capital distribution'' applicable to State savings associations found in § 390.343 incorporates all of the elements of the statutory definition of ''capital distribution.'' In addition, § 390.343's definition of ''capital distribution'' expressly extends to certain transactions not specifically addressed in section 38, such as: Repurchases, redemptions, retirements, or other acquisitions of debt instruments; payments made in connection with corporate restructurings; or other distributions that would be charged against a State savings association's capital accounts and that would cause the association to be less than well capitalized. The FDIC does not propose to adopt a regulatory definition of ''capital distribution'' specific to subpart K and proposes to continue to directly rely on the statutory definition of ''capital distribution'' found in section 38(b)(2)(B). Therefore, the FDIC proposes to rescind and remove § 390.343.

Question 2: Should the FDIC adopt a regulatory definition of ''capital distribution'' in its PCA regulation, 12 CFR 303.203? In addition to incorporating the elements of section 38's definition of ''capital distribution,'' should the FDIC exercise its authority under section 38(b)(2)(B)(iii) to adopt by regulation certain provisions that are not specifically addressed in the statutory definition of ''capital distribution,'' such as: Repurchases, redemptions, retirements, or other acquisitions of debt instruments; payments made in connection with corporate restructurings; or other distributions that would be charged against an institution's capital accounts and that would cause the institution to be less than well capitalized? Should such a definition apply to all FDIC-supervised institutions?

5. 12 CFR 390.344—Definitions Applicable to Capital Distributions

Section 390.344 adopts additional definitions specifically for the capital distribution provisions of §§ 390.342 through 390.348.[86] These defined terms include affiliate, capital, net income, retained net income, and shares. Because the FDIC proposes to rescind §§ 390.342 through 390.348, this definition section would no longer be necessary. Accordingly, the FDIC proposes to rescind and remove § 390.344.

6. 12 CFR 390.345—Must I file with the FDIC?

Under § 390.345, a State savings association is required to file an application for a proposed capital distribution in certain circumstances, and in others is required to file a notice. An application is required under § 390.345(a)(1) through (4) in cases where: (1) A State savings association is not eligible for expedited processing under § 390.101; (2) the total amount of all capital distributions by a State savings association for the applicable calendar year exceeds the association's net income for that year to date plus retained net income for the preceding two years; (3) a State savings association would not be at least adequately capitalized following the distribution; or (4) a State savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement with the FDIC, or violate a condition imposed on the State savings association in an FDIC-approved application or notice.[87] A notice is required under § 390.345(b)(1)–(2) in cases where: (1) A State savings association would not be well capitalized following the distribution; or (2) a State savings association's proposed capital distribution would reduce the amount of or retire any part of the association's common or preferred stock or retire any part of debt instruments included in capital.[88]

The FDIC proposes to make capital distributions by State savings associations subject to the same requirements that govern capital distributions by State nonmember banks. As discussed above, the requirements applicable to State nonmember banks are those imposed by section 38 of the FDI Act, implemented at § 303.203 of the FDIC's regulations,[89] and by FDI Act section 18(i), implemented at § 303.241 of the FDIC's regulations.

The application requirements of § 303.203 are analogous to those imposed on State savings associations by § 390.345(a)(3), as both sections require applications to the FDIC in cases where an institution would be undercapitalized following a capital distribution, as mandated by section 38 of the FDI Act. Because section 38 prohibits capital distributions in cases where an insured depository institution would be undercapitalized, the substantive requirements of § 390.345(a)(3) would be preserved by making § 303.203 applicable to State savings associations. Accordingly, the FDIC proposes to rescind and remove § 390.345(a)(3) and, as noted above, the FDIC also proposes to amend § 303.241 so that it applies to State savings associations. This proposal would preserve the regulatory consideration that is required under section 38 and would provide for consistency of treatment between State nonmember banks and State savings associations with respect to capital distributions.

The application requirements of § 303.241 are analogous to the notice requirements imposed on State savings associations by § 390.345(b)(2), as both sections require regulatory consideration of transactions that would

[81] 63 FR 1044, 1046 (Jan. 7, 1998).

[82] *Id.*

[83] 12 CFR 390.343(d).

[84] 64 FR 2805, 2806 (Jan. 19, 1999).

[85] 12 CFR 390.343(e), 12 U.S.C. 1831*o*(b)(2)(B)(iii).

[86] 12 CFR 390.344.

[87] 12 CFR 390.345(a).

[88] 12 CFR 390.345(b).

[89] *See* 12 CFR 324.405.

reduce or retire common or preferred stock or capital notes or debentures. Although § 303.241 implements section 18(i) of the FDI Act, which applies by its terms only to State nonmember banks, the FDIC believes that it would be advisable to use its authority under section 39 to maintain a regulatory filing requirement for a capital distribution by a State savings association that would reduce or retire the association's capital. Accordingly, the FDIC proposes to rescind and remove § 390.345(b)(2) and, as noted above, the FDIC also proposes to amend § 303.241 so that it applies to State savings associations. Doing so would preserve the regulatory consideration that applies to reductions or retirements of capital by State savings associations, and would achieve consistency of treatment between State nonmember banks and State savings associations with respect to capital distributions.

The FDIC proposes to rescind and remove § 390.345 in its entirety, which would effectively eliminate application requirements for capital distributions in cases where: A State savings association is not eligible for expedited processing under § 390.101; the total amount of all capital distributions by a State savings association for the applicable calendar year exceeds the association's net income for that year to date plus retained net income for the preceding two years; and where a State savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement with the FDIC, or violate a condition imposed on the State savings association in an FDIC-approved application or notice. The rescission and removal of § 390.345 would also effectively eliminate the notice requirements for capital distributions in cases where a State savings association would not be well capitalized following the distribution. The FDIC believes that making §§ 303.203 and 303.241 applicable to State savings associations would preserve adequate regulatory consideration over capital distributions by State savings associations, and therefore proposes to rescind and remove § 390.345 in order to achieve consistency of treatment between State nonmember banks and State savings associations with respect to capital distributions.[90]

7. 12 CFR 390.346—How do I file with the FDIC?

Section 390.346 provides filing instructions for capital distributions that are subject to application or notice requirements under § 390.345, including instructions concerning a filing's content, schedules, and timing.[91] Because the FDIC proposes to rescind and remove § 390.345, these provisions would no longer be applicable. Therefore, the FDIC proposes to rescind and remove § 390.346. As described above, the FDIC also proposes to make §§ 303.203 and 303.241 applicable to State savings associations, and both of these sections set forth requirements related to the content of filings. Furthermore, certain rules of general applicability, including those related to processing, are set forth in subpart A of part 303 of the FDIC's regulations and would apply to filings made by State savings associations under §§ 303.203 and 303.241.

8. 12 CFR 390.347—May I combine my notice or application with other notices or applications?

Section 390.347 authorizes a State savings association to combine a notice or application required under § 390.345 with another related notice or application.[92] Because the FDIC proposes rescinding § 390.345, these provisions would no longer be applicable. Therefore, the FDIC proposes to rescind and remove § 390.347. As noted above, by making State savings associations subject to §§ 303.203 and 303.241, as proposed, State savings associations should file applications that are subject to both sections as a single filing or concurrently with other filings.[93]

9. 12 CFR 390.348—Will the FDIC permit my capital distribution?

Section 390.348 sets forth the bases on which the FDIC may deny, in whole or in part, a notice or application filed under § 390.345. Section 390.348(a) states that if a State savings association would be undercapitalized, significantly undercapitalized, or critically undercapitalized following a capital distribution, the FDIC will determine if the distribution would be permitted under the exemption authorized in section 38(d)(1)(B) of the FDI Act.[94] Section 390.348(b) states that the FDIC may deny a notice or application for a capital distribution that raises safety and soundness concerns. Section 390.348(c) states that the FDIC may deny a capital distribution if it would violate a prohibition contained in any statute, regulation, or condition imposed on the applicant State savings association. Because the FDIC proposes to rescind and remove § 390.345, these provisions would no longer be applicable. Furthermore, the statutory exception that applies to capital distributions subject to section 38 would continue to apply to capital distributions by State savings associations that are subject to section 38. In addition, because the proposal would make reductions or retirements of capital by State savings associations subject to the application requirements of § 303.241, the FDIC would evaluate such applications in light of the statutory factors enumerated in section 18(i)(4) of the FDI Act, and the bases identified in §§ 390.348(b) and 390.348(c) would be preserved insofar as they would be inherent in how the FDIC would review applications in light of the statutory factors of section 18(i)(4).[95] For these reasons, the FDIC proposes to rescind and remove § 390.348 in its entirety.

N. 12 CFR 390.349—Management and Financial Policies

Section 390.349 implements the statutory requirement of section 4 of HOLA. That section requires each State savings association to be operated in a safe and sound manner and encourages State savings associations to provide credit for housing safely and soundly.[96] In particular, § 390.349 includes explicit safety and soundness requirements relating to liquidity and compensation to officers, directors, employees, and consultants. Section 39 of the FDI Act,[97] requires the Federal banking agencies to prescribe safety and soundness standards for internal controls, information systems, and internal audit systems; loan documentation; credit underwriting; interest rate exposure; asset growth; compensation, fees, and

[90] State savings associations also may be subject to capital distribution requirements or restrictions under applicable state law or as required by the appropriate State supervisor.

[91] 12 CFR 390.346.

[92] 12 CFR 390.347.

[93] *See* 12 CFR 303.203(b) and 12 CFR 303.241(e).

[94] 12 CFR 390.348(a). This statutory exception under section 38(d)(1)(B) authorizes the FDIC to permit a capital distribution that would otherwise be prohibited by section 38 if such a distribution is made in connection with the issuance of additional shares of obligations and would reduce the institution's financial obligations or otherwise improve the institution's financial condition. 12 U.S.C. 1831*o*(d)(1)(B).

[95] The statutory factors of section 18(i)(4): (A) The financial history and condition of the institution; (B) the adequacy of its capital structure; (C) its future earnings prospects; (D) the general character and fitness of its management; (E) the convenience and needs of the community to be served; and (F) whether or not its corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1828(i)(4).

[96] 12 U.S.C. 1463(a).

[97] 12 U.S.C. 1831p–1.

benefits; and such other operational and managerial standards as the agency determines to be appropriate. To this end, the FDIC has adopted part 364 and the related appendices. Part 364 establishes compensation-related standards and provides for other safety- and soundness-related guidelines which apply to all insured State nonmember banks, to state-licensed insured branches of foreign banks, and to State savings associations.[98] As such, the safety and soundness standards in § 390.349 are generally duplicative of the standards implemented through part 364. To ensure consistent treatment of State nonmember banks and State savings associations, FDIC staff proposes to eliminate the distinct safety and soundness requirements for State savings associations found in § 390.349, because part 364, as amended, provides consistent safety and soundness standards for both State nonmember banks and State savings associations. These standards help to ensure that State savings associations are operated in a safe and sound manner, enabling them to provide credit for housing safely and soundly. For these reasons, the FDIC proposes to rescind and remove § 390.349.

O. 12 CFR 390.350—Examinations and Audits; Appraisals; Establishment and Maintenance of Records

Section 390.350 contains requirements regarding examinations, appraisals, establishing and maintaining books and records, and using data processing services for maintenance of records. The proposed rule would rescind and remove all of § 390.350. The FDIC believes that examination and appraisal requirements should be consistent between State savings associations and State nonmember banks because they are based on the same or similar statutory authority, as described below.

Section 390.350(a) states that each State savings association and affiliate will be examined periodically and may be examined anytime by the FDIC and that appraisals may be required as part of the examination. Section 337.12 states that the FDIC examines State nonmember banks pursuant to section 10 of the FDI Act,[99] State savings associations pursuant to section 10 of the FDI Act and section 4 of HOLA,[100] and implements the frequency of examinations specified by section 10 for insured depository institutions, including State savings associations. Because the examination requirements of §§ 390.350(a) and 337.12 are similar and both based on section 10 of the FDIA, the FDIC proposes to rescind § 390.350(a).

Section 390.350(a) allows the FDIC to require an appraisal during an examination if it is deemed advisable. Section 390.350(b) permits the FDIC to select appraisers in connection with an examination, requires State savings associations to pay for such an appraiser, and mandates that the FDIC furnish the appraisal report to the State savings association within 90 days following the filing of the report to the FDIC. Part 323 of the FDIC's regulations implements Title XI of FIRREA,[101] which requires written appraisals in connection with certain federally related transactions entered into by institutions regulated by the FDIC. Section 323.3(c), which applies to all FDIC-supervised institutions, including State savings associations, allows the FDIC to require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns, which would include during an examination. The FDIC believes the appraisal provisions of § 390.350(a) and (b) are unnecessary because they are duplicative of the FDIC's reservation of authority found in § 323.3(c), which allows the FDIC to require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns.[102]

Section 390.350(c) requires each State savings association and its affiliates to establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts to enable the examination of the State savings association and its affiliates by the FDIC. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

State savings associations are already subject to other FDIC regulations that achieve the purposes of § 390.350(c). For example, as recognized by § 304.3 of the FDIC's regulations, all insured depository institutions, including State savings associations, are required to file quarterly Consolidated Reports of Condition and Income (Call Reports). Under § 304.3(a), all insured depository institutions must prepare the Call Report in accordance with the instructions for the report (Call Report Instructions), which in turn require the institutions to maintain their business records in a manner that supports and reconciles to the contents of the Call Report.[103] In addition, portions of the Call Report also are required to be prepared in accordance with GAAP.[104] In addition, all State savings associations and other FDIC-supervised institutions are subject to 12 CFR part 364 (including its Appendix A).[105] This part requires FDIC-supervised institutions to have internal controls and information systems that are appropriate to their size and the risks posed by their activities and that provide for, among other things: ''timely and accurate financial, operational and regulatory reports.'' [106] Because accurate and complete business records are the very foundation of accurate regulatory and financial reporting, State savings associations must, therefore, maintain accurate and complete records of their business transactions supporting, and readily reconcilable to, the associations' regulatory and financial reports. In the event an FDIC-supervised institution fails to create and maintain the required internal controls and information systems, the FDIC may require the institution to submit a safety and

[98] 12 CFR 364.101. In 2015, 12 CFR 364.101 was amended to apply to both state nonmember banks and state savings associations. *See Removal of Transferred OTS Regulations Regarding Safety and Soundness Guidelines and Compliance Procedures; Rules on Safety and Soundness,* 80 FR 65903 (Oct. 28, 2015).

[99] 12 U.S.C. 1820.

[100] 12 U.S.C. 1463.

[101] Public Law 101–73, 103 Stat. 183; codified at 12 U.S.C. 3331 *et seq.*

[102] Section 390.350(b) contains a cost allocation provision and a timeframe within which appraisals must be provided. These provisions are unnecessary because it is unlikely that the FDIC would purchase an appraisal and seek reimbursement. If the FDIC determines that an appraisal is needed, it will be made in a supervisory recommendation in a report of examination and the response time would be requested in the report transmittal letter or the request would be made as part of an enforcement action with a required timeframe.

[103] See the section entitled ''Preparation of the Reports'' contained in the General Instructions portion of Call Report Instructions for the FFIEC 031, 041 and 051 Report Forms and the section entitled ''Preparation of Information to be Reported'' in the General Instructions portion of the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002 Report Form).

[104] 12 U.S.C. 1831(n); See the section entitled ''Applicability of U.S. Generally Accepted Accounting Principles to Regulatory Reporting Requirements'' contained in the General Instructions portion of Call Report Instructions for the FFIEC 031, 041 and 051 Report Forms and the section entitled ''Accounting Basis'' in the General Instructions portion of the FFIEC 002 Report Form.

[105] 12 CFR 364.101. Part 364 and its appendices implement section 39(a) of the FDI Act. 12 U.S.C. 1831p–1. Taken together, part 364 and Appendix A reflect the FDIC's longstanding expectations for all prudently managed FDIC-supervised institutions while generally leaving the specific methods of achieving these objectives to each institution.

[106] 12 CFR part 364, App. A, § II.

soundness plan designed to correct the deficiencies and, if necessary, compel compliance by means of order.[107]

Section 390.350(d) prohibits State savings associations from transferring the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has authorized the transfer by resolution and notified the appropriate regional director. The FDIC has not promulgated a similar rule for State nonmember banks. Generally, state laws or regulations of the state chartering authority provide for the location of records. The FDIC generally conducts examinations at the home office of FDIC-supervised institutions and requires that records be produced upon request in connection with any examination or investigation under section 10(c) or section 8(n) of the FDI Act. The removal of § 390.350(d) will provide relief to State savings association by not having to notify the appropriate regional director of its intention to relocate records from its home office to a branch or service office and will provide parity with State nonmember banks which do not provide the FDIC with prior notification of transferring records from one location to another.

Section 390.350(e) requires that when a State savings association maintains any of its records by means of data processing services, it will notify the appropriate regional director for the region in which the principal office of such State savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Section 304.3(d), implementing section 7 of the Bank Service Company Act,[108] already requires FDIC-supervised institutions, including State savings associations, to notify the FDIC about the existence of a service relationship within thirty days after the making of the contract or the performance of the service and provides for the required information either through a letter or FDIC Form 6120/06 *Notification of Performance of Bank Services.* The removal of § 390.350(e) will eliminate conflicting requirements on State savings associations with respect to Section 7 of the Bank Service Company Act.

For the foregoing reasons, the FDIC proposes to rescind and remove § 390.350 in its entirety.

P. 12 CFR 390.352—Financial Derivatives

Section 390.352 addresses the permissibility of financial derivatives transactions, the responsibility of the board of directors and management of a State savings association with respect to such transactions, and recordkeeping requirements related to such transactions. The FDIC proposes to rescind and remove § 390.352 for the reasons discussed below.

Section 28(a) of the FDI Act,[109] implemented by part 362 of the FDIC's regulations,[110] restricts and prohibits State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and its service corporations. The term ''activities permissible for a Federal savings association'' means, among other things, activities recognized as permissible in OCC regulations.[111] Section 163.172 of the OCC's regulations governs the financial derivatives activities of Federal savings associations, the responsibility of the board of directors and management of a Federal savings association with respect to such transactions, and recordkeeping requirements related to such transactions.[112] Because section 28(a) of the FDI Act and part 362 permit a State savings association to engage in financial derivatives activities to the same extent permitted by the OCC with respect to a Federal savings association, the FDIC proposes to rescind and remove § 390.352.

Q. 12 CFR 390.353—Interest-Rate-Risk-Management Procedures

Former FHLBB rules 12 CFR 571.3 and 563.17–6, respectively, were intended to support responsible risk management within the industry, to facilitate the examination process, and to assess and reduce the impact of interest rate risk on the former Savings Association Insurance Fund (SAIF).[113] The OTS redesignated § 563.17–6 as 12 CFR 563.176.[114] When the rule was transferred from the former OTS to the FDIC, the FDIC redesignated it as 12 CFR 390.353.

Section 390.353 requires the board of directors or a board committee of a State savings association to develop, implement, and review policies and procedures for the management of a State savings association's interest-rate-risk; requires the association's management to report periodically to the board regarding implementation of the policy; and requires the association's board of directors to adjust the policy as necessary, including adjustments to the authorized acceptable level of interest rate risk. For the reasons below, the FDIC proposes to rescind and remove § 390.353.

As mentioned above, the Interagency Safety and Soundness Guidelines, promulgated pursuant to section 39 of the FDI Act, describe examples of safe and sound practices for State nonmember banks and State savings associations. The guidelines suggest that an institution ''should manage interest rate risk in a manner that is appropriate to its size and the complexity of its assets and liabilities''.[115] Management and the board of directors should be provided reports regarding interest rate risk that are adequate to assess the level of risk. There is no reason to have an additional set of similar standards applicable only to State savings associations.[116]

R. 12 CFR 390.354—Procedures for Monitoring BSA Compliance

Section 390.354 requires State savings associations to establish and maintain a Bank Secrecy Act (BSA) compliance program and a customer identification program. Section 390.354 also enumerates the four pillars required for a BSA compliance program. Similarly, § 326.8 of the FDIC's regulations [117] requires insured depository institutions for which the FDIC is the appropriate Federal banking agency to establish a BSA compliance program to include the same four pillars and a customer identification program. The proposed rule would rescind § 390.354 and make technical changes to § 326.8, which is currently only applicable to insured depository institutions for which the

[107] *See* 12 U.S.C. 1831p–1(e); 12 CFR 308.300, *et seq.;* 12 CFR part 364, App. A.

[108] 12 U.S.C. 1867.

[109] 12 U.S.C. 1831e(a).

[110] *See* 12 CFR 362.9–.15.

[111] *See* 12 CFR 362.9(a).

[112] *See* 12 CFR 163.172.

[113] The SAIF provided deposit insurance to depositors of federally insured savings associations until it was merged into the Bank Insurance Fund (BIF), which similarly insured depositors of federally insured banks. The merged fund, the Deposit Insurance Fund (DIF) became effective on March 31, 2006, consistent with § 2102(a) of the Federal Deposit Insurance Reform Act of 2005. As a result of this action, both the SAIF and BIF were abolished. *See* 49 FR 19307 (May 7, 1984) (proposed rule); 49 FR 27295 (July 3, 1984) (final rule).

[114] 54 FR 49411 (Nov. 30, 1989).

[115] 12 CFR part 364, App. A, § II.E.

[116] Section 305 of FDICIA required the Federal banking agencies to revise their risk-based capital standards to take into account interest rate risk. *See* 12 U.S.C. 1828 nt.; *see also* 12 CFR 324.63, Table 10; 12 CFR 324.173, Table 12.

[117] 12 CFR 326.8, 326.1(a).

FDIC is the appropriate Federal Banking agency.[118]

Section 390.354(a) states that the purpose of the regulation is to require State savings associations to establish and maintain procedures reasonably designed to assure and monitor compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the U.S. Department of the Treasury, 31 CFR part 103 (now superseded by 31 CFR chapter X), commonly referred to as the Bank Secrecy Act. Similarly, § 326.8(a) requires that all insured depository institutions for which the FDIC is the appropriate Federal banking agency establish and maintain procedures reasonably designed to assure and monitor their compliance with the same laws and regulations.

Section 390.354(b) discusses the establishment of a BSA compliance program. Subparagraph (b)(1) states that State savings association shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements of the BSA. The compliance program must be written, approved by the State savings association's board of directors, and reflected in the minutes of the State savings association. Subparagraph (b)(2) states that each State savings association is subject to the requirements of 31 U.S.C. 5318(l) and its implementing regulations, which require the implementation of a customer identification program. Similarly, § 326.8(b)(1) requires that all insured depository institutions for which the FDIC is the appropriate Federal banking agency have a written BSA compliance program, approved by the board of directors, and reflected in the board minutes. Section 326.8(b)(2) also requires all insured depository institutions for which the FDIC is the appropriate Federal banking agency to have a customer identification program.

Section 390.354(c) states that a BSA compliance program shall: Provide for a system of internal controls; provide for independent testing; designate individual(s) responsible for BSA compliance; and provide training. Like § 390.354, § 326.8(c) requires that all insured depository institutions for which the FDIC is the appropriate Federal banking agency have these same BSA compliance program components.

Effective May 2, 2018, the FDIC amended §§ 326.0–326.4 [119] and rescinded the corresponding OTS regulations.[120] As of this date, the recently amended § 326.1 [121] defines both ''FDIC-supervised insured depository institution'' and ''institution'' as any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to 12 U.S.C. 1813(q)(2).

The proposed rule would amend § 326.8 to include both insured State savings associations and State nonmember banks for all of § 326.8 by replacing the terms ''insured nonmember bank'' and ''bank'' currently in § 326.8 with the term ''FDIC supervised institution'' or ''institution.'' Having made the technical amendment to § 326.8, § 390.354 will be duplicative and the FDIC proposes to rescind and remove § 390.354.[122]

S. 12 CFR 390.355—Suspicious Activity Reports and Other Reports and Statements

In order to streamline FDIC regulations and reduce regulatory burden, the FDIC proposes to rescind and remove § 390.355 because it is unnecessary, redundant, and duplicative. In addition, the FDIC proposes to make conforming changes to §§ 353.1 and 353.3 to make part 353 of the FDIC's regulations applicable to all FDIC-supervised institutions.

Section 390.355 requires State savings associations and service corporations to make certain reports. Specifically, subsection 390.355 (a) requires State savings associations to make periodic reports to the FDIC in such a manner and on such forms as the FDIC may prescribe. Subsection 390.355(b) prohibits State savings associations from making false or misleading statements or omissions. Subsection 390.355(c) requires a State Savings association maintaining bond insurance coverage to promptly notify its carrier and file a proof of loss concerning any covered losses more than twice the deductible amount. Subsection 390.355(d) requires State savings associations to file a Suspicious Activity Report (''SAR'') when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of law or regulation. Subsection 390.355(e) requires State savings associations within the jurisdiction of a Federal Home Loan Bank (FHLB) to provide data from the Consolidated Reports of Condition or Income (Call Report) upon the request of the FHLB.

1. § 390.355(a) Periodic Reports

Section 390.355(a) requires State savings associations to make such periodic or other reports to the FDIC in the manner and on the forms the FDIC requires. The FDIC may provide that reports filed for other purposes may also satisfy requirements imposed under § 390.355.

There are a number of Federal statutes that require reporting by State savings associations. For example, section 5 of HOLA requires ''each association to make reports of conditions to the appropriate Federal banking agency which shall be in a form prescribed by the appropriate Federal banking agency . . . .'' and sets forth the type of information such reports shall contain.[123] Section 7(a)(3) of the FDI Act requires all insured depository institutions to make four annual reports of condition to their appropriate Federal banking agency.[124] In addition, section 36 of the FDI Act [125] and the FDIC's implementing regulations at part 363 [126] require insured depository institutions above a specified asset threshold to have annual independent audits and to submit annual reports and audited financial statements to the FDIC. Section 37 of the FDI Act requires financial statements, capital standards, and other reports provided to the FDIC to be prepared in a manner consistent with generally accepted accounting procedures.[127] Finally, The Interagency Policy Statement on External Audit Programs of Banks and Savings

[118] 12 CFR 326.8 is applicable to ''all insured nonmember banks as defined in 12 CFR 326.1.'' Section 326.1 was revised to remove the definition of ''insured nonmember bank'' and replace it with the term ''FDIC-supervised institution'' or ''institution'', defined to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act (12 U.S.C. 1813(q). 83 FR 13839, 13842 (April 2, 2018).

[119] 12 CFR 326.0–326.4

[120] 83 FR at 13842–3.

[121] 12 CFR 326.1 (2019).

[122] The FDIC also proposes to amend the definition in 12 CFR 326.1 to apply to all entities for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act. This revision would clarify that foreign banks having a State-chartered insured branch are also subject to part 326 of the FDIC's regulations. This change is not substantive because the term ''insured depository institution'' already includes insured branches. *See* 12 U.S.C. 1813(a)(1), (c)(2), and (s)(3).

[123] 12 U.S.C. 1464(v)(1). Although 12 U.S.C. 1464 is titled ''Federal savings associations'', section 1464(v) describes the reporting obligations of ''[e]ach association'' and refers to the requirements of the ''appropriate Federal banking agency'' rather than only the OCC. The FDIC is the appropriate Federal banking agency for State savings associations. 12 U.S.C. 1813(q).

[124] 12 U.S.C. 1817(a)(3).

[125] 12 U.S.C. 1831m.

[126] 12 CFR part 363.

[127] 12 U.S.C. 1831n.

Associations[128] provides unified interagency guidance regarding independent external auditing programs of insured depository institutions that community banks and savings associations that do not have to comply with part 363 (because they do not meet the size threshold) or that are not otherwise subject to audit requirements by order, agreement, statute, or FDIC regulations.

For these reasons, § 390.355(a) is not necessary and the FDIC proposes that it be rescinded and removed.

2. § 390.355(b) False or Misleading Statements or Omissions

Section 390.355(b) prohibits State savings associations from making false or misleading statements or omissions to the FDIC and to auditors of State savings associations.

By statute, whoever makes any materially false, fictitious, or fraudulent statement or representation in a matter involving the executive branch of the U.S. government, is subject to imprisonment for up to five years.[129]

In addition, the OCC has promulgated a rule on this topic applicable to all savings associations, Federal or State. The Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[130] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, 12 CFR 163.180(b), that is substantially similar to § 390.355(b) and that applies to both State and Federal savings associations.[131] It prohibits all savings associations from knowingly making false or misleading statements to their ''appropriate Federal banking agency'' and to those auditing the institution.[132] The OCC's prohibition at § 163.180(b) effectively prohibits a State savings association from making false or misleading statements to the FDIC or to any party auditing or preparing or reviewing its financial statements. Because the prohibition contained in the OCC's regulation is applicable to all savings associations and is substantially similar to the rule found at § 390.355(b), and enforceable by the FDIC pursuant to section 8 of the FDI Act,[133] the FDIC has concluded that § 390.355(b) is duplicative and unnecessary, and the FDIC proposes to rescind and remove this section.

3. § 390.355(c) Notifications of Loss and Reports of Increase in Deductible Amount of Bond

Subsection 390.355(c) requires a State Savings association maintaining bond insurance coverage to promptly notify its carrier and file a proof of loss concerning any covered losses more than twice the deductible amount. The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[134] However, the FDIC does not otherwise impose a reporting requirement such as the one contained in § 390.355(c).[135] Staff was unable to find a provision of State law or in the regulations of any Federal banking agency containing a prescriptive filing requirement such as that contained in § 390.355(c).

Therefore, on the basis of parity and reduction of the regulatory burden for State savings associations, the FDIC proposes to rescind and remove § 390.355(c).

4. § 390.355(d) Suspicious Activity Reports

Subsection 563.180(d) was transferred to the FDIC and redesignated as subsection 390.355(d). The section, which regulates SARs, was enacted in concert with the other Federal banking agencies, including the OCC,[136] the FRB,[137] and the FDIC,[138] as well as the Financial Crimes Enforcement Network (FinCEN).[139] These entities issued substantially similar proposals, which became effective on April 1, 1996. The purpose of the OTS's regulation was to revise its rule on the reporting of known or suspected criminal conduct and suspicious activities by the savings associations under its supervision. The final rule developed a single form, the SAR, for reporting known or suspected Federal criminal law violations and transactions that an institution suspects involve money laundering or violates the BSA.

Paragraph (1) of § 390.355(d) states that the purpose and scope of the subsection is to ensure that State savings associations and service corporations file a SAR when they detect a known or suspected violation of Federal law or a suspicious transaction related to a money laundering activity or a violation of the BSA. Similarly, § 353.1 of the FDIC regulations states that its purpose is to ensure that all insured State nonmember banks file a SAR pursuant to the same laws and regulations.

Paragraph (2) of subsection 390.355(d) is a definition section similar to the definitional section contained in § 353.2 of the FDIC's regulations.

Paragraph (3) of subsection 390.355(d) enumerates the four instances when a State savings association must file a SAR with FinCEN: (1) Insider abuse involving any amount; (2) violations aggregating $5,000 or more where a suspect can be identified; (3) violations aggregating $25,000 or more regardless of potential suspects; and (4) transactions aggregating $5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act. Similarly, § 353.3 of the FDIC's regulations requires State nonmember banks to file SARs with FinCEN in the same four instances.

Paragraph (4) of subsection 390.355(d) is reserved.

Paragraph (5) of subsection 390.355(d) states the time by which a State savings association is required to file a SAR in various circumstances after the date of initial detection of facts that may constitute a basis for filing a SAR. Similarly, § 353.3(b) requires State nonmember banks to file SARs with FinCEN within the same time limits.

Paragraph (6) of subsection 390.355(d) encourages State savings associations to file a copy of the SAR with state and local law enforcement agencies where appropriate. Similarly, § 353.3(c) encourages State nonmember banks to file a copy of the SAR with state and local law enforcement agencies where appropriate.

Paragraph (7) of subsection 390.355(d) indicates that a State savings association

[128] *See* FIL–96–99 (Oct. 25, 1999); 64 FR 57094 (Oct. 22, 1999).

[129] 18 U.S.C. 1001(a)(2) (up to 8 years if the offense involves terrorism).

[130] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[131] 76 FR 49047 (Aug. 9, 2011).

[132] The FDIC is the ''appropriate Federal banking agency'' for any State savings association. *See* 12 U.S.C. 1813(q).

[133] 12 U.S.C. 1818.

[134] *See* 12 U.S.C. 1816; FDIC Statement of Policy on Applications for Deposit Insurance, 63 FR 44756 (Aug. 20, 1998), amended at 67 FR 79278 (Dec. 27, 2002), available at *https://www.fdic.gov/regulations/laws/rules/5000-3000.html.*

[135] *See* Statement of Policy on Applications for Deposit Insurance, *supra* note 134 (''An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.'').

[136] Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program, 61 FR 4332 (Feb. 5, 1996).

[137] Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activities Under Bank Secrecy Act, 61 FR 4338 (Feb. 5, 1996).

[138] Suspicious Activity Reports, 61 FR 6095 (Feb. 16, 1996).

[139] Amendment to the Bank Secrecy Act Regulations; Requirement to Report Suspicious Transactions, 61 FR 4326 (Feb. 5, 1996).

need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities. Similarly, § 353.3(d) directs that State nonmember banks need not file a SAR for a robbery or burglary committed or attempted that is reported to appropriate law enforcement authorities.

Paragraph (8) of subsection 390.355(d) states that a State savings association shall maintain a copy of any SAR filed along with supporting documentation for five years and shall make the supporting documentation available to appropriate law enforcement agencies upon request. Similarly, § 353.3(e) directs a State nonmember banks to maintain a copy of any SAR filed and supporting documentation for five years and to make supporting documentation available to appropriate law enforcement agencies upon request.

Paragraph (9) of subsection 390.355(d) states that the management of a State savings association shall promptly notify its board of directors, or a committee of directors or executive officers designated by the board of directors to receive notice of a SAR filing. Similarly, § 353.3(f) directs that State nonmember banks shall promptly notify its board of directors, or a committee thereof, to receive notice of a SAR filing.

Paragraph (9) of subsection 390.355(d) also states that if the subject of the SAR is a director or executive officer, the State savings association may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects. In this circumstance, § 353.3 does not have analogous language; however, the FDIC relies on 31 U.S.C. 5813(g)(2) to achieve the same purpose. That section states:

> Reporting of suspicious transactions . . . (2) Notification prohibited (A) In general. If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency (i) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported. . . .

Paragraph (10) of subsection 390.355(d) states that a State savings association's failure to file a SAR in accordance with this section may subject the State savings association, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action. In this circumstance, § 353.3 does not have analogous language. Although § 353.3 does not explicitly provide a remedy for failure to file a SAR, the FDIC has enforcement authority for violations of law or regulation.[140] Therefore, the FDIC is proposing to remove subsection 390.355(d)(10) in its entirety because it is unnecessary.

Paragraph (11) of subsection 390.355(d) states that a State savings association may obtain SARs and the instructions from the appropriate FDIC region as defined in § 303.2 of the FDIC's regulations. In this circumstance, § 353.3 does not have analogous language. However, FDIC-supervised institutions can obtain SAR forms electronically. Specifically, 31 CFR 1010.306(e) states:

> Forms to be used in making the reports required by § 1010.311, § 1010.313, § 1010.350, § 1020.315, § 1021.311, or § 1021.313 of this chapter may be obtained from BSA E-Filing System. Forms to be used in making the reports required by § 1010.340 may be obtained from the U.S. Customs and Boarder Protection or FinCEN.

Since the OTS's rule went into effect, FinCEN converted to the BSA E-Filing System for filing SARs for all financial institutions.[141] This provision of the transferred OTS rule is now obsolete as forms are no longer available from FDIC regions.

Paragraph (12) of subsection 390.355(d) states that SARs are confidential and any institution or person subpoenaed or otherwise requested to disclose a SAR or the information contained in a SAR shall decline to produce the SAR or to provide any information that would disclose that a SAR has been prepared or filed, citing this paragraph (d), applicable law (*e.g.,* 31 U.S.C. 5318(g)), or both, and shall notify the FDIC. Similarly, § 353.3(g) directs that State nonmember banks maintain the confidentiality of SARs, decline to disclose a SAR or the information contained in a SAR or information concerning the existence of a SAR, and notify the FDIC.

Paragraph (13) of subsection 390.355(d) states that the safe harbor provision of 31 U.S.C. 5318(g), which exempts any financial institution that makes a disclosure of any possible violation of law or regulation from liability under any law or regulation of the United States, or any constitution, law or regulation of any state or political subdivision, covers all reports of suspected or known criminal violations and suspicious activities to law enforcement and financial institution supervisory authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this paragraph (d), or are filed on a voluntary basis. Similarly, § 353.3(h) contains similar safe harbor language.

For the above-stated reasons, the FDIC proposes to rescind and remove § 390.355(d).

5. § 390.355(e) Adjustable-Rate Mortgage Indices

Section 390.355(e) requires State savings associations within the jurisdiction of a FHLB to provide data from the Call Report upon the request of the FHLB. The FDIC is required under section 402(e)(3) of FIRREA ''to take such action as may be required as may be necessary to assure that the indexes prepared by the . . . Federal home loan banks immediately prior to the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.'' [142] As noted above, the Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[143] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, 12 CFR 163.180(e), which is substantially similar to § 390.355(e) and that applies to both State and Federal savings associations.[144] It requires all savings associations within the jurisdiction of that FHLB to report specified data items for the FHLB to use in calculating and publishing an adjustable-rate mortgage index.[145]

Because the provision contained in the OCC's regulation is applicable to all savings associations and is substantially similar to the rule found at § 390.355(e), the FDIC has concluded that 3§ 90.355(e) is duplicative and unnecessary, and the FDIC proposes to rescind and remove this section.

6. Amendments to Other Rules

The proposed rule would amend FDIC §§ 353.1 and 353.3 to include both insured State savings associations and State nonmember banks by replacing the terms ''insured nonmember banks'' and ''bank'' currently in the regulation with the term ''FDIC-supervised institution.'' With these amendments, § 390.355 is unnecessary and, for the reasons stated

[140] *See* 12 U.S.C. 1818.

[141] *See https://bsaefiling.fincen.treas.gov/main.html.*

[142] *See* 12 U.S.C. 1437 nt.

[143] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[144] 76 FR 49047 (Aug. 9, 2011).

[145] 12 CFR 163.180(e).

above, the FDIC proposes to rescind and remove § 390.355 in its entirety.

T. 12 CFR 390.356—Bonds for Directors, Officers, Employees and Agents; Form of and Amount of Bonds

Section 390.356 requires fidelity bond coverage for directors, officers, employees, and agents of State savings associations. The FDIC proposes to rescind and remove § 390.356, to conform requirements for State savings associations with requirements for State nonmember banks, and to reduce regulatory burden. State savings associations may, however, consult FDIC guidance concerning best practices regarding fidelity bond coverage.[146]

Section 390.356(a) requires each State savings association to maintain fidelity bond coverage for those directors, officers, employees, and agents who have control over or access to cash, securities, or other property of the State savings association. Section 390.356(b) requires the management of each State savings association to determine the amount of fidelity bond coverage that would be considered safe and sound, commensurate with its assessment of the association's potential risk exposure. Additionally, paragraph (b) requires the State savings association's board of directors to approve the management's determination. Section 390.356(c) provides that the State savings association may maintain bond coverage through riders, endorsements, or supplements, beyond that provided by the insurance underwriting industry's standard forms if the State savings association's board determines that additional coverage is warranted. Section 390.356(d) provides that the State savings association's board of directors must approve the State savings association's fidelity bond coverage, review such coverage annually, and document its review and approval in board meeting minutes.

Neither the FDI Act nor the FDIC's regulations for State nonmember banks contain similar prescriptive language concerning fidelity bonds that would be applicable to State savings associations. Section 18(e) of the FDI Act authorizes, but does not mandate, that the FDIC require an insured depository institution to ''provide protection and indemnity against burglary, defalcation, and other similar insurable losses.'' [147] The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[148] However, other than expressing general guidelines regarding the appropriate level of insurance coverage, the FDIC does not otherwise impose requirements such as the ones contained in § 390.356.[149] There are no other relevant provisions concerning fidelity bond coverage or the use of fidelity bond proceeds. And, there is no analogous statutory or regulatory language for State nonmember banks that mirrors § 390.356. Therefore, for supervisory consistency between State nonmember banks and State savings associations, and to reduce regulatory burden, the FDIC proposes that § 390.356 be rescinded and removed.

U. 12 CFR 390.357—Bonds for Agents

Section 390.357,[150] provides that, in lieu of a bond for directors, officers, employees, and agents of State savings associations referenced in § 390.356, the State savings association's board may approve a bond for its agents. This bond must be twice the average monthly collections of such agent, and the agent is required to settle its account with the State savings association at least monthly.

Similar to § 390.356, there are not analogous statutory or regulatory requirements for State nonmember banks that resemble § 390.357. Neither sections 18(e) or 18(k) of the FDI Act nor §§ 326.2 or 326.3 of FDIC's regulations require or provide for bond coverage. State savings associations may, however, consult FDIC guidance concerning best practices regarding fidelity bond coverage.[151] Therefore, in the interest of consistency between State nonmember banks and State savings associations, and to reduce regulatory burden, the FDIC proposes that § 390.357 be rescinded and removed.[152]

V. 390.358 Conflicts of Interest

12 CFR 390.358 is the re-designation of the transferred OTS regulation prohibiting persons including directors, officers, or employees of State savings associations, or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from advancing personal or business interests, or those of others, at the expense of the State savings association. The section also prescribes how these individuals should interact with the board of directors of a State savings association if they have an interest in a matter or transaction requiring board consideration.

While section 8(e) of the FDI Act [153] authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty generally is a matter of state law. The FDIC proposes to rescind and remove § 390.358 because such conduct is governed by either statutory or common law.[154]

W. 390.359 Corporate Opportunity

Section 390.359 is the re-designation of the OTS regulation prohibiting persons, including directors and officers or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from taking advantage of corporate opportunities belonging to the State savings association. Such conduct is governed by either statutory or common law.[155] While section 8(e) of the FDI Act [156] authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty generally is a matter of state law. The FDIC proposes to rescind and remove § 390.358 because such conduct is governed by either statutory or common law.

[146] *See, e.g.,* Risk Management Manual of Examination Policies § 4.4 (Fidelity and Other Indemnity Protection), available at *https://www.fdic.gov/regulations/safety/manual/section4-4.pdf.*.

[147] *See* 12 U.S.C. 1828(e).

[148] *See* 12 U.S.C. 1816; Statement of Policy on Applications for Deposit Insurance, *supra* note 134.

[149] *See* Statement of Policy on Applications for Deposit Insurance, *supra* note 134. Generally, an order granting Federal deposit insurance would include fidelity coverage as a condition, but would not specify an amount. See also Resolution Seal No. 071098, B(2)(a)(iii) and (d) (Dec. 3, 2002); Memorandum to the Board regarding Delegations of Authority, Ex. 1, Delegations of Authority: Notices and Filings, subpart B, n. B–1 6(11) (Nov. 25, 2002), available at *https://www.fdic.gov/regulations/laws/matrix/exhibit1.html.*

[150] 12 CFR 390.357.

[151] *See, e.g.,* Risk Management Manual of Examination Policies § 4.4, *supra* note 146.

[152] State savings associations may, however, consult FDIC guidance concerning best practices regarding fidelity bond coverage. *See* Risk Management Manual of Examination Policies § 4.4, *supra* note 146.

[153] 12 U.S.C. 1818(e).

[154] *See, e.g.,* 12 U.S.C. 1821(k); *Atherton* v. *FDIC,* 519 U.S. 213 (1997); CO Rev Stat § 7–108–401 and § 11–41–134 (2017); IN Code § 23–1–35–1; § 28–10–1–3; § 28–13–11–1 (2018); LA Rev Stat § 6:291; § 12:1–830 (2018); MO Rev. Stat Title XXIV § 369.109; NH Rev Stat § 293–A:8.30 (2018); NJ 17:9A–250; NY Banking Law § 398–B (2018); Ohio Rev. Code 1701.59, .641, 1105.11; PA Consol. Stat, Title 15, § 512; SC Code § 34–28–440 (2018); WI Stat § 180.0828; § 215.525 (2018).

[155] *See supra* note 154.

[156] 12 U.S.C. 1818(e).

X. 12 CFR 390.360–.368—Change of Director or Senior Executive Officer

Section 914 of FIRREA added section 32 of the FDI Act.[157] Section 32 requires certain insured depository institutions and insured depository institution holding companies to furnish the appropriate Federal banking agency with at least 30 days' notice prior to adding any individual to the board of directors or employing any individual as a senior executive officer. Section 32 was amended on September 30, 1996, by the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA).[158] Section 209 of the EGRPRA changed the circumstances under which a notice must be filed and also permitted the appropriate Federal banking agency no more than 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer. On September 25, 1998, the OTS, then the appropriate Federal banking agency for all savings associations, issued a final rule relating to the changes made to section 32 by EGRPRA and added implementing regulations which replaced 12 CFR 574.9 with §§ 563.550 through 563.590. These regulations were transferred then to the FDIC, as the appropriate Federal banking agency for State savings associations. The implementing regulations are now found at §§ 390.360 through 390.368.[159]

Subpart F of part 303 of the FDIC's regulations imposes similar notice filing requirements on insured State nonmember banks. After careful review, for the reasons described below, the FDIC proposes to amend subpart F of part 303 so that it applies to State savings associations as well as State nonmember banks and to rescind and remove §§ 390.360 through 390.368 as unnecessary and duplicative. The FDIC believes that the section 32 of the FDI Act and the proposed amendments to subpart F of part 303 sufficiently address the circumstances and requirements for both State nonmember banks and State savings associations to provide advance notification to the FDIC before appointing or employing directors and senior executive officers.

1. 12 CFR 390.360—Change of Director or Senior Executive Officer

Section 390.360 is an introductory section. It describes the statutory basis for and the content and purpose of the remaining §§ 390.361 through 390.368. The content of this section is substantively identical to § 303.100. Therefore, the FDIC proposes that § 390.360 be rescinded and removed.

2. 12 CFR 390.361—Applicable Definitions

Section 390.361 provides definitions of certain terms that apply to §§ 390.360 through 390.368. This section defines the terms director, senior executive officer and troubled condition. Section 303.101 provides substantively similar definitions for the same three terms. The FDIC does not believe § 390.361 is necessary in light of § 303.101, and for this reason, the FDIC proposes to rescind and remove § 390.361.

3. 12 CFR 390.362—Who must give prior notice?

Section 390.362 outlines the conditions under which prior notification must be given to the FDIC. Paragraph (a) requires a State savings association to provide notice prior to adding or replacing board members or senior executive officers if it: (1) Does not comply with all minimum capital requirements; (2) is in troubled condition; or (3) if it has been notified by the FDIC that a notice is required. These three conditions are substantively identical to those contained in § 303.102, which pertains to State nonmember banks. When part 303, subpart F is amended to apply to State savings associations, paragraph (a) will become unnecessary and duplicative.

Paragraph (b) allows an individual seeking election to the board of directors of a State savings association, without a nomination by the institution's management, to submit an after-the-fact notice to the FDIC within seven days of being elected. Section 303.102(c)(2) contains a similar regulation with the requirement that a notice must be submitted within two business days after election. Thus paragraph (b) is duplicative and unnecessary. For foregoing reasons, the FDIC proposes to rescind and remove § 390.362.

4. 12 CFR 390.363—What procedures govern the filing of my notice?

Section 390.363 references the procedures found in §§ 390.103 through 390.110 as governing the filing of a notice to the FDIC. Again, these sections are substantively similar to the procedural rules found in subpart A of part 303. Because subpart A of part 303 governs general procedures for submitting filings, including notices, to the FDIC, § 390.363 is unnecessary and duplicative. For this reason and because maintaining alternative procedures for State savings associations and State nonmember banks would be confusing and burdensome, the FDIC proposes to rescind and remove § 390.363.

5. 12 CFR 390.364—What information must I include in my notice?

Section 390.364 establishes the required content for prior notices filed pursuant to section 32 of the FDI Act. Paragraph (a) requires the submission of certain biographical information, a set of fingerprints and any other information that the FDIC requires. Paragraph (d)(1) of § 303.102 requires substantively similar information.[160]

Paragraph (b) of § 390.364 allows the FDIC to modify the requirements listed in paragraph (a), similar to paragraph (d)(2) of § 303.102. Amending § 303.102 to also apply to State savings associations will make § 390.364 unnecessary and duplicative. For this reason, the FDIC proposes to rescind and remove § 390.364.

6. 12 CFR 390.365—What procedures govern the FDIC's review of my notice for completeness?

Section 390.365 outlines the procedures and timelines the FDIC will follow in reviewing a notice of change of director or senior officer. Paragraph (a) states that the FDIC will notify the applicant in writing of the date on which the FDIC received a complete notice. This provision is substantively similar to paragraph (a) of § 303.103. Paragraph (b) of § 390.365 states that an applicant may be asked to provide additional information before an application is deemed complete, and failure to provide such information may cause the notice filing to be deemed withdrawn. This provision is substantively similar to § 303.11. If subpart F of part 303 is amended to apply to State savings associations, § 390.365 will become duplicative and unnecessary. For this reason, the FDIC proposes to rescind and remove § 390.365.

[157] 12 U.S.C. 1831i.

[158] Public Law 104–208, 110 Stat. 3009, Sept. 30, 1996.

[159] 63 FR 51272 (Sept. 25, 1998).

[160] Section 303.102(d)(1) does not specifically contain a fingerprinting requirement, but does provide that ''[t]he FDIC may require additional information.'' In practice, the FDIC obtains fingerprints to facilitate background checks performed in connection with applications and notices submitted to the FDIC, including: Applications for Federal deposit insurance, notices of acquisition of control, requests for participation in the banking industry by individuals with certain criminal convictions, and notices to replace board members or senior management in certain institutions *See* FIL–21–2018, Electronic Fingerprinting for Background Checks Related to Applications (Apr. 17, 2018). Thus, the FDIC is clarifying that fingerprints may be required in connection with the filings noted above.

7. 12 CFR 390.366—What standards and procedures will govern the FDIC review of the substance of my notice?

Section 390.366 outlines the standards and procedures under which a notice of change of director or senior officer will be reviewed by the FDIC. This section is substantively identical to paragraph (c) of § 303.103. If subpart F of part 303 is amended to apply to State savings associations, § 390.366 will become duplicative and unnecessary. For this reason, the FDIC proposes to rescind and remove § 390.366.

8. 12 CFR 390.367—When may a proposed director or senior executive officer begin service?

Section 390.367 establishes the conditions and timelines for a proposed director or senior executive officer to begin service. Paragraph (a) establishes that a director or senior executive officer may begin service 30 days after the FDIC receives all required information, unless the FDIC has disapproved the notice or the FDIC has extended its review period. Paragraph (b) establishes that a director or senior executive officer may begin service any time after the FDIC provides notice that it will not disapprove the notice. Both of these paragraphs are substantively similar to the conditions and timelines established under paragraphs (a) and (b) of § 303.103. If subpart F of part 303 is amended to apply to State savings associations, § 390.367 will become duplicative and unnecessary. For this reason, the FDIC proposes to rescind and remove § 390.367.

9. 12 CFR 390.368—When will the FDIC waive the prior notice requirement?

Section 390.398 outlines the conditions under which the FDIC may waive the prior notification requirement. Paragraph (a) establishes that the FDIC may provide a waiver of prior notice if it issues a written finding that a delay would (1) threaten the safety or soundness of the institution, (2) not be in the public interest, or (3) that extraordinary circumstances exist to justify a waiver. Paragraph (b) allows for an automatic waiver under certain circumstances for directors elected without the nomination of management. Paragraph (c) allows for the FDIC to subsequently deny a notice filed after a waiver within 30 days. Paragraph (c) of § 303.102 provides for substantively identical criteria for the waiver of prior notice for State nonmember banks. If subpart F of part 303 is amended to apply to State savings associations, § 390.368 will become duplicative and unnecessary. For this reason, the FDIC proposes to rescind and remove § 390.368.

III. Request for Comments

The FDIC invites comments on all aspects of this proposed rulemaking, and specifically requests comments on the following:

Question 3: What impact, positive or negative, can you foresee in the FDIC's proposal to rescind certain provisions of Subpart S? Please substantiate your response.

Written comments must be received by the FDIC no later than December 2, 2019.

IV. Regulatory Analysis and Procedure

A. The Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act (PRA),[161] the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The proposed rule would rescind and remove from the FDIC's regulations part 390, subpart S. The proposed rule will not create any new or revise any existing information collections pursuant to the PRA. Therefore, no information collection request will be submitted to the OMB for review.

B. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that, in connection with a notice of proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the proposed rule on small entities.[162] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities, and publishes its certification and a short explanatory statement in the **Federal Register**, together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[163] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons provided below, the FDIC certifies that the proposed rule, if adopted in final form, would not have a significant economic impact on a substantial number of small banking organizations. Accordingly, a regulatory flexibility analysis is not required.

As of June 30, 2019, the FDIC supervised 3,424 insured depository institutions, of which 2,665 are considered small banking organizations for the purposes of RFA. The proposed rule primarily affects regulations that govern State savings associations. There are 36 State savings associations considered to be small banking organizations for the purposes of the RFA.[164]

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.330 requires a de novo State savings association, prior to commencing operations, to file its charter and bylaws with the FDIC for certification. The FDIC does not charter depository institutions, therefore the certification authority outlined in § 390.330 does not conform with the FDIC's general authority. The OCC or State banking supervisors do charter depository institutions and therefore, may have similar charter and bylaw certification requirements for de novo savings associations. If the OCC or a State banking supervisor does not have similar charter and bylaw certification requirements for de novo savings associations, this aspect of the proposed rule could reduce recordkeeping and reporting requirements for future de novo savings associations. However, an analysis of de novo activity for savings associations shows that there has been only one in the last eleven years. The proposed rule would also eliminate the federal requirement for a state savings association to make available to its accountholders, on request, a copy of its bylaws. The nature of the requirements contained in § 390.330 are typically addressed by state law. Depending on the state, elimination of this section could result in a small reduction in expenses. Therefore, this aspect of the

[161] 44 U.S.C. 3501, *et seq.*

[162] 5 U.S.C. 601, *et seq.*

[163] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[164] Based on data from the June 30, 2019, Call Report and Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks.

proposed rule is unlikely to pose significant effects on a substantial number of small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.331 requires that every security issued by a State savings association include in its provisions a clear statement that the security is not insured by the FDIC. Although, the FDIC does not have a companion rule that requires state nonmember institutions to clearly state that a security is not insured by the FDIC, provisions of the FDI Act, FDIC regulations, and Statements of Policy clarify that securities are not insured by the FDIC. Moreover, the FDIC has issued two Statements of Policy, one regarding the sale of nondeposit investment products and one regarding the use of offering circulars, that are intended to prevent confusion on the part of customers and investors regarding these matters. Therefore, rescission of § 390.331 would not substantively change deposit insurance coverage for state savings associations, or security disclosure practices. This aspect of the proposed rule is unlikely to pose significant effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.332 addresses the application requirements for mergers, consolidations, purchases or sales of assets, and assumptions of liabilities that apply to State savings associations. The FDIC proposes to rescind § 390.332 and to amend 12 CFR part 303, subpart D, the section of the FDIC's regulations governing merger transactions. The proposed amendments to subpart D would make that section applicable to any FDIC-supervised institution, including State savings associations, and would make other conforming changes. Because the proposed changes would not affect the application requirements and application content this aspect of the proposed rule is unlikely to pose any effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.333 prohibits State savings associations from making inaccurate representations about services, contracts, investments, or financial condition in their advertising. The prohibition of misrepresentations in advertising contained in § 390.333 is substantially similar to the more general prohibition of unfair or deceptive acts or practices under section 5(a) of the Federal Trade Commission Act (section 5). The FDIC enforces this provision pursuant to its authority under section 8 of the FDI Act.[165] The prohibition contained in section 5 is broader than § 390.333 because it prohibits all ''unfair or deceptive acts or practices in or affecting commerce,'' and it applies to all FDIC-supervised institutions, not only State savings associations.[166] Because the narrower prohibitions of § 390.333 appear subsumed within the broader prohibitions of Section 5, the FDIC believes that this aspect of the proposed rule will not have any substantive effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.334 limits who may serve on the board of directors of a State savings association by providing that: A majority of the directors must not be employees of the State savings association or its affiliates; no more than two directors may come from the same family; and no more than one director may be an attorney with a particular law firm. This aspect of the proposed rule could reduce compliance requirements on small, FDIC-supervised state savings associations by enabling them to make changes to the composition of their board of directors if they so choose. Such a reduction of compliance requirements could benefit covered entities by enabling them to choose a board that best executes the fiduciary powers of the board of directors, and more effectively supports the financial health of the institution. However, rescinding § 390.334 also potentially reduces the independence of boards of directors for small State savings associations thereby increasing risks to safety and soundness. The FDIC believes that the potential risks to safety and soundness for small FDIC-insured state savings associations that might result from rescinding § 390.334 is ameliorated by periodic examinations of safety and soundness risk in management for covered institutions. Therefore, the FDIC believes that this aspect of the proposed rule will not have any significant effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.335 is entitled ''Tying restriction exception'' and refers solely to the regulations issued by the FRB. Section 312(b)(2) of the Dodd-Frank Act transferred the authority to grant exceptions from the anti-tying regulations of HOLA to the FRB, rather than to the FDIC, upon the dissolution of the OTS.[167] Therefore, rescinding § 390.335 would align the FDIC's regulations with the FDIC's general authority. Additionally, because the FRB maintains the authority to grant exceptions from the anti-tying regulations for Federal and State savings associations, this aspect of the proposed rule will have no substantive effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.336 sets forth requirements with which a State savings association must comply when entering into an employment contract with its officers and other employees. Although there are no similar regulations for FDIC-supervised institutions, existing statutes, guidelines, and regulations have a similar effect on FDIC-supervised institutions, including State savings associations. Therefore, removal of § 390.336 is unlikely to have any substantive effect on small, FDIC-supervised State savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.337 states only that State savings associations should ''see the regulations issued by Board of Governors of the Federal Reserve System'' for the applicable rules for transactions with affiliates. Because HOLA applies sections 23A and 23B of the Federal Reserve Act to State savings associations[168] and because the FRB's Regulation W[169] addresses the additional restrictions of HOLA applicable to State and Federal savings associations' transactions with their affiliates, the FDIC believes that this aspect of the proposed rule will not have any substantive effects on small, FDIC-supervised institutions.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.338 cross-referenced the FRB's Regulation O,[170] with some additional modifications. Section 337.3 of the FDIC's regulations reference Regulation O to impose similar direct regulatory requirements on State nonmember banks. The FDIC proposes to rescind and remove § 390.338, to make minor conforming changes to § 337.3 to clarify its applicability to State savings associations, and to make technical amendments to § 337.3. Therefore, this aspect of the proposed rule is unlikely

[165] 12 U.S.C. 1818.

[166] 15 U.S.C. 45(a)(1).

[167] 12 U.S.C. 5412(b)(2)(A).

[168] 12 U.S.C. 1468(a).

[169] The FDIC has interpreted the language ''in the same manner and to the same extent'' to include the application of Regulation W.

[170] 12 CFR part 215.

to have any effect on small, FDIC-supervised institutions.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.339 prohibits State savings associations from sponsoring an employee pension plan which, because of unreasonable costs or for any other reason, could lead to material financial loss or damage to the sponsor. The section further requires a State savings association that serves as a pension plan sponsor to retain detailed pension plan records and actuarial funding reports and to provide advance notice of a pension plan termination. The Interagency Safety and Soundness Guidelines explicitly identify compensation that could lead to material financial loss as an unsafe and unsound practice. Additionally, regulations on recordkeeping by the Pension Benefit Guaranty Corporation would apply to any pension plan offered by an FDIC-supervised institution.[171] Because FDIC-supervised institutions, including State savings associations, will continue to be subject to the Interagency Safety and Soundness Guidelines, as well as PBCG regulations, rescinding § 390.339 is unlikely to substantively effect small, FDIC-supervised institutions.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.340 generally prohibits the offer or sale of debt or equity securities issued by a State savings association or an affiliate of the State savings association at an office of the State savings association with the exception of equity securities issued in connection with the State savings association's conversion from mutual to stock form in a transaction that has been approved by the FDIC or if the sale is conducted in accordance with the conditions set forth in § 390.340. The NDIP Statement of Policy [172] provides guidelines for all sales of nondeposit products (such as annuities, mutual funds, and other securities) by depository institutions, including State savings associations. Additionally, the Offering Circular Statement of Policy provides guidelines for sales and distribution of bank securities. Therefore, the FDIC believes that rescission of § 390.340 will not substantively change the offer or sale of debt or equity securities issued by a State savings associations or their subsidiaries. Therefore, this aspect of the proposed rule is unlikely to pose significant effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.341 provides application and notice procedures and form and content requirements for subordinate debt securities and mandatorily redeemable preferred stock that a State savings association seeks to include in its tier 2 capital. There is no corresponding requirement applicable to State nonmember banks. Many of the form and content requirements in § 390.341 that are designed to prevent consumer confusion are included in the FDIC's Offering Circular Statement of Policy which covers FDIC-supervised institutions, including State savings associations. Small FDIC-supervised institutions, including State savings associations, are governed by the criteria for inclusion in tier 2 capital are included in the FDIC's capital rules in 12 CFR part 324.[173] Therefore, this aspect of the proposed rule is unlikely to pose significant effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.342 states that §§ 390.342 through 390.348 apply to capital distributions by a State savings association.[174] Because the proposed rule would rescind §§ 390.342 through 390.348, and would amend other FDIC regulations to make them applicable to State savings associations, the removal of § 390.342 will not have any substantive effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.343 defines a ''capital distribution'' for the purposes of §§ 390.342–348. Section 38 of the FDI Act [175] applies to all insured depository institutions, and, among other things, generally prohibits an insured depository institution from making a capital distribution if, after making the distribution, the institution would be undercapitalized. Section also 38 defines a ''capital distribution'' to include certain dividends; repurchases, redemptions, retirements, or other acquisitions of shares or other ownership interests, including extensions of credit to finance an affiliated company's acquisition of such shares; and any other transaction that the Federal banking agencies find to be in substance a distribution of capital.[176] Part 303 of the FDIC's regulations implements the PCA provisions of section 38 for insured State nonmember banks and insured branches of foreign banks. The proposed rule would amend § 303.203 so that it expressly applies to State savings associations. The requirements of §§ 390.343(a) and (b) are substantively similar to requirements in section 38 and the current, analogous FDIC regulations at § 303.203. Section 390.343(e) incorporates FDI Act section 38(b)(2)(B)(iii), which authorizes the Federal banking agencies to, by order or regulation, deem as a ''capital distribution'' any transaction that the FDIC determines to be in substance a distribution of capital.[177] Therefore, the proposed rule's rescission of these elements and amendments to § 303.203 will have no effects on small, FDIC-supervised state savings associations.

Section 390.343(c) further defines ''capital distribution'' to include any direct or indirect payment of cash or other property to owners or affiliates made in connection with a corporate restructuring, including the payment of cash or property to shareholders of another savings association of its holding company to acquire ownership in that savings association, other than by a distribution of shares.[178] This prong of § 390.343's definition of ''capital distribution'' is not matched by an analogous prong in section 38. Additionally, § 390.343(d) captures as a ''capital distribution'' any capital distribution that is charged against a State savings association's capital accounts if the State savings association would not be well capitalized following the distribution.[179] As with payments made in connection with a corporate restructuring, this element of § 390.343's regulatory definition is not expressly addressed in section 38. The proposed rule would rescind these requirements for small, FDIC-supervised state savings associations. The FDIC believes that this aspect of the proposed rule is unlikely to substantively effect small, FDIC-supervised institutions. Additionally, the FDIC believes that small, FDIC-supervised savings association would benefit from the establishment of equal treatment of capital distributions for State nonmember banks and State savings associations. However, it is difficult to estimate these effects because it depends on the financial condition of, and future decisions of

[171] Public Law 109–280, 120 Stat. 780, 29 U.S.C. 1301 *et seq.*

[172] *See supra* note 12.

[173] *See* 12 CFR 324.20(d)(1).

[174] 12 CFR 390.342.

[175] 12 U.S.C. 1831o.

[176] 12 U.S.C. 1831*o*(b)(2)(B).

[177] 12 CFR 390.343(e), 12 U.S.C. 1831*o*(b)(2)(B)(iii).

[178] 12 CFR 390.343(c).

[179] 12 CFR 390.343(d).

senior management at, small FDIC-supervised savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.344 adopts additional definitions specifically for the capital distribution provisions of §§ 390.342 through 390.348.[180] Section 38 of the FDI Act[181] applies to all insured depository institutions, and, among other things, generally prohibits an insured depository institution from making a capital distribution if, after making the distribution, the institution would be undercapitalized. Section 38 also defines a ''capital distribution'' to include certain dividends; repurchases, redemptions, retirements, or other acquisitions of shares or other ownership interests, including extensions of credit to finance an affiliated company's acquisition of such shares; and any other transaction that the Federal banking agencies find to be in substance a distribution of capital.[182] Part 303 of the FDIC's regulations implements the PCA provisions of section 38 for insured state nonmember banks and insured branches of foreign banks, and definitions of terms for capital distribution provisions are contained in the FDIC's capital rules. The proposed rule would amend § 303.203 so that it expressly applies to State savings associations. Therefore, the rescinding § 390.344 is unlikely to have any substantive effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.345 establishes that a State savings association is required to file an application for a proposed capital distribution in certain circumstances, and in others is required to file a notice. The application requirements of § 303.203 are analogous to those imposed on State savings associations by § 390.345(a)(3), as both sections require applications to the FDIC in cases where an institution would be undercapitalized following a capital distribution, as mandated by section 38 of the FDI Act. Because section 38 prohibits capital distributions in cases where an insured depository institution would be undercapitalized, the substantive requirements of § 390.345(a)(3) would be preserved by making § 303.203 applicable to State savings associations. The application requirements of § 303.241 are analogous to the notice requirements imposed on State savings associations by § 390.345(b)(2), as both sections require regulatory consideration of transactions that would reduce or retire common or preferred stock or capital notes or debentures. Accordingly, the FDIC proposes to rescind §§ 390.345(a)(3) and 390.345(b)(2) and, as noted above, the FDIC also proposes to amend § 303.241 so that it applies to State savings associations.

The FDIC proposes to rescind the entirety of § 390.345, which would effectively eliminate application requirements for capital distributions in cases where: A State savings association is not eligible for expedited processing under § 390.101; the total amount of all capital distributions by a State savings association for the applicable calendar year exceeds the association's net income for that year to date plus retained net income for the preceding two years; and where a State savings association's proposed capital distribution would violate a prohibition contained in any applicable statute, regulation, or agreement with the FDIC, or violate a condition imposed on the State savings association in an FDIC-approved application or notice. The rescission of § 390.345 would also effectively eliminate the notice requirements for capital distributions in cases where a State savings association would not be well capitalized following the distribution. The prompt corrective action provisions of section 38 of the FDI Act, however, which apply to all insured institutions, would address such situations. This aspect of the proposed rule is expected to reduce compliance costs for small, FDIC-supervised state savings associations. Although reducing notice requirements for these capital distribution activities could potentially increase the frequency of this activity for small, FDIC-supervised state savings associations, the FDIC believes such effects are likely to be relatively small. However, it is difficult to estimate these effects because it depends on the financial condition of, and future decisions of senior management at, small, FDIC-supervised savings associations. Additionally, the FDIC believes that small, FDIC-supervised savings association would benefit from the establishment of equal treatment for application and notification requirements of capital distributions for State nonmember banks and State savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.346 provides filing instructions for capital distributions that are subject to application or notice requirements under § 390.345, including instructions concerning a filing's content, schedules, and timing.[183] Because the FDIC proposes rescinding § 390.345, these provisions would no longer be applicable. Therefore, the FDIC proposes to rescind § 390.346. As described above, the FDIC also proposes to make §§ 303.203 and 303.241 applicable to State savings associations, and both of these sections set forth requirements related to the content of filings. Furthermore, certain rules of general applicability, including those related to processing, are set forth in subpart A of part 303 of the FDIC's regulations and would apply to filings made by State savings associations under §§ 303.203 and 303.241. Based on this information, the FDIC believes that this aspect of the proposed rule is unlikely to have any effect on small, FDIC-supervised State savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.347 authorizes a State savings association to combine a notice or application required under § 390.345 with another related notice or application.[184] Because the FDIC proposes rescinding § 390.345, these provisions would no longer be applicable. Therefore, the FDIC proposes to rescind § 390.347. As noted above, by making State savings associations subject to §§ 303.203 and 303.241, as proposed, State savings associations would be permitted to file applications that are subject to both sections as a single filing or concurrently with other filings.[185] Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.348 sets forth the bases on which the FDIC may deny, in whole or in part, a notice or application filed under § 390.345. Because the FDIC proposes to rescind § 390.345, these provisions would no longer be applicable. Furthermore, the statutory exception that applies to capital distributions subject to section 38 of the FDI Act would continue to apply to capital distributions by State savings associations that are subject to section 38. In addition, because the proposal would make reductions or retirements of capital by State savings associations subject to the application requirements of § 303.241, the FDIC would evaluate such applications in light of the

[180] 12 CFR 390.344.

[181] 12 U.S.C. 1831o.

[182] 12 U.S.C. 1831*o*(b)(2)(B).

[183] 12 CFR 390.346.

[184] 12 CFR 390.347.

[185] *See* 12 CFR 303.203(b) and 12 CFR 303.241(e).

statutory factors enumerated in section 18(i)(4) of the FDI Act, and the bases identified in §§ 390.348(b) and 390.348(c) would be preserved insofar as they would be inherent in how the FDIC would review applications in light of the statutory factors of section 18(i)(4).[186] Therefore, the FDIC believes that this aspect of the proposed rule is unlikely to have any effect on small FDIC-supervised State savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.349 implements the statutory requirement of section 4 of the HOLA. That section requires each State savings association to be operated in a safe and sound manner and encourages State savings associations to provide credit for housing safely and soundly.[187] In particular, § 390.349 includes explicit safety and soundness requirements relating to liquidity and compensation to officers, directors, employees, and consultants. Section 39 of the FDI Act[188] requires the Federal banking agencies to prescribe safety and soundness standards for internal controls, information systems, and internal audit systems; loan documentation; credit underwriting; interest rate exposure; asset growth; compensation, fees, and benefits; and such other operational and managerial standards as the agency determines to be appropriate. To this end, the FDIC has adopted part 364 and the related appendices. Part 364 establishes compensation-related standards and provides for other safety- and soundness-related guidelines which apply to all insured State nonmember banks, to state-licensed insured branches of foreign banks, and to State savings associations.[189] As such, the safety and soundness standards in § 390.349 are generally duplicative of the standards implemented through part 364. Part 364, as amended, provides consistent safety and soundness standards for both State nonmember banks and State savings associations. Therefore, the FDIC believes that this aspect of the proposed rule will have no substantive effects on small, FDIC-supervised institutions.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.350 contains requirements regarding examinations, appraisals, establishing and maintaining books and records, and using data processing services for maintenance of records. The proposed rule would rescind paragraphs (a), pertaining to examinations and audits, and (b), pertaining to appraisals. Section 390.350(a) states that each State savings association and affiliate will be examined periodically and may be examined anytime by the FDIC and that appraisals may be required as part of the examination. Section 337.12 states that the FDIC examines State nonmember banks pursuant to section 10 of the FDI Act,[190] State savings associations pursuant to section 10 of the FDI Act and section 4 of HOLA,[191] and implements the frequency of examinations specified by section 10 for insured depository institutions, including State savings associations. Section 390.350(b) permits the FDIC to select appraisers in connection with an examination, requires State savings associations to pay for such an appraiser, and mandates that the FDIC furnish the appraisal report to the State savings association within 90 days following the filing of the report to the FDIC. Part 323 of the FDIC's regulations implements Title XI of FIRREA,[192] which requires written appraisals in connection with certain federally related transactions entered into by institutions regulated by the FDIC. Section 323.3(c), which applies to all FDIC-supervised institutions, including State savings associations, allows the FDIC to require an appraisal whenever the agency believes it is necessary to address safety and soundness concerns, which would include during an examination.

Section 390.350(c) requires each State savings association and its affiliates to establish and maintain such accounting and other records as will provide an accurate and complete record of all business it transacts to enable the examination of the State savings association and its affiliates by the FDIC. The documents, files, and other material or property comprising said records shall at all times be available for such examination and audit wherever any of said records, documents, files, material, or property may be.

State savings associations are already subject to other FDIC regulations that achieve the purposes of § 390.350(c). For example, as recognized by § 304.3 of the FDIC's regulations, all insured depository institutions, including State savings associations, are required to file quarterly Consolidated Reports of Condition and Income (Call Reports).

Section 390.350(d) prohibits State savings associations from transferring the location of any of its general accounting or control records, or the maintenance thereof, from its home office to a branch or service office, or from a branch or service office to its home office or to another branch or service office unless prior to the date of transfer its board of directors has authorized the transfer by resolution and notified the appropriate regional director. The FDIC has not promulgated a similar rule for State nonmember banks. The removal of § 390.350(d) will provide relief to State savings association by not having to notify the appropriate regional director of its intention to relocate records from its home office to a branch or service office and will provide parity with State nonmember banks which do not provide the FDIC with prior notification of transferring records from one location to another.

Section 390.350(e) requires that when a State savings association maintains any of its records by means of data processing services, it will notify the appropriate regional director for the region in which the principal office of such State savings association is located, in writing, at least 90 days prior to the date on which such maintenance of records will begin. Section 304.3(d), implementing section 7 of the Bank Service Company Act,[193] already requires FDIC-supervised institutions, including State savings associations, to notify the FDIC about the existence of a service relationship within thirty days after the making of the contract or the performance of the service and provides for the required information either through a letter or FDIC Form 6120/06 *Notification of Performance of Bank Services.* Therefore, the FDIC believes that rescinding § 390.350 is unlikely to have any substantive effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.352 addresses the permissibility of financial derivatives transactions, the responsibility of the board of directors

[186] The statutory factors of section 18(i)(4): (A) The financial history and condition of the institution; (B) the adequacy of its capital structure; (C) its future earnings prospects; (D) the general character and fitness of its management; (E) the convenience and needs of the community to be served; and (F) whether or not its corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1828(i)(4).

[187] 12 U.S.C. 1463(a).

[188] 12 U.S.C. 1831p–1.

[189] 12 CFR 364.101. In 2015, 12 CFR 364.101 was amended to apply to both state nonmember banks and state savings associations. *See Removal of Transferred OTS Regulations Regarding Safety and Soundness Guidelines and Compliance Procedures; Rules on Safety and Soundness,* 80 FR 65903 (Oct. 28, 2015).

[190] 12 U.S.C. 1820.

[191] 12 U.S.C. 1463.

[192] Public Law 101–73, 103 Stat. 183; codified at 12 U.S.C. 3331 *et seq.*

[193] 12 U.S.C. 1867.

and management of a State savings association with respect to such transactions, and recordkeeping requirements related to such transactions. Section 28(a) of the FDI Act,[194] implemented by Part 362 of the FDIC's regulations,[195] restricts and prohibits State savings associations and their service corporations from engaging in activities and investments of a type that are not permissible for a Federal savings association and its service corporations. The term ''activities permissible for a Federal savings association'' means, among other things, activities recognized as permissible in OCC regulations.[196] Section 163.172 of the OCC's regulations governs the financial derivatives activities of Federal savings associations, the responsibility of the board of directors and management of a Federal savings association with respect to such transactions, and recordkeeping requirements related to such transactions.[197] Because section 28(a) of the FDI Act and part 362 establish requirements that are duplicative of 390.352, the FDIC believes that rescinding § 390.352 is unlikely to have any effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.353 requires the board of directors or a board committee of a State savings association to develop, implement, and review policies and procedures for the management of a State savings association's interest-rate-risk; requires the association's management to report periodically to the board regarding implementation of the policy; and requires the association's board of directors to adjust the policy as necessary, including adjustments to the authorized acceptable level of interest rate risk. As mentioned above, the Interagency Safety and Soundness Guidelines, promulgated pursuant to section 39 of the FDI Act, describe examples of safe and sound practices for State nonmember banks and State savings associations. The Guidelines provide that an institution ''should manage interest rate risk in a manner that is appropriate to its size and the complexity of its assets and liabilities''.[198] Management and the board of directors should be provided reports regarding interest rate risk that are adequate to assess the level of risk. Because the requirements outlined in § 390.353 are similar to the safety and soundness practices outlined in established Guidelines that already apply to small, FDIC-supervised state savings associations, the FDIC believes that this aspect of the proposed rule is unlikely to have any substantive effects on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.354 requires State savings associations to establish and maintain a BSA compliance program and a customer identification program. Section 390.354 also enumerates the four pillars required for a BSA compliance program. Similarly, § 326.8 of the FDIC's regulations [199] requires insured depository institutions for which the FDIC is the appropriate Federal banking agency to establish a BSA compliance program to include the same four pillars and a customer identification program. The proposed rule would rescind § 390.354 and make technical changes to § 326.8, which is currently only applicable to insured depository institutions for which the FDIC is the appropriate Federal banking agency.[200] Because the amended § 326.8 would be duplicative of § 390.354 the FDIC believes that this aspect of the proposed rule is unlikely to have any effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.355 requires State savings associations and service corporations to make certain reports. Subsection 390.355 (a) requires State savings associations to make periodic reports to the FDIC in such a manner and on such forms as the FDIC may prescribe. Statutory authorities enable the FDIC to require reports be filed by small, FDIC-supervised state savings associations.

Subsection 390.355(b) prohibits State savings associations from making false or misleading statements or omissions to the FDIC and to auditors of State savings associations. The Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[201] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, 12 CFR 163.180(b), that is substantially similar to § 390.355(b) and that applies to both State and Federal savings associations.[202] It prohibits all savings associations from knowingly making false or misleading statements to their ''appropriate Federal banking agency'' and to those auditing the institution.[203] The OCC's prohibition at § 163.180(b) effectively prohibits a State savings association from making false or misleading statements to the FDIC or to any party auditing or preparing or reviewing its financial statements. Therefore, the FDIC believes that rescinding this subsection will have no effect on small, FDIC-supervised state savings associations.

Subsection 390.355(c) requires a State Savings association maintaining bond insurance coverage to promptly notify its carrier and file a proof of loss concerning any covered losses more than twice the deductible amount. The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[204] However, the FDIC does not otherwise impose a reporting requirement such as the one contained in § 390.355(c).[205] This aspect of the proposed rule potentially reduces reporting requirements on small, FDIC-supervised state savings associations. The FDIC believes that these potential effects are likely to be relatively small. However, it is difficult to estimate these effects because it depends on the financial condition of, and future decisions of senior management at, small, FDIC-supervised savings associations.

Subsection § 390.355(d) regulates SARs for state savings associations, was enacted in concert with the other Federal banking agencies, including the

[194] 12 U.S.C. 1831e(a).

[195] *See* 12 CFR 362.9–.15.

[196] *See* 12 CFR 362.9(a).

[197] *See* 12 CFR 163.172.

[198] 12 CFR part 364, App. A, § II.E.

[199] 12 CFR 326.8, 326.1(a).

[200] 12 CFR 326.8 is applicable to ''all insured nonmember banks as defined in 12 CFR 326.1.'' Section 326.1 was revised to remove the definition of ''insured nonmember bank'' and replace it with the term ''FDIC-supervised institution'' or ''institution'', defined to mean any insured depository institution for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act (12 U.S.C. 1813(q). 83 FR 13839, 13842 (April 2, 2018).

[201] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[202] 76 FR 49047 (Aug. 9, 2011).

[203] The FDIC is the ''appropriate Federal banking agency'' for any State savings association. *See* 12 U.S.C. 1813(q).

[204] *See* 12 U.S.C. 1816; FDIC Statement of Policy on Applications for Deposit Insurance, 63 FR 44756 (Aug. 20, 1998), amended at 67 FR 79278 (Dec. 27, 2002), available at *https://www.fdic.gov/regulations/laws/rules/5000-3000.html.*

[205] *Id.* (''An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.'').

OCC,[206] the FRB,[207] and the FDIC,[208] as well as the Financial Crimes Enforcement Network (FinCEN).[209] These entities issued substantially similar proposals, which became effective on April 1, 1996. As mentioned earlier, paragraphs (1)–(8), (12), and (13) of § 390.355(d) mirror § 353.3 for state nonmember banks. The notification requirements for board of directors, or a committee of directors or executive officers of state savings associations outlined paragraph (9) of subsection 390.355(d) also mirror notifications requirements in § 353.3. Paragraph (9) of subsection 390.355(d) also states that if the subject of the SAR is a director or executive officer, the State savings association may not notify the suspect, pursuant to 31 U.S.C. 5318(g)(2), but shall notify all directors who are not suspects. In this circumstance, § 353.3 does not have analogous language; however, the FDIC relies on 31 U.S.C. 5813(g)(2) to achieve the same purpose. Paragraph (10) of subsection 390.355(d) states that a State savings association's failure to file a SAR in accordance with this section may subject the State savings association, its directors, officers, employees, agents, or other institution-affiliated parties to supervisory action. In this circumstance, § 353.3 does not have analogous language. Although § 353.3 does not explicitly provide a remedy for failure to file a SAR, the FDIC has enforcement authority for violations of law or regulation.[210] Therefore, the FDIC proposes to rescind subsection 390.355(d)(10) in its entirety because it is unnecessary. Paragraph (11) of subsection 390.355(d) states that a State savings association may obtain SARs and the instructions from the appropriate FDIC region as defined in § 303.2 of the FDIC's regulations. In this circumstance, § 353.3 does not have analogous language. However, FDIC-supervised institutions can obtain SAR forms electronically. FinCEN converted to the BSA E-Filing System for filing SARs for all financial institutions;[211] therefore this provision is now obsolete as forms are no longer available from FDIC regions. With this proposed rule the FDIC proposes to make conforming changes to §§ 353.1 and 353.3 to make part 353 of the FDIC's regulations applicable to all FDIC-supervised institutions, including state savings associations. Therefore, the FDIC believes that rescinding this subsection of § 390.355 will have no effect on small, FDIC-supervised state savings associations.

Subsection 390.355(e) requires State savings associations within the jurisdiction of a FHLB to provide data from the Call Report upon the request of the FHLB. The FDIC is required under section 402(e)(3) of FIRREA ''to take such action as may be required as may be necessary to assure that the indexes prepared by the . . . Federal home loan banks immediately prior to the enactment of this subsection and used to calculate the interest rate on adjustable rate mortgage instruments continue to be available.''[212] As noted above, the Dodd-Frank Act provided the OCC with rulemaking authority relating to both State and Federal savings associations.[213] On August 9, 2011, the OCC published in the **Federal Register** a final rule that contained a provision, § 163.180(e), that is substantially similar to § 390.355(e) and that applies to both State and Federal savings associations.[214] It requires all savings associations within the jurisdiction of that FHLB to report specified data items for the FHLB to use in calculating and publishing an adjustable-rate mortgage index.[215] Because the provision contained in the OCC's regulation is applicable to all savings associations and is substantially similar to the rule found at § 390.355(e), the FDIC believes that rescinding this subsection will not have any effect on small, FDIC-supervised state savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.356 requires fidelity bond coverage for directors, officers, employees, and agents of State savings associations. Neither the FDI Act nor the FDIC's regulations for State nonmember banks contain similar prescriptive language concerning fidelity bonds that would be applicable to State savings associations. Section 18(e) of the FDI Act authorizes, but does not mandate, that the FDIC to require an insured depository institution to ''provide protection and indemnity against burglary, defalcation, and other similar insurable losses.''[216] The FDIC generally requires fidelity bond insurance for insured depository institutions and considers whether fidelity bond insurance is in place when analyzing the general character and fitness of the management of a *de novo* financial institution applying for deposit insurance.[217] However, other than expressing general guidelines regarding the appropriate level of insurance coverage, the FDIC does not otherwise impose requirements such as the ones contained in § 390.356.[218] There are no other relevant provisions concerning fidelity bond coverage or the use of fidelity bond proceeds. And, there is no analogous statutory or regulatory language for State nonmember banks that mirrors § 390.356. Therefore, rescinding § 390.356 could potentially reduce compliance costs for small, FDIC-supervised state savings associations if they choose to make changes to their fidelity bond coverage. The FDIC believes that this aspect of the proposed rule is likely to pose relatively small effects on small, FDIC-supervised state savings associations. However, it is difficult to estimate these effects because it depends on the decisions of senior management at small, FDIC-supervised savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.357 provides that, in lieu of a bond for directors, officers, employees, and agents of State savings associations referenced in § 390.356, the State savings association's board may approve a bond for its agents. This bond must be twice the average monthly collections of such agent, and the agent is required to settle its account with the State savings association at least monthly. Similar to § 390.356, there are not analogous statutory or regulatory requirements for State nonmember banks that resemble § 390.357. Therefore, rescinding § 390.357 could potentially reduce compliance costs for small, FDIC-supervised state savings associations to the extent that they were engaging in such bond coverage practices and choose to make changes. The FDIC believes that this aspect of the proposed rule is likely to pose relatively small

[206] Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program, 61 FR 4332 (Feb. 5, 1996).

[207] Membership of State Banking Institutions in the Federal Reserve System; International Banking Operations; Bank Holding Companies and Change in Control; Reports of Suspicious Activities Under Bank Secrecy Act, 61 FR 4338 (Feb. 5, 1996).

[208] Suspicious Activity Reports, 61 FR 6095 (Feb. 16, 1996).

[209] Amendment to the Bank Secrecy Act Regulations; Requirement to Report Suspicious Transactions, 61 FR 4326 (Feb. 5, 1996).

[210] *See* 12 U.S.C. 1818.

[211] *See https://bsaefiling.fincen.treas.gov/main.html.*

[212] *See* 12 U.S.C. 1437 nt.

[213] *See* 12 U.S.C. 5412(b)(2)(B)(i)(II).

[214] 76 FR 49047 (Aug. 9, 2011).

[215] 12 CFR 163.180(e).

[216] *See* 12 U.S.C. 1828(e).

[217] *See* 12 U.S.C. 1816; Statement of Policy on Applications for Deposit Insurance.

[218] *See* Statement of Policy on Applications for Deposit Insurance (''An insured depository institution should maintain sufficient fidelity bond coverage on its active officers and employees to conform with generally accepted industry practices. Primary coverage of no less than $1 million is ordinarily expected. Approval of the application may be conditioned upon acquisition of adequate fidelity coverage prior to opening for business.'').

effects on small, FDIC-supervised state savings associations. However, it is difficult to estimate these effects because it depends on the decisions of senior management at small, FDIC-supervised savings associations.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.358 prohibits persons including directors, officers, or employees of State savings associations, or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from advancing personal or business interests, or those of others, at the expense of the State savings association. The section also prescribes how these individuals should interact with the board of directors of a State savings association if they have an interest in a matter or transaction requiring board consideration. While section 8(e) of the FDI Act authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty is a matter of State law. Therefore, rescinding § 390.358 is not likely to have a substantive effect on small, FDIC-supervised State savings associations because applicable State laws will continue to govern conflicts of interest and fiduciary duties, relevant FDIC guidance on boards of director will continue to apply, and the FDIC will have the same enforcement authority for violations of law in this area.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, § 390.359 prohibits persons, including directors and officers or others who have power to direct its management or policies or who otherwise owe a fiduciary duty to a State savings association from taking advantage of corporate opportunities belonging to the State savings association. Such conduct is governed by either statutory or common law. While section 8(e) of the FDI Act authorizes enforcement actions against directors and officers who breach their fiduciary duties to the depository institution, the existence and scope of a fiduciary duty is a matter of state law. Therefore, rescinding § 390.359 is not likely to have a substantive effect on small, FDIC-supervised State savings associations because applicable State laws will continue to govern conflicts of interest and fiduciary duties, relevant FDIC guidance on boards of director will continue to apply, and the FDIC will have the same enforcement authority for violations of law in this area.

As discussed previously in the **SUPPLEMENTARY INFORMATION** section, §§ 390.360 through 390.368 require certain insured depository institutions and insured depository institution holding companies to furnish the appropriate Federal banking agency with at least 30 days' notice prior to adding any individual to the board of directors or employing any individual as a senior executive officer. It also permits the appropriate Federal banking agency no more than 90 days to issue a notice of disapproval of the proposed addition of a director or employment of a senior executive officer. Subpart F of Part 303 of the FDIC's regulations imposes similar notice filing requirements on insured State nonmember banks. After careful review, for the reasons described above in Section X. of the **SUPPLEMENTARY INFORMATION** section, the FDIC proposes to amend subpart F of Part 303 so that it applies to State savings associations as well as State nonmember banks and to rescind and remove §§ 390.360 through 390.368. Therefore, the FDIC believes that rescinding §§ 390.360 through 390.368 is unlikely to have any effect on small, FDIC-supervised state savings associations.

Based on the information above, the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. The FDIC invites comments on all aspects of the supporting information provided in this RFA section. In particular, would this rule have any significant effects that the FDIC has not identified on small entities?

C. The Economic Growth and Regulatory Paperwork Reduction Act

Under section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA),[219] the FDIC is required to review all of its regulations at least once every 10 years, in order to identify any outdated or otherwise unnecessary regulations imposed on insured institutions.[220] The FDIC, along with the other Federal banking agencies, submitted a Joint Report to Congress on March 21, 2017, (''EGRPRA Report'') discussing how the review was conducted, what has been done to date to address regulatory burden, and further measures that will be taken to address issues that were identified. As noted in the EGRPRA Report, the FDIC is continuing to streamline and clarify its regulations through the OTS rule integration process. By removing outdated or unnecessary regulations, such as Part 390, subpart S, this Proposed Rule complements other actions the FDIC has taken, separately and with the other Federal banking agencies, to further the EGRPRA mandate.

D. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[221] requires each Federal banking agency to use plain language in all of its proposed and final rules published after January 1, 2000. As a Federal banking agency subject to the provisions of this section, the FDIC has sought to present the Proposed Rule in a simple and straightforward manner. The FDIC invites comments on whether the Proposed Rule is clearly stated and effectively organized, and how the FDIC might make it easier to understand. For example:

- Has the FDIC organized the material to suit your needs? If not, how could it present the rule more clearly?
- Have we clearly stated the requirements of the rule? If not, how could the rule be more clearly stated?
- Does the rule contain technical jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

E. Riegle Community Development and Regulatory Improvement Act of 1994

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final

[219] Public Law 104–208, 110 Stat. 3009 (1996).

[220] Public Law 104–208, 110 Stat. 3009 (1996).

[221] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

form.[222] The FDIC invites comments that further will inform its consideration of RCDRIA.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 326

Banks, banking, Currency, Reporting and recordkeeping requirements, Security measures.

12 CFR Part 337

Banks, banking, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 353

Banks, banking, Crime, Reporting and recordkeeping requirements.

12 CFR Part 390

Administrative practice and procedure, Advertising, Aged, Civil rights, Conflict of interests, Credit, Crime, Equal employment opportunity, Fair Housing, Government employees, Individuals with disabilities, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble and under the authority of 12 U.S.C. 5412, the Federal Deposit Insurance Corporation proposes to amend parts 303, 326, 337, 353 and 390 of title 12 of the Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for 12 CFR Part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 478, 1463, 1813, 1815, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1831z, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5412; 15 U.S.C. 1601–1607.

■ 2. Amend § 303.2 by redesignating paragraphs (s) through (ff) as paragraphs (t) through (gg) and adding a new paragraph (s) to read as follows:

* * * * *

(s) *FDIC-supervised institution* means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

* * * * *

■ 3. Revise § 303.62 to read as follows:

[222] 12 U.S.C. 4802.

§ 303.62 Transactions requiring prior approval.

(a) *Merger transactions.* The following merger transactions require the prior written approval of the FDIC under this subpart:

(1) Any merger transaction, including any corporate reorganization, interim merger transaction, or optional conversion, in which the resulting institution is to be an FDIC-supervised institution; and

(2) Any merger transaction, including any corporate reorganization, or interim merger transaction, that involves an uninsured bank or institution.

(b) *Related regulations.* Transactions covered by this subpart also may be subject to other regulations or application requirements, including the following:

(1) *Interstate merger transactions.* Merger transactions between insured banks that are chartered in different states are subject to the regulations of section 44 of the FDI Act (12 U.S.C. 1831u). In the case of a merger transaction that consists of the acquisition by an out of state bank of a branch without acquisition of the bank, the branch is treated for section 44 purposes as a bank whose home state is the state in which the branch is located.

(2) *Deposit insurance.* An application for deposit insurance will be required in connection with a merger transaction between a state-chartered interim institution and an insured depository institution if the related merger application is being acted upon by a Federal banking agency other than the FDIC. If the FDIC is the Federal banking agency responsible for acting on the related merger application, a separate application for deposit insurance is not necessary. Procedures for applying for deposit insurance are set forth in subpart B of this part. An application for deposit insurance will not be required in connection with a merger transaction (other than a purchase and assumption transaction) of a federally-chartered interim institution and an insured institution, even if the resulting institution is to operate under the charter of the Federal interim institution.

(3) *Branch closings.* Branch closings in connection with a merger transaction are subject to the notice requirements of section 42 of the FDI Act (12 U.S.C. 1831r–1), including requirements for notice to customers. These requirements are addressed in the ''Interagency Policy Statement Concerning Branch Closings Notices and Policies'' (1 FDIC Law, Regulations, Related Acts (FDIC) 5391; *see* § 309.4(a) and (b) of this chapter for availability).

(4) *Undercapitalized institutions.* Applications for a merger transaction by applicants subject to section 38 of the FDI Act (12 U.S.C. 1831o) should also provide the information required by § 303.204. Applications pursuant to sections 38 and 18(c) of the FDI Act (12 U.S.C, 1831o and 1828(c)) may be filed concurrently or as a single application.

(5) *Certification of assumption of deposit liability.* Whenever all of the deposit liabilities of an insured depository institution are assumed by one or more insured depository institutions by merger, consolidation, other statutory assumption, or by contract, the transferring insured depository institution, or its legal successor, shall provide an accurate written certification to the FDIC that its deposit liabilities have been assumed, in accordance with 12 CFR part 307.

■ 4. Revise § 303.64 to read as follows:

§ 303.64 Processing

(a) *Expedited processing for eligible depository institutions*—(1) *General.* An application filed under this subpart by an eligible depository institution as defined in § 303.2(r) and which meets the additional criteria in paragraph (a)(4) of this section will be acknowledged by the FDIC in writing and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. The FDIC may remove an application from expedited processing for any of the reasons set forth in § 303.11(c)(2).

(2) Under expedited processing, the FDIC will take action on an application by the date that is the latest of:

(i) 45 days after the date of the FDIC's receipt of a substantially complete merger application; or

(ii) 10 days after the date of the last notice publication required under § 303.65 of this subpart; or

(iii) 5 days after receipt of the Attorney General's report on the competitive factors involved in the proposed transaction; or

(iv) For an interstate merger transaction subject to the provisions of section 44 of the FDI Act (12 U.S.C. 1831u), 5 days after the FDIC receives confirmation from the host state (as defined in § 303.41(e)) that the applicant has both complied with the filing requirements of the host state and submitted a copy of the FDIC merger application to the host state's bank supervisor.

(3) Notwithstanding paragraphs (a)(1) or (2) of this section, if the FDIC does not act within the expedited processing period, it does not constitute an automatic or default approval.

(4) *Criteria.* The FDIC will process an application using expedited procedures if:

(i) Immediately following the merger transaction, the resulting institution will be ''well-capitalized'' pursuant to subpart H of part 324 of this chapter (12 CFR part 324), as applicable; and

(ii)(A) All parties to the merger transaction are eligible depository institutions as defined in § 303.2(r); or

(B) The acquiring party is an eligible depository institution as defined in § 303.2(r) and the amount of the total assets to be transferred does not exceed an amount equal to 10 percent of the acquiring institution's total assets as reported in its report of condition for the quarter immediately preceding the filing of the merger application.

(b) *Standard processing.* For those applications not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action taken by the FDIC on the application when the decision is rendered.

(c) *Processing for State savings associations.* Notwithstanding paragraphs (a) and (b) of this section, the FDIC will approve or disapprove an application filed by a State savings association to acquire or be acquired by another insured depository institution that is required to be filed with the FDIC within 60 days after the date of the FDIC's receipt of a substantially complete merger application, subject to the FDIC's discretion to extend such period by an additional 30 days if any material information submitted is substantially inaccurate or incomplete.

(1) The FDIC shall notify an applicant that is a State savings association in writing of the date the application is deemed substantially complete. The FDIC may request additional information at any time.

(2) Notwithstanding paragraph (c) of this section, if the FDIC does not approve or disapprove an application within the 60-day or extended processing period it does not constitute an automatic or default approval.

■ 5. Revise § 303.100 to read as follows:

§ 303.100 Scope

This subpart sets forth the circumstances under which an FDIC-supervised institution must notify the FDIC of a change in any member of its board of directors or any senior executive officer and the procedures for filing such notice. This subpart implements section 32 of the FDI Act (12 U.S.C. 1831i).

■ 6. Amend § 303.101 by revising paragraph (a) introductory text, paragraph (b) introductory, paragraph (c) introductory text and paragraphs (c)(3), (c)(4) and (d) to read as follows:

§ 303.101 Definitions

(a) *Director* means a person who serves on the board of directors or board of trustees of an FDIC-supervised institution, except that this term does not include an advisory director who:

* * * * *

(b) *Senior executive officer* means a person who holds the title of president, chief executive officer, chief operating officer, chief managing official (in an insured state branch of a foreign bank), chief financial officer, chief lending officer, chief investment officer, or, without regard to title, salary, or compensation, performs the function of one or more of these positions. *Senior executive officer* also includes any other person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the FDIC-supervised institution.

(c) *Troubled condition* means any FDIC-supervised institution that:

* * * * *

(3) Is subject to a cease-and-desist order or written agreement issued by either the FDIC or the appropriate state banking authority that requires action to improve the financial condition of the FDIC-supervised institution or is subject to a proceeding initiated by the FDIC or state authority which contemplates the issuance of an order that requires action to improve the financial condition of the FDIC-supervised institution, unless otherwise informed in writing by the FDIC; or

(4) Is informed in writing by the FDIC that it is in troubled condition for purposes of the requirements of this subpart on the basis of the FDIC-supervised institution's most recent report of condition or report of examination, or other information available to the FDIC.

(d) *FDIC-supervised institution* means any entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

■ 7. Amend § 303.102 by revising paragraph (a), paragraph (c) introductory text, paragraph (c)(1) introductory text, paragraph (c)(1)(i), and (c)(2) to read as follows:

§ 303.102 Filing procedures and waiver of prior notice

(a) *FDIC-supervised institutions.* An FDIC-supervised institution shall give the FDIC written notice, as specified in paragraph (c)(1) of this section, at least 30 days prior to adding or replacing any member of its board of directors, employing any person as a senior executive officer of the institution, or changing the responsibilities of any senior executive officer so that the person would assume a different senior executive officer position, if the FDIC-supervised institution:

(1) Is not in compliance with all minimum capital requirements applicable to the FDIC-supervised institution as determined on the basis of the institution's most recent report of condition or report of examination;

(2) Is in troubled condition; or

(3) The FDIC determines, in connection with its review of a capital restoration plan required under section 38(e)(2) of the FDI Act (12 U.S.C. 1831o(e)(2)) or otherwise, that such notice is appropriate.

* * * * *

(c) *Waiver of prior notice*—(1) *Waiver requests.* The FDIC may permit an individual, upon petition by the FDIC-supervised institution to the appropriate FDIC office, to serve as a senior executive officer or director before filing the notice required under this subpart if the FDIC finds that:

(i) Delay would threaten the safety and soundness of the FDIC-supervised institution

* * * * *

(2) *Automatic waiver.* The prior 30-day notice is automatically waived in the case of the election of a new director not proposed by management at a meeting of the shareholders of an FDIC-supervised institution, and the individual immediately may begin serving, provided that a complete notice is filed with the appropriate FDIC office within two business days after the individual's election.

* * * * *

■ 8. Revise § 303.103 to read as follows:

§ 303.103 Processing

(a) *Processing.* The 30-day notice period specified in § 303.102(a) shall begin on the date substantially all information required to be submitted by the notificant pursuant to § 303.102(c)(1) is received by the appropriate FDIC office. The FDIC shall notify the FDIC-supervised institution submitting the notice of the date on which the notice is accepted for processing and of the date on which the 30-day notice period will expire. If processing cannot be completed with 30 days, the notificant will be advised in writing, prior to expiration of the 30-day period, of the reason for the delay in processing and of the additional time period, not to exceed 60 days, in which processing will be completed.

(b) *Commencement of service*—(1) *At expiration of period.* A proposed director or senior executive officer may begin service after the end of the 30-day period or any other additional period as provided under paragraph (a) of this section, unless the FDIC disapproves the notice before the end of the period.

(2) *Prior to expiration of the period.* A proposed director or senior executive officer may begin service before the end of the 30-day period or any additional time period as provided under paragraph (a) of this section, if the FDIC notifies the FDIC-supervised institution and the individual in writing of the FDIC's intention not to disapprove the notice.

(c) *Notice of disapproval.* The FDIC may disapprove a notice filed under § 303.102 if the FDIC finds that the competence, experience, character, or integrity of the individual with respect to whom the notice is submitted indicates that it would not be in the best interests of depositors of the FDIC-supervised institution or in the best interests of the public to permit the individual to be employed by, or associated with the FDIC-supervised institution. Subpart L of 12 CFR part 308 sets forth the rules of practice and procedure for a notice of disapproval.

■ 9. Revise § 303.200(b) to read as follows:

§ 303.200 Scope

* * * * *

(b) *Institutions covered.* Restrictions and prohibitions contained in subpart H of part 324 of this chapter apply primarily to FDIC-supervised institutions, as well as to directors and senior executive officers of those institutions. Portions of subpart H of part 324 of this chapter also apply to all insured depository institutions that are deemed to be critically undercapitalized.

■ 10. Revise § 303.203 to read as follows:

§ 303.203 Applications for capital distributions.

(a) *Scope.* An FDIC-supervised institution shall submit an application for a capital distribution if, after having made a capital distribution, the institution would be undercapitalized, significantly undercapitalized, or critically undercapitalized.

(b) *Content of filing.* An application to repurchase, redeem, retire, or otherwise acquire shares or ownership interests of the FDIC-supervised institution shall describe the proposal, the shares or obligations that are the subject thereof, and the additional shares or obligations of the institution that will be issued in at least an amount equivalent to the distribution. The application also shall explain how the proposal will reduce the institution's financial obligations or otherwise improve its financial condition. If the proposed action also requires an application under § 303.241 of this part regarding prior consent to retire capital, such application should be filed concurrently with, or made a part of, the application filed pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*).

■ 11. Amend § 303.241 by revising paragraphs (a) and (e) to read as follows:

§ 303.241 Reduce or retire capital stock or capital debt instruments.

(a) *Scope.* (1) *Insured State nonmember banks.* The procedures contained in this section are to be followed by an insured State nonmember bank to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures pursuant to section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)).

(2) *Insured State savings associations.* The procedures contained in this section are to be followed by an insured State savings association to seek the prior approval of the FDIC to reduce the amount or retire any part of its common or preferred stock, or to retire any part of its capital notes or debentures, as if the insured State savings association were a State nonmember bank subject to section 18(i)(1) of the Act (12 U.S.C. 1828(i)(1)).

* * * * *

(e) *Undercapitalized institutions.* Procedures regarding applications by an undercapitalized insured depository institution to retire capital stock or capital debt instruments pursuant to section 38 of the FDI Act (12 U.S.C. 1831*o*) are set forth in subpart K (Prompt Corrective Action), § 303.203. Applications pursuant to section 38 and this section should be filed concurrently, or as a single application.

* * * * *

PART 326—MINIMUM SECURITY DEVICES AND PROCEDURES AND BANK SECRECY ACT COMPLIANCE

■ 12. Revise the authority citation for 12 CFR part 326 to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1818, 1819 (Tenth), 1881–1883, 5412; 31 U.S.C. 5311–5314, 5316–5332.2.

■ 13. Revise § 326.1(a) to read as follows:

§ 326.8 Definitions

* * * * *

(a) The term *FDIC-supervised institution* or *institution* means any entity for which the Federal Deposit Insurance Corporation is the appropriate Federal banking agency pursuant to section 3(q) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(q).

* * * * *

■ 14. Revise § 326.8 to read as follows:

§ 326.8 Bank Secrecy Act Compliance

(a) *Purpose.* This subpart is issued to assure that all FDIC-supervised institutions as defined in 12 CFR 326.1 establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR Chapter X.

(b) *Compliance procedures*—(1) *Program requirement.* Each institution shall develop and provide for the continued administration of a program reasonably designed to assure and monitor compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations issued by the Department of Treasury at 31 CFR Chapter X. The compliance program shall be written, approved by the institution's board of directors, and noted in the minutes.

(2) *Customer identification program.* Each institution is subject to the requirements of 31 U.S.C. 5318(l) and the implementing regulation jointly promulgated by the FDIC and the Department of the Treasury at 31 CFR 1020.220.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by institution personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 15. Revise the authority citation for 12 CFR 337 to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463, 1464, 1816, 1818(a), 1818(b), 1819, 1820(d), 1821(f), 1828(j)(2), 1831, 1831f, 1831g, 5412.

■ 16. Revise § 337.3 to read as follows:

§ 337.3 Limits on extensions of credit to executive officers, directors, and principal shareholders of FDIC-supervised institutions.

(a) With the exception of 12 CFR 215.5(b), 215.5(c)(3), and 215.5(c)(4), FDIC-supervised institutions are subject to the restrictions contained in Federal Reserve Board Regulation O (12 CFR part 215) to the same extent and to the same manner as though they were member banks.

(b) For the purposes of compliance with § 215.4(b) of Federal Reserve Board Regulation O, no FDIC-supervised institution may extend credit or grant a line of credit to any of its executive officers, directors, or principal shareholders or to any related interest of any such person in an amount that, when aggregated with the amount of all other extensions of credit and lines of credit by the FDIC-supervised institution to that person and to all related interests of that person, exceeds the greater of $25,000 or five percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus,[3] or $500,000 unless:

(1) The extension of credit or line of credit has been approved in advance by a majority of the entire board of directors of that FDIC-supervised institution and

(2) the interested party has abstained from participating directly or indirectly in the voting.

(c)(1) No FDIC-supervised institution may extend credit in an aggregate amount greater than the amount permitted in paragraph (c)(2) of this section to a partnership in which one or more of the FDIC-supervised institution's executive officers are partners and, either individually or together, hold a majority interest. For the purposes of paragraph (c)(2) of this section, the total amount of credit extended by an FDIC-supervised institution to such partnership is considered to be extended to each executive officer of the FDIC-supervised institution who is a member of the partnership.

(2) An FDIC-supervised institution is authorized to extend credit to any executive officer of the bank for any other purpose not specified in § 215.5(c)(1) and (2) of Federal Reserve Board Regulation O (12 CFR 215.5(c)(1) and (2)) if the aggregate amount of such other extensions of credit does not exceed at any one time the higher of 2.5 percent of the FDIC-supervised institution's unimpaired capital and unimpaired surplus or $25,000 but in no event more than $100,000, provided, however, that no such extension of credit shall be subject to this limit if the extension of credit is secured by:

(i) A perfected security interest in bonds, notes, certificates of indebtedness, or Treasury bills of the United States or in other such obligations fully guaranteed as to principal and interest by the United States;

(ii) Unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or any corporation wholly owned directly or indirectly by the United States; or

(iii) A perfected security interest in a segregated deposit account in the lending FDIC-supervised institution.

(3) For the purposes of paragraph (c) of this section, the definitions of the terms used in Federal Reserve Board Regulation O shall apply including the exclusion of executive officers of an FDIC-supervised institution's parent bank or savings and loan holding company and executive officers of any other subsidiary of that bank or savings and loan holding company from the definition of executive officer for the purposes of complying with the loan restrictions contained in section 22(g) of the Federal Reserve Act. For the purposes of complying with § 215.5(d) of Federal Reserve Board Regulation O, the reference to ''the amount specified for a category of credit in paragraph (c) of this section'' shall be understood to refer to the amount specified in paragraph (c)(2) of this § 337.3.

(d) *Definition.* For purposes of this section, *FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

■ 17. Revise § 337.11 to read as follows:

§ 337.11 Effect on other banking practices.

(a) Nothing in this part shall be construed as restricting in any manner the Corporation's authority to deal with any banking practice which is deemed to be unsafe or unsound or otherwise not in accordance with law, rule, or regulation; or which violates any condition imposed in writing by the Corporation in connection with the granting of any application or other request by an FDIC-Supervised institution, or any written agreement entered into by such institution with the Corporation. Compliance with the provisions of this part shall not relieve an FDIC-supervised institution from its duty to conduct its operations in a safe and sound manner nor prevent the Corporation from taking whatever action it deems necessary and desirable to deal with specific acts or practices which, although they do not violate the provisions of this part, are considered detrimental to the safety and sound operation of the institution engaged therein.

(b) *Definition. FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

PART 353—SUSPICIOUS ACTIVITY REPORTS

■ 18. Revise the authority citation for 12 CFR part 353 to read as follows:

Authority: 12 U.S.C. 1818, 1819; 31 U.S.C. 5318

§ 353.1 [Amended]

■ 19. Amend § 353.1 by removing the term ''insured nonmember bank'' and adding in its place the term ''FDIC-supervised institution''.

■ 20. Amend § 353.2 by adding paragraph (c) to read as follows:

§ 353.2 Definitions

* * * * *

(c) *FDIC-supervised institution* means an entity for which the FDIC is the appropriate Federal banking agency pursuant to section 3(q) of the FDI Act, 12 U.S.C. 1813(q).

§ 353.3 [Amended]

■ 21. Amend § 353.3 by:

■ a. Removing the term ''insured nonmember bank'' and adding in its place the term ''FDIC-supervised institution'';

■ b. Removing the term ''bank'' and adding in its place the term ''institution''.

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 22. The authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

Subpart S—[Removed]

■ 23. Remove subpart S consisting of §§ 390.330 through 390.368

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

[3] For the purposes of section 337.3, an FDIC-supervised institution's unimpaired capital and unimpaired surplus shall have the same meaning as found in section 215.2(i) of Federal Reserve Board Regulation O (12 CFR 215.2(i)).

Dated at Washington, DC, on October 15, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–23115 Filed 10–30–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 211 October 31, 2019

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 990

Establishment of a Domestic Hemp Production Program; Interim Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 990

[Doc. No. AMS–SC–19–0042; SC19–990–2 IR]

Establishment of a Domestic Hemp Production Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes a new part specifying the rules and regulations to produce hemp. This action is mandated by the Agriculture Improvement Act of 2018, which amended the Agricultural Marketing Act of 1946. This rule outlines provisions for the Department of Agriculture (USDA) to approve plans submitted by States and Indian Tribes for the domestic production of hemp. It also establishes a Federal plan for producers in States or territories of Indian Tribes that do not have their own USDA-approved plan. The program includes provisions for maintaining information on the land where hemp is produced, testing the levels of delta-9 tetrahydrocannabinol, disposing of plants not meeting necessary requirements, licensing requirements, and ensuring compliance with the requirements of the new part.

DATES:

Effective date: This rule is effective October 31, 2019 through November 1, 2021.

Comment due dates: Comments received by December 30, 2019 will be considered prior to issuance of a final rule. Pursuant to the Paperwork Reduction Act (PRA), comments on the information collection burden must be received by December 30, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule and the proposed information collection. Comments should be submitted via the Federal eRulemaking portal at *www.regulations.gov.* Comments may also be filed with Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; or Fax: (202) 720–8938. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: *www.regulations.gov.* All comments submitted in response to this rule will be included in the record and will be made available to the public.

FOR FURTHER INFORMATION CONTACT: Bill Richmond, Chief, U.S. Domestic Hemp Production Program, Specialty Crops Program, AMS, USDA; 1400 Independence Avenue SW, Stop 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *William.Richmond@usda.gov* or Patty Bennett, Director, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA at the same address and phone number above or Email: *Patty.Bennett@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Section 10113 of Public Law 115–334, the Agriculture Improvement Act of 2018 (2018 Farm Bill). Section 10113 amended the Agricultural Marketing Act of 1946 (AMA) by adding Subtitle G (sections 297A through 297D of the AMA). Section 297B of the AMA requires the Secretary of Agriculture (Secretary) to evaluate and approve or disapprove State or Tribal plans regulating the production of hemp. Section 297C of the AMA requires the Secretary to establish a Federal plan for producers in States and territories of Indian Tribes not covered by plans approved under section 297B. Lastly, section 297D of the AMA requires the Secretary to promulgate regulations and guidelines relating to the production of hemp, including sections 297B and 297C, in consultation with the U.S. Attorney General. USDA is committed to issuing the final rule expeditiously after reviewing public comments and obtaining additional information during the initial implementation. This interim final rule will be effective for two years and then be replaced with a final rule.

I. Introduction

Hemp is a commodity that can be used for numerous industrial and horticultural purposes including fabric, paper, construction materials, food products, cosmetics, production of cannabinoids (such as cannabidiol or CBD), and other products.[1] While hemp was produced previously in the U.S. for hundreds of years, its usage diminished in favor of alternatives. Hemp fiber, for instance, which had been used to make rope and clothing, was replaced by less expensive jute and abaca imported from Asia. Ropes made from these materials were lighter and more buoyant, and more resistant to salt water than hemp rope, which required tarring. Improvements in technology further contributed to the decline in hemp usage. The cotton gin, for example, eased the harvesting of cotton, which replaced hemp in the manufacture of textiles.

Hemp production in the U.S. has seen a resurgence in the last five years; however, it remains unclear whether consumer demand will meet the supply. High prices for hemp, driven primarily by demand for use in producing CBD, relative to other crops, have driven increases in planting. Producer interest in hemp production is largely driven by the potential for high returns from sales of hemp flowers to be processed into CBD oil.

USDA regulates the importation of all seeds for planting to ensure safe agricultural trade. Hemp seeds can be imported into the United States from Canada if accompanied by either: (1) A phytosanitary certification from Canada's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected; or (2) a Federal Seed Analysis Certificate (SAC, PPQ Form 925) for hemp seeds grown in Canada. Hemp seeds imported into the United States from countries other than Canada may be accompanied by a phytosanitary certificate from the exporting country's national plant protection organization to verify the origin of the seed and confirm that no plant pests are detected. Accordingly, since importation of seed is covered under USDA Animal and Plant Health Inspection Service (APHIS) regulations, this rule does not further address hemp seed imports or exports. For imports of hemp plant material,

[1] The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act). See section 297D(c)(1) (''Nothing in this subchapter shall affect or modify . . . the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); section 351 of the Public Health Service Act (42 U.S.C. 262); or the authority of the Commissioner of Food and Drugs and the Secretary of Health and Human Services . . .'' under those Acts). Accordingly, products containing cannabis and cannabis-derived compounds are subject to the same authorities and requirements as FDA-regulated products containing any other substance.

APHIS will have jurisdiction for any pest related issues if they arise.

The 2018 Farm Bill allows for the interstate transportation and shipment of hemp in the United States. This rule does not affect the exportation of hemp. Should there be sufficient interest in exporting hemp in the future, USDA will work with industry and other Federal agencies to help facilitate this process.

Prior to the 2018 Farm Bill, *Cannabis sativa* L. with delta-9 tetrahydrocannabinol (THC) levels greater than 0.3% fell within the definition of ''marihuana'' under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.,* and was therefore a Schedule I controlled substance unless it fell under a narrow range of exceptions (*e.g.,* the ''mature stalks'' of the plant).[2] As a result, many aspects of domestic production of what is now defined as hemp was limited to persons registered under the CSA to do so. Under the Agricultural Act of 2014 (2014 Farm Bill), Public Law 113–79, State departments of agriculture and institutions of higher education were permitted to produce hemp as part of a pilot program for research purposes. The authority for hemp production provided in the 2014 Farm Bill was extended by the 2018 Farm Bill, which was signed into law on December 20, 2018.

The 2018 Farm Bill requires USDA to promulgate regulations and guidelines to establish and administer a program for the production of hemp in the United States. Under this new authority, a State or Indian Tribe that wants to have primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe may submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. For States or Indian Tribes that do not have approved plans, the Secretary is directed to establish a Departmental plan to monitor and regulate hemp production in those areas.

There are similar requirements that all hemp producers must meet. These include: Licensing requirements; maintaining information on the land on which hemp is produced; procedures for testing the THC concentration levels for hemp; procedures for disposing of non-compliant plants; compliance provisions; and procedures for handling violations.

After extensive consultation with the Attorney General, USDA is issuing this interim final rule to establish the domestic hemp production program and to facilitate the production of hemp, as set forth in the 2018 Farm Bill. This interim rule will help expand production and sales of domestic hemp, benefiting both U.S. producers and consumers. With the publication of the interim rule, USDA will begin to implement the hemp program including reviewing State and Tribal plans and issuing licenses under the USDA hemp plan. There is also a 60-day comment period during which interested persons may submit comments on this interim rule. The comment period will close on December 30, 2019. After reviewing and evaluating the comments, USDA will draft and publish a final rule within two years of the date of publication. USDA will evaluate all information collected during this period to adjust, if necessary, this rule before finalizing.

For the purposes of this new part, and as defined in the 2018 Farm Bill, the term ''hemp'' means the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis. Delta-9 tetrahydrocannabinol, or THC, is the primary intoxicating component of cannabis. Cannabis with a THC level exceeding 0.3 percent is considered marijuana, which remains classified as a schedule I controlled substance regulated by the Drug Enforcement Administration (DEA) under the CSA.

The term ''State'' means any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The term ''Indian Tribe'' or ''Tribe'' is the same definition as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). The interim rule also includes the definition of ''territory of an Indian Tribe'' to provide clarity to the term because the Act does not define it. The definition adopts the definition ''Indian Country'' in 18 U.S.C. 1151 because it is a commonly acceptable approach to determine a tribal government's jurisdiction. Under an approved Tribal plan, the Indian Tribe will have regulatory authority over Indian Country under its jurisdiction.[3] A full list of terms and definitions relating to this part can be found under ''Definitions'' in section IV.

II. State and Tribal Plans

If a State or Indian Tribes wants to have primary regulatory authority over the production of hemp in that State or territory of that Indian Tribe they may submit, for the approval of the Secretary, a plan concerning the monitoring and regulation of such hemp production. State or Tribal plans must be submitted to USDA and approved prior to their implementation. Nothing preempts or limits any law of a State or Tribe that regulates the production of hemp and is more stringent than the provisions in the 2018 Farm Bill. State and Tribal plans developed to regulate the production of hemp must include certain requirements when submitted for USDA approval. These requirements are outlined in the following sections.

A. Land Used for Production

Plans will need to contain a process by which relevant information regarding the land used for hemp production in their jurisdiction is collected and maintained. All information on hemp production sites must be collected for each producer covered by the State or Tribal plan. The information required to be collected includes a legal description of the land and geospatial location, which the USDA Farm Service Agency (FSA) can help provide, for each field, greenhouse, or other site where hemp is produced. Geospatial location is required because many rural locations do not have specific addresses and these coordinates will assist with the proper identification of hemp production locations. Per statute, States and Tribes will need to retain these records for three years.

In addition to the land information required to be submitted to the appropriate State or Tribe, licensed producers must also report their hemp crop acreage to the FSA. When reporting to FSA, producers must provide their State or Tribe-issued license or authorization number. The requirement that producers report hemp crop acreage to FSA establishes an identification system for hemp production nationwide and complies with the information sharing requirements of the 2018 Farm Bill. A link to FSA information on how to report hemp crop acreage to FSA is available at *https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2019/crop-acreage-*

[2] Although the statutory spelling is ''marihuana'' in the Controlled Substances Act, this rule uses the more commonly used spelling of marijuana.

[3] We note that if an Alaskan Native Corporation wants to produce hemp on land it owns in fee simple, it would need to have a State or USDA license, whichever is applicable, because that land does not qualify as Indian Country and it does not have jurisdiction over that land.

reporting-19.pdf and will be provided on the USDA hemp production program web site. USDA believes that most producers who will plant hemp already report land use data to FSA for other crops and to apply for various FSA programs, including those for hemp. FSA offices are located in various counties within each State and are designed to be a single location where customers can access services from USDA agencies including FSA, AMS, Natural Resources Conservation Service (NRCS) and Rural Development (RD). These offices currently serve the agricultural industry within their communities and provide producers access to an office for establishing farm and producer records, a place for producers to record their licensing information, and a place to report crop acreage. The producer may, with supporting documentation, also update its FSA farm records for leases, sub-leases, or ownership of land.

Under the hemp pilot program authorized under the terms of the 2014 Farm Bill, various States developed seed certification programs to help producers identify hemp seed that would work well in their specific geographical areas. USDA will not include a seed certification program in this rule because the same seeds grown in different geographical locations and growing conditions can react differently. For example, the same seed used in one State to produce hemp plants with THC concentrations less than 0.3%, can produce hemp plants with THC concentrations of more than 0.3% when planted in a different State. We have also found that the technology necessary to determine seed planting results in different locations is not advanced enough at this time to make a seed-certification scheme feasible. Additionally, we do not have accurate data at this time on the origin of most hemp seed planted in the U.S.

B. Sampling and Testing for Delta-9 Tetrahydrocannabinol

State and Tribal plans must incorporate procedures for sampling and testing hemp to ensure the cannabis grown and harvested does not exceed the acceptable hemp THC level. Sampling procedures, among other requirements, must ensure that a representative sample of the hemp production is physically collected and delivered to a DEA-registered laboratory for testing. Within 15 days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing. If producers delay harvest beyond 15 days, the plant will likely have a higher THC level at harvest than the sample that is being tested. This requirement will yield the truest measurement of the THC level at the point of harvest. Accepting that a pre-harvest inspection is best to identify suspicious plants and activities, and that the sample should be taken as close to harvest as possible, the time was selected based on what would be a reasonable time for a farmer to harvest an entire field. This 15-day post-sample harvest window was also designed to allow for variables such as rain and equipment delays. We are requesting comments and information regarding the 15-day sampling and harvest timeline.

Testing procedures must ensure the testing is completed by a DEA-registered laboratory using a reliable methodology for testing the THC level. The THC concentration of all hemp must meet the acceptable hemp THC level. Samples must be tested using post-decarboxylation or other similarly reliable analytical methods where the total THC concentration level reported accounts for the conversion of delta-9-tetrahydrocannabinolic acid (THCA) into THC. Testing methodologies currently meeting these requirements include those using gas or liquid chromatography with detection. The total THC, derived from the sum of the THC and THCA content, shall be determined and reported on a dry weight basis. In order to provide flexibility to States and Tribes in administering their own hemp production programs, alternative sampling and testing protocols will be considered if they are comparable and similarly reliable to the baseline mandated by section 297B(a)(2)(ii) of the AMA and established under the USDA plan and procedures. USDA procedures for sampling and testing will be issued concurrently with this rule and will be provided on the USDA website.

Sections 297B(a)(2)(A)(iii) and 297C(a)(2)(C) require that cannabis plants that have a THC concentration level of greater than 0.3% on a dry weight basis be disposed of in accordance with the applicable State, Tribal, or USDA plan. Because of this requirement, producers whose cannabis crop is not hemp will likely lose most of the economic value of their investment. Thus, USDA believes that there must be a high degree of certainty that the THC concentration level is accurately measured and is in fact above 0.3% on a dry weight basis before requiring disposal of the crop.

The National Institute of Standards and Technology (NIST) Reference on Constants, Units, and Uncertainty states that ''measurement result is complete only when accompanied by a quantitative statement of its uncertainty. The uncertainty is required in order to decide if the result is adequate for its intended purpose and to ascertain if it is consistent with other similar results.'' [4] Simply stated, knowing the measurement of uncertainty is necessary to evaluate the accuracy of test results.

This interim rule requires that laboratories calculate and include the measurement of uncertainty (MU) when they report THC test results. Hemp producers must utilize laboratories that use appropriate, validated methods and procedures for all testing activities and who also evaluate measurement of uncertainty. Laboratories should meet the AOAC International [5] standard method performance requirements for selecting an appropriate method.

This interim rule defines ''measurement of uncertainty'' as ''the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.'' This definition is based on the definition of ''uncertainty (of measurement)'' in section 2.2.3 of the Joint Committee for Guides in Metrology [6] 100:800, Evaluation of measurement data—Guide to the expression of uncertainty in measurement (JCGM Guide). NIST Technical Note 1297, Guidelines for Evaluating and Expressing the Uncertainty of NIST Measurement Results (TN 1297), is based on the JCGM Guide. USDA also relied on the Eurachem/Co-Operation on International Traceability in Analytical Chemistry's ''Guide on Use of Uncertainty Information in Compliance

[4] *https://physics.nist.gov/cuu/Uncertainty/international1.html.*

[5] USDA established the Association of Official Agricultural Chemists in 1884. In 1965, it changed its name to the Association of Official Analytical Chemists and became an independent organization in 1979. In 1991, it adopted its current, legal name as AOAC International.

[6] The Joint Committee for Guides in Metrology is composed of international organizations working in the field of metrology. Its membership includes the Bureau International des Poids et Mesures, the Organisation Internationale de Métrologie Légale, the International Organization for Standardization, the International Electrotechnical Commission, the International Union of Pure and Applied Chemistry, the International Union of Pure and Applied Physics, the International Federation of Clinical Chemistry and Laboratory Medicine, and the International Laboratory Accreditation Cooperation.

Assessment, First Edition 2007''. Colloquially, the measurement of uncertainty is similar to a margin of error. When the measurement of uncertainty, normally expressed as a +/− with a number, (*e.g.,* +/− 0.05) is combined with the reported measurement, it produces a range and the actual measurement has a known probability of falling within that range (typically 95%).

This interim rule requires that laboratories report the measurement of uncertainty as part of any hemp test results. The rule also includes a definition of ''acceptable hemp THC level'' to account for the uncertainty in the test results. The reported THC concentration level of a sample may not be the actual concentration level in the sample. The actual THC concentration level is within the distribution or range when the reported THC concentration level is combined with the measurement of uncertainty.

It bears emphasis that this rule does not alter Federal law with regard to the definition of hemp or marihuana. As stated above, the 2018 Farm Bill defines hemp as the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 THC of not more than 0.3 percent on a dry weight basis. Likewise, the Federal (CSA) definition of marihuana continues to include those parts of the cannabis plant as specified in 21 U.S.C. 802(16) (and derivatives thereof) that contain more than 0.3 percent delta-9 THC on a dry weight basis. The foregoing provisions of Federal law remain in effect for purposes of Federal criminal prosecutions as well as Federal civil and administrative proceedings arising under the CSA. However, for purposes of this rule (*i.e.,* for purposes of determining the obligations of licensed hemp growers under the applicable provisions of the 2018 Farm Bill), the term ''acceptable hemp THC level'' is used to account for the uncertainty in the test results.

The definition of ''acceptable hemp THC level'' explains how to interpret test results with the measurement of uncertainty with an example. The application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution, or range. If 0.3% or less is within the distribution or range, then the sample will be considered to be hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. For example, if a laboratory reports a result as 0.35% with a measurement of uncertainty of +/−0.06, the distribution or range is 0.29% to 0.41%. Because 0.3% is within that distribution or range, the sample, and the lot it represents, is considered hemp for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans. However, if the measurement of uncertainty for that sample was 0.02%, the distribution or range is 0.33% to 0.37%. Because 0.3% or less is not within that distribution or range, the sample is not considered hemp for the purpose of plan compliance, and the lot it represents will be subject to disposal. Thus the ''acceptable hemp THC level'' is the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis producing a distribution or range that includes 0.3% or less. As such, the regulatory definition of ''acceptable hemp THC level'' describes how State, Tribal, and USDA plans must account for uncertainty in test results in their treatment of cannabis. Again, this definition affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of ''marihuana,'' 21 U.S.C. 802(16), in the CSA.

The laboratories conducting hemp testing must be registered by the DEA to conduct chemical analysis of controlled substances (in accordance with 21 CFR 1301.13). Registration is necessary because laboratories could potentially handle cannabis that tests above the 0.3% concentration of THC on a dry weight basis, which is, by definition, marijuana and a Schedule 1 controlled substance. Instructions for laboratories to obtain DEA registration, along with a list of approved laboratories, will be posted on the USDA Domestic Hemp Production Program website.

USDA is considering establishing a fee-for-service hemp laboratory approval process for labs that wish to offer THC testing services. USDA approved laboratories would be approved by the USDA, AMS, Laboratory Approval Service, which administers the Laboratory Approval Program (LAP). USDA-approved laboratories would need to comply with the LAP requirements, as established under ''Laboratory Approval Program—General Policies & Procedures'' (*www.ams.usda.gov/services/lab-testing/lab-approval*), which describes the general policies and procedures for a laboratory to apply for and maintain status in a LAP. Under the LAP, an individual program for hemp would be developed, with a set of documented requirements to capture specific regulatory, legal, quality assurance and quality control, and analytical testing elements. A requirement for a testing laboratory to be approved by USDA would be in addition to the requirement in the final rule that the laboratory be registered with DEA.

In addition to requiring ISO 17025 accreditation, which assesses general competence of testing laboratories, the LAP would provide a way for USDA to accredit that laboratories perform to a standard level of quality. When DEA registers a lab to handle narcotics, they do not require the lab to be accredited. This is an important factor, as the issue of providing assurance as to proper testing was raised on numerous occasions during the USDA outreach process that was conducted prior to developing this rule. The LAP would give USDA the proper oversight of the laboratories doing the testing, providing quality assurance and control procedures that ensure a validated and qualified analysis, and defensible data. Should USDA establish a lab approval process, a list of USDA approved laboratories that are also registered with the DEA would be posted on the USDA Domestic Hemp Production Program website. Although this proposal is not reflected in the regulatory text of this interim final rule, USDA is seeking comment on it to determine whether to incorporate it in the subsequent final rule.

Alternatively, USDA is considering requiring all laboratories testing hemp to have ISO 17025 accreditation. We are requesting comment on this requirement as well and are interested to learn about the number of labs that already have this accreditation, the associated burden, and the potential benefits of such a requirement.

C. Disposal of Non-Compliant Plants

State and Tribal plans are also required to include procedures for ensuring effective disposal of plants produced in violation of this part. If a producer has produced cannabis exceeding the acceptable hemp THC level, the material must be disposed of in accordance with the CSA and DEA regulations because such material constitutes marijuana, a schedule I controlled substance under the CSA. Consequently, the material must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer.

D. Compliance With Enforcement Procedures Including Annual Inspection of Hemp Producers

State and Tribal plans must include compliance procedures to ensure hemp is being produced in accordance with the requirements of this part. This includes requirements to conduct annual inspections of, at a minimum, a random sample of hemp producers to verify hemp is not being produced in violation of this part. These plans also must include a procedure for handling violations. In accordance with the 2018 Farm Bill, States and Tribes with their own hemp production plans have certain flexibilities in determining whether hemp producers have violated their approved plans. However, there are certain compliance requirements that all State and Tribal plans must contain. This includes procedures to identify and attempt to correct certain negligent acts, such as failing to provide a legal description of the land on which the hemp is produced, not obtaining a license or other required authorizations from the State or tribal government or producing plants exceeding the acceptable hemp THC level. States and Tribes may require additional information in their plans. In the context of this part, negligence is defined as a failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part. This definition employed in this rule is derived from the definition of negligence in Black's Law Dictionary. *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (defining *negligence* as ''[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation'').

This rule specifies that hemp producers do not commit a negligent violation if they produce plants that exceed the acceptable hemp THC level and use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. USDA recognizes that hemp producers may take the necessary steps and precautions to produce hemp, such as using certified seed, using other seed that has reliably grown compliant plants in other parts of the country, or engaging in other best practices, yet still produce plants that exceed the acceptable hemp THC level. USDA seeks comments whether there are other reasonable efforts to be considered. We believe that a hemp producer in that scenario has exercised a level of care that a reasonably prudent person would exercise if the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis. USDA arrived at that percentage by examining the test results of samples taken from several States that have a hemp research program under the 2014 Farm Bill and by reviewing results from plants grown from certified seed as well as uncertified seed and tested using different testing protocols. Under this scenario, although a producer would not be considered ''negligent,'' they would still need to dispose of the plants if the THC concentration exceeded the acceptable hemp THC level.

In developing the compliance requirements of State and Tribal plans, USDA recognizes that there may be significant differences across States and Tribes in how they will administer their respective hemp programs. Accordingly, as long as, at a minimum, the requirements of the 2018 Farm Bill are met, States and Tribes are free to determine whether or not a licensee under their applicable plan has taken reasonable steps to comply with plan requirements.

In cases where a State or Tribe determines a negligent violation has occurred, a corrective action plan shall be established. The corrective action plan must include a reasonable date by which the producer will correct the negligent violation. Producers operating under a corrective action plan must also periodically report to the State or Tribal government, as applicable, on their compliance with the plan for a period of not less than two calendar years following the violation. A producer who negligently violates a State or Tribal plan three times in a five-year period will be ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement action by local, Tribal, State, or Federal government authorities.

State and Tribal plans also must contain provisions relating to producer violations made with a culpable mental state greater than negligence, meaning, acts made intentionally, knowingly, or with recklessness. This definition is derived from the definition of negligence in Black's Law Dictionary. *See* BLACK'S LAW DICTIONARY (10th ed. 2014) (giving as a definition of *negligence* ''[t]he failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation''). If it is determined a violation was committed with a culpable mental state greater than negligence, the State department of agriculture or tribal government, as applicable, shall immediately report the producer to the Attorney General, USDA, and the chief law enforcement officer of the State or Tribe. State and Tribal plans also must prohibit any person convicted of a felony related to a controlled substance under State or Federal law before, on, or after the enactment of the 2018 Farm Bill from participating in the State or Tribal plan and from producing hemp for 10-years following the date of conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

To meet this requirement, the State or Indian Tribe will need to review criminal history reports for each applicant. When an applicant is a business entity, the State or Indian Tribe must review the criminal history report for each key participant in the business. The State and Tribe may determine the appropriate method for obtaining the criminal history report for their licensees in their plan. Finally, any person found by the USDA, State, or Tribal government to have materially falsified any information submitted to this program will be ineligible to participate.

E. Information Sharing

State and Tribal plans also must contain procedures for reporting specific information to USDA. This is separate from the requirement to report hemp crop acreage with FSA as discussed above. The information required here includes contact information for each hemp producer covered under the plan including name, address, telephone number, and email address (if available). If the producer is a business entity, the information must include the full name of the business, address of the principal business location, full name and title of the key participants, an email address if available, and EIN number of the business entity. Producers must report the legal description and geospatial location for each hemp production area, including each field, greenhouse, or other site, used by them, as stated in section A of this preamble. The report also shall include the status of the license or other required authorization from the State or Tribal government, as applicable, for each producer under a hemp production plan. States and Tribes will submit this information to USDA not later than 30 days after the date it is received using the appropriate reporting requirements as determined by USDA. These reporting requirements are found at § 990.70 in this rule. Further explanation of the specific information to be submitted, the appropriate format, and the specific due

dates for the information is discussed below. This information submitted from each State and Tribal plan, along with the equivalent information collected from individuals participating under the USDA plan, will be assembled and maintained by USDA and made available in real time to Federal, State, and local law enforcement as required by the 2018 Farm Bill. All information supporting, verifying, or documenting the information submitted to USDA must be maintained by the States and Tribes for at least three years.

F. Certification of Resources

All State and Tribal plans submitted for USDA approval must also have a certification stating the State or Tribe has the resources and personnel necessary to carry out the practices and procedures described in their plan. Section 297B of the AMA requires this certification and the information is important to USDA's approval of State and Tribal plans in that all such plans must be supported by adequate resources to effectively administer them.

G. Plan Approval, Technical Assistance and USDA Oversight

During the plan development process, States and Tribes are encouraged to contact USDA so we may provide technical assistance in developing plan specifics. USDA will not review, approve or disapprove plans until after the effective date of this interim rule. Once USDA formally receives a plan, USDA will have 60 days to review the submitted plan. USDA may approve plans which comply with the 2018 Farm Bill and with the provisions of this rule. If a plan does not comply with all requirements of the Act and this part it will be rejected. USDA will consult with the Attorney General throughout this process.

When plans are rejected, USDA will provide a letter of notification outlining the deficiencies identified. The State or tribal government may then submit an amended plan for review. If the State or Tribe disagrees with the determination made by USDA regarding the plan, a request for reconsideration can be submitted to USDA using the appeal process as outlined in section V. of this rule. Plans submitted by States and Tribes must be approved by USDA before they can be implemented.

USDA will use the information outlined here and as directed in the 2018 Farm Bill when evaluating State and Tribal plans for approval. States and Tribes can submit their plans to USDA through electronic mail at *farmbill.hemp@usda.gov* or by postal carrier to USDA. The specific address is provided on the USDA Domestic Hemp Production Program website.

If the State or Tribal plan application is complete and meets the criteria of this part, USDA shall issue an approval letter. Approved State and Tribal plans, including their respective rules, regulations and procedures, shall be posted on USDA's hemp program website.

Once a plan has received approval from USDA, it will remain in effect unless revoked by USDA pursuant to the revocation procedures discussed below, or unless the State or Tribe makes substantive revisions to their plan or their laws that alter the way the plan meets the requirements of this regulation. Additionally, changes to the provisions or procedures under this rule or to the language in the 2018 Farm Bill may require plan revision and resubmission to USDA for approval. Should States or Tribes have questions regarding the need to resubmit their plans, they should contact USDA for guidance. Statutory amendments could result in revocation of some or all plans.

A State or tribal government may submit an amended plan to USDA for approval if: (1) The Secretary disapproves a State or Tribal plan; or (2) The State or Tribe makes substantive revisions to their plan or to their laws that alter the way the plan meets the requirements of this regulation, or as necessary to bring the plan into compliance with changes in other applicable law or regulations.

If the plan, previously approved by USDA, needs to be amended because of changes to the State or Tribe's laws or regulations, such resubmissions should be provided to USDA within a calendar year from when the new State or tribal law or regulations are effective. Producers will be held to the requirements of the previous plan until such modifications are approved by USDA. If State or tribal government regulations in effect under the USDA-approved plan change but the State or tribal government does not resubmit a modified plan within the calendar year of the effective date of the change, USDA will issue a notification to the State or tribal government that approval of its plan will be revoked. The revocation will be effective no earlier than the beginning of the next calendar year. When USDA sends the notification to the State or Tribe, it will accept applications for USDA licenses from producers in the State or territory of the Indian Tribe for 90 days after the notification even if that time period does not coincide with the annual period in which USDA normally accepts applications under § 990.21.

USDA has the authority to audit States and Tribes to determine if they are in compliance with the terms and conditions of their approved plans. If a State or Tribe is noncompliant with their plan, USDA will work with that State or Tribe to develop a corrective action plan following the first case of noncompliance. However, if additional instances of noncompliance occur, USDA has the authority to revoke the approval of the State or Tribal plan for one year. USDA believes that one year is sufficient time for a noncompliant State or Tribe to evaluate problems with their plan and make the necessary adjustments. Should USDA determine the approval of a State or Tribal plan should be revoked, such a revocation would begin after the end of the current calendar year, so producers will have the opportunity to adjust their operations as necessary. This one-year window will allow producers to apply for a license under the USDA plan so that their operations do not become disrupted due to the revocation of the State or Tribal plan.

For the 2020 planting season, the 2018 Farm Bill provides that States and institutions of higher education can continue operating under the authorities of the 2014 Farm Bill. The 2018 Farm Bill extension of the 2014 Farm Bill authority expires 12 months after the effective date of this rule.

III. Department of Agriculture Plan

This rule also establishes a USDA plan to regulate hemp production by producers in areas where hemp production is legal but is not covered by an approved State or Tribal plan. All hemp produced outside of States and Tribes with approved plans must meet the requirements of the USDA plan. The requirements of the USDA plan are similar to those under State and Tribal plans.

A. USDA Hemp Producer License

1. Application

To produce hemp under the USDA plan, producers must apply for and be issued a license from USDA. USDA will begin accepting applications 30 days after the effective date of this interim rule. USDA is delaying acceptance of applications for 30 days to allow States and Tribal governments to submit their plans first. This is to prevent USDA from reviewing and issuing USDA licenses to producers when there is a likelihood that there will soon be a State or Tribal plan in place and producers will obtain their licenses from the State or Tribe.

While a State or Tribal government has a draft hemp production plan pending for USDA approval, USDA will not issue USDA hemp production licenses to individual producers located in those States or Tribal Nations. Once USDA approves a draft hemp production plan from a State or Tribe, it will deny any license applications from individuals located in the applicable State or Tribal Nation. If USDA disapproves a State or Tribal hemp production plan, individual producers located in the State or Tribal Nation may apply for a USDA hemp production license.

For the first year after USDA begins to accept applications, applications can be submitted any time. For all subsequent years, license applications and license renewal applications must be submitted between August 1 and October 31. For hemp grown outdoors, harvesting usually occurs in the late summer and early fall. This application period is close to or after the harvest season when producers are preparing for the next growing season. USDA requests comments on whether this application period is sufficient. USDA may consider an alternative application window if experience demonstrates the need for one. Having an established application period provides adequate time for USDA to effectively and efficiently review and decide on applications, while also providing producers with a licensing decision well before planting season. All applications must comply with the requirements as described below. The license application will be available online at the USDA Domestic Hemp Production Program website. Applications may be submitted electronically or by mail. Copies can be also requested by email at *farmbill.hemp@usda.gov.*

The application will require contact information such as name, address, telephone number, and email address (if available). If the applicant represents a business entity, and that entity will be the producer, the application will require the full name of the business, address of the principal business location, full name and title of the key participants on behalf of the entity, an email address if available, and EIN number of the business entity.

All applications must be accompanied by a completed criminal history report. If the application is for a business entity, a completed criminal history report must be provided for each key participant.

Key participants are a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include other management positions like farm, field or shift managers. USDA is requiring a criminal history records report for key participants because those persons are likely to have control over hemp production, whether production is owned by an individual, partnership, or a corporation. USDA considers those individuals to be responsible for ensuring compliance with the regulatory requirements and thereby active participants in the Domestic Hemp Production Program. If those persons have a disqualifying felony, they can no longer participate in the program as provided for by section 297B(e)(3)(B)(i) of the 2018 Farm Bill. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

USDA will not accept criminal history reports completed more than 60 days before the submission of an application, which provides USDA with an expectation that the findings of the report are reasonably current and accurate.

The criminal history report must indicate the applicant has not been convicted of a State or Federal felony related to a controlled substance for the 10 years prior to the date of when the report was completed. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

In addition to providing the information specified, the application will also require license applicants to certify they will adhere to the provisions of the plan.

Once all the necessary information has been provided, applications will be reviewed by USDA for completeness and to determine an applicant's eligibility. USDA will approve or deny license applications unless the applicant is from a State or Tribal Nation that has a plan submitted to or approved by USDA. Applicants will be notified if they have been granted or denied a license either by mail or email.

If an application is denied, the applicant will receive a notification letter or email specifying why the application was denied. If denied, applicants will have the option of resubmitting a revised application if the application was rejected for being incomplete. Applicants may resubmit after October 31 as long as the original application was submitted between August 1 and October 31. If the application was rejected for other reasons, the applicant will have the opportunity to appeal the USDA's decision in accordance with the appeals process outlined in the regulation.

2. USDA Hemp Producer Licenses

Once a license application has been approved, USDA will issue the producer license. Licenses are not transferrable in any manner. An applicant whose application has been approved will not be considered a licensed producer under the USDA plan until the applicant receives their producer license. Licenses do not renew automatically and must be renewed every three years. Because of the felony ban, we believe it is necessary to review producers' criminal history to ensure that they have not committed a felony since the most recent license approval that would disqualify them.

Applications for renewal will be subject to the same terms and approved under the same criteria as initial applications unless there has been an intervening change in the applicable law or regulations since approval of the initial or last application. In such a case the subsequently enacted law or regulation shall govern renewal of the license. Licenses will be valid until December 31 of the year that is at least three years after the license is issued. This date is not tied to the harvest and planting season. Rather it is tied to the window for applications (Aug. 1–Oct. 31) and the 60 days for USDA to make a decision. For example, if a producer applies for a license August 1, 2020 and is granted a license on September 15, 2020, the license would expire December 31, 2023. A December 31 expiration date will allow licensed producers time to apply for a license renewal prior to their prior license's expiration and prevent a gap in licensing.

Once a producer has been issued a USDA license, the producer must report their hemp crop acreage to FSA. Producers must provide specific information to FSA, as identified in this part, including, but not limited to: The specific location where hemp is produced, and the acreage, greenhouse, building, or site where hemp is produced. The specific location where hemp is produced must be identified, to the extent practicable, by the geospatial location.

If at any time, there is a change to the information submitted in the license application, a license modification is required. A license modification is

required if, for example, the licensed business is sold to a new owner or when hemp will be produced in a new location not described on the original application. Producers must notify USDA immediately should there be any change in the information provided on the license application. USDA will provide guidance on where producers will submit this information on its website.

B. Sampling and Testing for THC

All hemp production must be sampled and tested for THC concentration levels. Samples must be collected by a USDA-approved sampling agent, or a Federal, State or local law enforcement agent authorized by USDA to collect samples. It is the responsibility of the licensed producer to pay any fees associated with sampling. USDA will issue guidance on sampling procedures that will satisfy sampling requirements to coincide with publication of this rule. This guidance will be provided on the USDA website.

The sampling procedures are designed to produce a representative sample for testing. They describe procedures for entering a growing area and collecting the minimum number of plant specimens necessary to accurately represent the THC content, through laboratory testing, of the sample to be tested.

THC levels in representative samples must test at or below the acceptable hemp THC level. Testing will be conducted using post-decarboxylation or other similarly reliable methods where the total THC concentration level measured includes the potential to convert delta-9-tetrahydrocannabinolic acid (THCA) into THC. Further, test results should be determined and reported on a dry weight basis, meaning the percentage of THC, by weight, in a cannabis sample, after excluding moisture from the sample. The moisture content is expressed as the ratio of the amount of moisture in the sample to the amount of dry solid in the sample.

Based on USDA's review of scientific studies, internal research and information gathered from the *United Nations Office on Drugs and Crime: Recommended Methods for the Identification and Analysis of Cannabis and Cannabis Products* (ISBN 978–92–1–148242–3), USDA has determined that testing methodologies meeting these requirements include gas or liquid chromatography with detection.

USDA requires that all samples tested for THC concentration levels be conducted in DEA registered laboratories. These laboratories must also meet standards of performance described in this regulation. Standards of performance ensure the validity and reliability of test results, and that analytical method selection, validation, and verification is appropriate (fit for purpose) and that the laboratory can successfully perform the testing. Furthermore, the standards ensure consistent, accurate, analytical performance and that the analytical tests performed are sufficiently sensitive for the purposes of the detectability requirements under this part.

Laboratories who conduct THC testing must also be registered with DEA to handle controlled substances under the CSA and DEA regulations (21 CFR part 1301). USDA is adopting this requirement because of the potential for these laboratories to handle cannabis products testing above 0.3% THC. Such products are, by definition, marijuana, and a controlled substance. DEA registration requirements verify a laboratory's ability to properly handle controlled substances.

As previously explained in the requirements for State and Tribal plans, USDA is also considering requiring that testing for THC concentration levels be conducted in USDA approved laboratories for USDA plan licensees. USDA approved laboratories are authorized under the USDA, AMS, Laboratory Approval Service, which administers the Laboratory Approval Program (LAP). USDA-approved laboratories would need to comply with the LAP requirements, as established under ''Laboratory Approval Program—General Policies & Procedures'' (*www.ams.usda.gov/services/lab-testing/lab-approval*), which describes the general policies and procedures for a laboratory to apply for and maintain status in a LAP. Under the LAP, an individual program for hemp would be developed, with a set of documented requirements to capture specific regulatory, legal, quality assurance and quality control, and analytical testing elements. A requirement for a testing laboratory to be approved by USDA would be in addition to the requirement in the final rule that the laboratory be registered with DEA.

USDA is considering a LAP for USDA licensees because it would be tailored to a commodity to meet specific requirements in support of domestic and international trade. In addition to requiring ISO 17025 accreditation, which assesses general competence of testing laboratories, the LAP would provide a way for USDA to certify that laboratories perform to a standard level of quality. This is an important factor, as the issue of providing assurance as to proper testing was raised on numerous occasions during the USDA outreach process conducted prior to developing this rule. The LAP would give USDA the proper oversight of the laboratories doing the testing, providing quality assurance and control procedures that ensure a validated and qualified analysis, and defensible data. Should USDA require that testing laboratories be approved by USDA, a list of USDA approved laboratories would be posted on the USDA Domestic Hemp Production Program website. Although this proposal is not reflected in the regulatory text of this interim rule, USDA is seeking comment on it to determine whether to incorporate it in the subsequent final rule.

Alternatively, USDA is considering requiring all laboratories testing hemp to have ISO 17025 accreditation. We are requesting comment on this requirement as well.

It is the responsibility of the licensed producer to select the DEA-registered laboratory that will conduct the testing and to pay any fees associated with testing. Laboratories performing THC testing for hemp produced under this program will be required to share test results with the licensed producer and USDA. USDA will provide instructions to all approved labs on how to electronically submit test results to USDA. Laboratories may provide test results to licensed producers in whatever manner best aligns with their business practices, but producers must be able to produce a copy of test results. For this reason, providing test results to producers through a web portal or through electronic mail, so the producer will have ready access to print the results when needed, is preferred.

Samples exceeding the acceptable hemp THC level are marijuana and will be handled in accordance with the procedures discussed in sections C and D below.

Any licensee may request that the laboratory retest samples if it is believed the original THC concentration level test results were in error. The licensee requesting the retest of the second sample would pay the cost of the test. The retest results would be issued to the licensee requesting the retest and a copy would be provided to USDA or its agent.

C. Disposal of Non-Compliant Product

If the results of a test conclude that the THC levels exceed the acceptable hemp THC level, the approved laboratory will promptly notify the producer and USDA or its authorized agent. If a licensed producer is notified that they have produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of

in accordance with the CSA and DEA regulations as such product is marijuana and not hemp. The material must be collected for destruction by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer, or official.

Licensed producers notified they have produced product exceeding the acceptable hemp THC level must arrange for disposal of the lot represented by the sample in accordance with the CSA and DEA regulations as specified above. Specific DEA procedures for arranging for the disposal of non-compliant product will be listed on the USDA Domestic Hemp Production Program website.

Producers must document the disposal of all marijuana. This can be accomplished by either providing USDA with a copy of the documentation of disposal provided by the reverse distributor or by using the reporting requirements established by USDA. These reports must be submitted to USDA following the completion of the disposal process.

D. Compliance

USDA has established certain compliance requirements for USDA licensees as part of this rulemaking. This includes the ability for USDA to conduct audits of USDA licensees and to issue corrective action plans for negligent violations. Negligent violations by a producer may lead to suspension or revocation of a producer's license.

USDA may conduct random audits of licensees to verify hemp is being produced in accordance with the provisions of this part. The format of the audit will vary and may include a ''desk-audit'' where USDA requests records from a licensee or the audit may be a physical visit to a licensee's facility. When USDA visits a licensee's facility, the licensee must provide access to any fields, greenhouses, storage facilities or other locations where the licensee produces hemp. USDA may also request records from the licensee to include production and planting data, testing results, and other information as determined by USDA.

USDA will conduct an audit of all USDA licensees no more than every three years based on available resources.

USDA will issue a summary of the audit to the licensee after the completed audit. Licensees who are found to have a negligent violation will be subject to a corrective action plan. A negligent violation includes: (1) Failure to provide a legal description of the land on which the hemp is produced; (2) not obtaining a license before engaging in production; or (3) producing plants exceeding the acceptable hemp THC level. Similar to the requirements for State and Tribal plans, USDA will not consider hemp producers as committing a negligent violation if they produce plants exceeding the acceptable hemp THC level if they use reasonable efforts to grow hemp and the plant does not have a THC concentration of more than 0.5 percent on a dry weight basis.

For sampling and testing violations, USDA will consider the entire harvest from a distinct lot in determining whether a violation occurred. This means that if testing determines that each sample of five plants from distinct lots has a THC concentration exceeding the acceptable hemp THC level (or 0.5 percent if the hemp producer has made reasonable efforts to grow hemp), USDA considers this as one negligent violation. If an individual produces hemp without a license, this will be considered one violation. USDA will establish and review a corrective action plan with the licensee and its implementation may be verified during a future audit or site visit.

When USDA determines that a negligent violation has occurred, USDA will issue a Notice of Violation. This Notice of Violation will include a corrective action plan. The corrective action plan will include a reasonable date by which the producer will correct the negligent violation or violations and require the producer to periodically report to USDA on its compliance with the plan for a period of not less than the next two calendar years. A producer who has negligently violated this part three times in a five-year period is ineligible to produce hemp for a period of five years from the date of the third violation. Negligent violations are not subject to criminal enforcement. However, USDA will report the production of hemp without a license issued by USDA to the Attorney General.

Hemp found to be produced in violation of this part, such as hemp produced on a property not disclosed by the licensed producer, or without a license, would be subject to the same disposal provisions as for cannabis testing above the acceptable hemp THC level. Further, if it is determined a violation was committed with a culpable mental state greater than negligence, USDA will report the violation to the Attorney General and the chief law enforcement officer of the State or Tribe as applicable.

The 2018 Farm Bill limited the participation of certain convicted felons in hemp production. A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on producing hemp under the Act. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

E. Suspension of a USDA License

A USDA license may be suspended if USDA or its representative receives credible information that a licensee has either: (1) Engaged in conduct violating a provision of this part; or (2) failed to comply with a written order from the AMS Administrator related to a negligent violation of this part. Examples of credible information are information from local authorities of harvested plants without testing or planting of hemp seed in non-approved locations.

Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or other cannabis was located at the time when USDA issued its notice of suspension without prior written authorization from USDA. Any person whose license has been suspended shall not produce hemp during the period of suspension. A suspended license may be restored after a waiting period of one year. A producer whose license has been suspended may be required to comply with a corrective action plan to fully restore their license.

A USDA license shall be immediately revoked if the licensee: (1) Pleads guilty to, or is convicted of, any felony related to a controlled substance;[7] or (2) made any materially false statement with regard to this part to USDA or its representatives with a culpable mental state greater than negligence; or (3) was found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated the provision of this part three times in five years.

If the licensed producer wants to appeal any suspension or revocation decision made by USDA under this section, they can do so using the appeal process specified in section V.

F. Reporting and Recordkeeping

The 2018 Farm Bill requires USDA to develop a process to maintain relevant

[7] For a corporation, if a key participant has a disqualifying felony conviction, the corporation may remove that person from a key participant position. Failure to remove that person will result in a license revocation.

information regarding the farm on which hemp is produced. USDA's FSA is best suited to collect this information for the domestic hemp production program. FSA has staff throughout the United States who are trained to work with farmers to verify land uses. Many hemp producers are likely to be familiar with the FSA since they already operate traditional farms, and therefore already provide data to FSA on acres and crops planted. Consequently, licensed producers will be required to report their hemp crop acreage with FSA, and to provide FSA with specific information regarding field acreage, greenhouse, or indoor square footage of hemp planted. This information must include street address, geospatial location or other comparable identification method specifying where the hemp will be produced, and the legal description of the land. Geospatial location or other methods of identifying the production locations are necessary as not all rural locations have specific addresses. This information is required for each field, greenhouse, building, or site where hemp will be grown. USDA will use this information to assemble and maintain the data USDA must make available in real time to Federal, State, and local law enforcement as required by the 2018 Farm Bill and as specified in section G below. Specific procedures for reporting hemp acreage to FSA will be posted on the USDA Domestic Hemp Production Program website. This information will be maintained by USDA for at least three calendar years.

Licensed producers will be required to maintain copies of all records and reports necessary to demonstrate compliance with the program. These records include those that support, document, or verify the information provided in the forms submitted to USDA. Records and reports must be kept for a minimum of three years.

Under the USDA plan, there will be additional reporting requirements for licensed producers. These include specific reporting requirements to collect the information needed by the licensing application, and the record and reporting requirements needed to document disposal of cannabis produced in violation of the provisions of this rule. Specific requirements may be referenced herein at § 990.71.

G. Information Sharing

USDA will develop and maintain a database of all relevant and required information regarding hemp as specified by the 2018 Farm Bill. This database will be accessible in real time to Federal, State, local and Tribal law enforcement officers through a Federal Government law enforcement system. USDA AMS will administer and populate this database, which will include information submitted by States and Tribes, laboratories, information submitted by USDA licensed producers, and information submitted to FSA.

USDA will use this information to create a comprehensive list of all domestic hemp producers. USDA will also gather the information related to the land used to produce domestic hemp. This information will be comprehensive and include data both from State and Tribal plans and include a legal description of the land on which hemp is grown by each hemp producer and the corresponding geospatial location. Finally, USDA will also gather information regarding the status of all licenses issued under State and tribal governments and under the USDA plan.

This information will be made available in real time to Federal, State, local and Tribal law enforcement as required by the 2018 Farm Bill.

USDA has prepared a System of Records Notice (SORN) and a Privacy Impact Analysis to be issued concurrently with this rule.

IV. Definitions

In support of the foregoing regulations and hemp production plan descriptions, USDA is establishing definitions for certain terms. The following terms are integral to implement the 2018 Farm Bill and establish the scope and applicability of the regulations of this part.

The term ''Act'' refers to the Agricultural Marketing Act of 1946. The 2018 Farm Bill amended the Agricultural Marketing Act of 1946 by adding Subtitle G which is a new authority for the Secretary of Agriculture to administer a national hemp production program. Section 297D of Subtitle G authorizes and directs USDA to promulgate regulations to implement this program.

The Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture is the agency the Secretary of Agriculture has charged with the responsibility to oversee the administration of this new program.

The term ''applicant'' means any State or Indian Tribe that has applied for USDA approval of a State or tribal hemp production plan for the State or Indian Tribe they represent. This term also applies to any person or business in a State or territory of an Indian Tribe not subject to a State or tribal plan, who applies for a hemp production license under the USDA plan established under this part.

The term ''cannabis'' is the Latin name of the plant that, depending on its THC concentration level, is further defined as either ''hemp'' or ''marijuana.'' Cannabis is a genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. For the purposes of this part, Cannabis refers to any form of the plant where the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined. This term is important in describing regulations that apply to plant production, sampling or handling prior to determining its THC content.

The Controlled Substances Act (CAS) is the statute, codified in 21 U.S.C. 801–971, establishing Federal U.S. drug policy under which the manufacture, importation, exportation, possession, use, and distribution of certain substances is regulated. Because cannabis containing THC concentration levels of higher than 0.3 percent is deemed to be marijuana, a schedule I controlled substance, its regulation falls under the authorities of the CSA. Therefore, for compliance purposes, the requirements of the CSA are relied upon for the disposal of cannabis that contains THC concentrations above the stated limit of this part.

The rule includes a definition of ''conviction'' to explain what is considered a conviction and what is not. Specifically, a plea of guilty or nolo contendere or any finding of guilt is a conviction. However, if the finding of guilt is subsequently overturned on appeal, pardoned, or expunged, then it is not considered a conviction for purposes of part 990. This definition of ''conviction'' is consistent with how some other agencies who conduct criminal history record searches determine disqualifying crimes.

A ''corrective action plan'' is a plan set forth by a State, tribal government, or USDA for a licensed hemp producer to correct a negligent violation of or non-compliance with a hemp production plan, its terms, or any other regulation set forth under this part. This term is defined in accordance with the 2018 Farm Bill, which mandates certain non-compliance actions to be addressed through corrective action plans.

''Culpable mental state greater than negligence'' is a term used in the 2018 Farm Bill to determine when certain actions would be subject to specific compliance actions. This term means to act intentionally, knowingly, willfully, recklessly, or with criminal negligence.

The term ''decarboxylated'' refers to the completion of the chemical reaction

that converts THC-acid (THCA) into delta-9–THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THCA. This term, commonly used in scientific references to laboratory procedures, is the precursor to the term ''post-decarboxylation,'' a term used in the 2018 Farm Bill's mandate over cannabis testing methodologies to identify THC concentration levels. This definition is based on the regulations administered by the Kentucky Department of Agriculture as part of the Kentucky industrial hemp research pilot program.

''Delta-9 tetrahydrocannabinol,'' also referred to as ''Delta-9 THC'' or ''THC'' is the primary psychoactive component of cannabis, and its regulation forms the basis for the regulatory action of this part. As mandated by the Act, legal hemp production must be verified as having THC concentration levels of 0.3 percent on a dry weight basis or below. For the purposes of this part, delta-9 THC and THC are interchangeable.

''DEA'' means the ''Drug Enforcement Administration,'' a United States Federal law enforcement agency under the United States Department of Justice. The DEA is the lead agency for domestic enforcement of the Controlled Substances Act. The DEA plays an important role in the oversight of the disposal of marijuana, a schedule I controlled substance, under the regulations of this part. The DEA is also instrumental in registering USDA-approved laboratories to legally handle controlled substances, including cannabis samples that test above the 0.3 THC concentration level.

''Dry weight basis'' refers to a method of determining the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

The Farm Service Agency (FSA) is an agency of the U.S. Department of Agriculture, that provides services to farm operations including loans, commodity price supports, conservation payments, and disaster assistance. For the purposes of this program, FSA will assist in information collection on land being used for hemp production.

''Gas chromatography'' or GC, is a scientific method (specifically, a type of chromatography technique) used in analytical chemistry to separate, detect, and quantify each component in a mixture. It relies on the use of heat for separating and analyzing compounds that can be vaporized without decomposition. Under the terms of this part, GC is one of the valid methods by which laboratories may test for THC concentration levels.

For the purposes of this part, ''geospatial location'' means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

This term ''handle'' is commonly understood by AMS and used across many of its administered programs. For the purposes of this part, ''handle'' refers to the actions of cultivating or storing hemp plants or hemp plant parts prior to the delivery of such plant or plant part for further processing. In cases where cannabis plants exceed the acceptable hemp THC level, handle may also refer to the disposal of those plants.

''Hemp'' is defined by the 2018 Farm Bill as ''the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.'' The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

''High-performance liquid chromatography (HPLC) or (LC)'' is a scientific method (specifically, a type of chromatography) used in analytical chemistry used to separate, identify, and quantify each component in a mixture. It relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds. Under the terms of this part, HPLC is one of the valid methods by which laboratories may test for THC concentration levels. Ultra-Performance Liquid Chromatography (UPLC) is an additional method that may also be used as well as other liquid or gas chromatography with detection.

''Indian Tribe'' is defined in the 2018 Farm Bill by reference to section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304). The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

A ''key participant'' is a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes persons in a corporate entity at executive levels including chief executive officer, chief operating officer and chief financial officer. This does not include such management as farm, field or shift managers.

''Law enforcement agency'' refers to all Federal, State, or local law enforcement agencies. Under the 2018 Farm Bill, State submissions of proposed hemp production plans to USDA must be made in consultation with their respective Governors and chief law enforcement officers. Moreover, the 2018 Farm Bill contemplates the involvement of law enforcement in compliance actions related to offenses identified as being made under a ''culpable mental state.'' To assist law enforcement in the fulfillment of these duties, the 2018 Farm Bill also mandates an information sharing system that provides law enforcement with real-time data.

The term ''lot'' refers to a contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout. In addition, ''lot'' is a common term in agriculture that refers to the batch or contiguous, homogeneous whole of a product being sold to a single buyer at a single time. Under the terms of this part, ''lot'' is to be defined by the producer in terms of farm location, field acreage, and variety (*i.e.,* cultivar) and to be reported as such to the FSA.

As defined in the CSA, ''marihuana'' (or ''marijuana'') means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term 'marihuana' does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o(1)). ''Marihuana'' also means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

''Negligence'' is a term used in the 2018 Farm Bill to describe when certain actions are subject to specific compliance actions. For the purposes of this part, the term means failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

Used in relation to the other terms and regulations in this part, ''phytocannabinoids'' are cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD). Testing methodologies under this part will refer to the presence of ''phytocannabinoids'' as either THC or CBD.

Under the terms of this program, ''plan'' refers to a set of criteria or regulations under which a State or tribal government, or USDA, monitors and regulates the production of hemp. ''Plan'' may refer to a State or Tribal plan, whether approved by USDA or not, or the USDA hemp production plan.

The 2018 Farm Bill mandates that all cannabis be tested for THC concentration levels using ''postdecarboxylation'' or similar methods. In the context of this part, ''postdecarboxylation'' means testing methodologies for THC concentration levels in hemp, where the total potential delta-9-tetrahydrocannabinol content, derived from the sum of the THC and THCA content, is determined and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, known as gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. The result of this test calculates total potential THC. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THCA intact, and requires a conversion calculation of that THCA to calculate total potential THC. See also the definition for decarboxylation.

The term ''produce,'' when used as a verb, is a common agricultural term that is often used synonymously with ''grow'' and means to propagate plants for market, or for cultivation for market, in the United States. In the context of this part, ''produce'' refers to the propagation of cannabis to produce hemp.

The 2018 Farm Bill mandates that USDA maintain a real-time informational database that identifies registered hemp production sites, whether under a State, tribal, or USDA plan, for the purposes of compliance and tracking with law enforcement. AMS will maintain this system with the information collection assistance of FSA. In order to maintain consistency and uniformity of hemp production locations, USDA is recommending that FSA collect this information through their crop acreage reporting system. In this context, a common use of the term ''producer'' is essential to maintaining a substantive database. For this reason, the definition of ''producer'' incorporates the FSA definition of ''producer'' with the additional qualifier that the producer is licensed or authorized to produce hemp under the Hemp Program.

''Secretary'' means the Secretary of Agriculture of the United States.

Section 297A of the Act defines ''State'' to mean any of one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

This term ''State department of agriculture'' is defined by the 2018 Farm Bill as the agency, commission, or department of a State government responsible for agriculture in the State. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The term ''store'' is part of the term ''handle'' under this part and means to deposit hemp plants or hemp plant product in a storehouse, warehouse or other identified location by a producer for safekeeping prior to delivery to a recipient for further processing.

As defined by the 2018 Farm Bill, the term ''tribal government'' means the governing body of an Indian Tribe. The statutory definition is self-explanatory, and USDA is adopting the same definition without change for part 990.

The ''U.S. Attorney General'' is the Attorney General of the United States.

''USDA'' is synonymous with the United States Department of Agriculture.

In the context of this part, ''licensee'' or ''USDA licensed hemp producer'' means a person or business authorized by USDA to grow hemp under the terms established in this part and who produces hemp.

V. Appeals

An applicant for a USDA hemp production program license may appeal a license denial to the AMS Administrator. Licensees may appeal denials of license renewals, license suspensions, or license revocations to the AMS Administrator. All appeals must be submitted in writing and received within 30 days of the denial. This submission deadline should provide adequate time to prepare the necessary information required to formulate the appeal. States or Tribes may appeal USDA decisions either denying, suspending or revoking State or Tribal hemp production plans. As with the USDA license plans, these appeals must be submitted in writing to the AMS Administrator and explain the reasoning behind the appeal, *e.g.* why the Administrator's decision is not justified or is improper. The appeal should include any additional information or documentation the appellant or licensee believes USDA should consider when reviewing its decision. The Administrator will take into account the applicant or licensee's justification for why the license should not be denied, suspended, or revoked, and then issue a final determination. Determinations made by the Administrator under the appeals process will be final unless the applicant or licensee requests a formal adjudicatory proceeding to review the decision, which will be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H. If the applicant or licensee does not request that the Administrator initiate a formal adjudicatory proceeding within 30 days of the Administrator's adverse ruling, such ruling becomes final. The following paragraphs explain when and how a State or Tribe may appeal a USDA decision. State or Tribal plans may include similar appeal procedures; this following section is not applicable to individuals subject to State or Tribal plans.\

Appeals Under a State or Tribe Hemp Production Plan

A State or Tribe may appeal the denial of a proposed hemp production plan, or the proposed suspension or revocation of a plan by the USDA. USDA will consult with States and Tribes to help ensure their draft plans meet statutory requirements, and that existing plan requirements are monitored and enforced by States and Tribes. If, however, a proposed State or Tribal plan is denied, or an existing plan is suspended or terminated, the decision may be appealed.

If the AMS Administrator sustains a State or Tribe's appeal of a denied hemp plan application, the proposed State or Tribal hemp production plan shall be established as proposed. If the AMS Administrator denies an appeal, prospective producers located in the State or Tribe may apply for hemp licenses under the terms of the USDA hemp production plan. Similarly, if an appeal to a proposed State or Tribal plan revocation is denied, producers located in the impacted State or Tribal

territory may apply for licenses under the USDA plan.

The appeal of a State or Tribal hemp production plan suspension or termination must explain the reasoning behind the appeal and be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. This timeframe should be adequate for the assembly of the information required to be submitted as part of the appeal.

VI. Interstate Commerce

Nothing in this rule prohibits the interstate commerce of hemp. No State or Indian Tribe may prohibit the transportation or shipment of hemp produced in accordance with this part and with section 7606 of the 2014 Farm Bill through the State or the territory of the Indian Tribe, as applicable.[8]

VII. Outreach

As part of this rulemaking process, USDA engaged in numerous discussions with industry stakeholders prior to issuing this rule. This included numerous meetings with different State and tribal groups and representatives, industry organizations, groups and individuals with experience in the hemp industry, and representatives of law enforcement.

In addition, USDA also conducted a listening session on March 13, 2019, that had more than 2,100 participants, and included comments from 46 separate speakers representing States, Tribes, producers, end-users, hemp organizations, and others. The recording of the listening session is available on the USDA website. On May 1 and 2, 2019, USDA also participated in tribal consultation meetings.

As required by the Farm Bill, the Secretary has developed these regulations and guidelines in consultation with the Attorney General. In addition, USDA will submit an annual report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate containing updates on the implementation of the hemp requirements in the Farm Bill.

VIII. Severability

This interim rule includes a severability provision. This is a standard provision in regulations. This section provides that if any provision of part 990 is found to be invalid, the remainder of the part shall not be affected.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), through this document AMS announces its intent to request approval from OMB for a new information collection OMB No. 0581–NEW and comments are invited on this new information collection. All comments received on this information collection will be summarized and included in the final request for OMB approval.

Based on our review of the hemp production under the 2014 Farm Bill, we estimate that there will be approximately 6,700[9] producers under State and Tribal plans, approximately 1,000 producers under the USDA plan, and 100 State and Tribal plans. We estimate that each producer will have an average of two lots of hemp with most producers growing one lot per year but larger producers growing many different lots. Each lot will need to be tested for THC concentration.

Comments are invited on: (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, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Domestic Hemp Production Program; 7 CFR 990.

OMB Number: 0581–NEW.

Type of Request: New Collection.

Abstract: The proposed information collection and reporting requirements will facilitate the effective administration and oversight of the Domestic Hemp Production Program, as described above. The Hemp Program includes provisions, among others, requiring licensed producers to maintain information on the land where hemp is produced, hemp testing for delta-9 tetrahydrocannabinol, and disposal of plants not meeting necessary requirements. Additionally, as explained above, all licensed producers must report hemp crop acreage to the USDA Farm Service Agency (FSA). The licensed producer must maintain information that supports, verifies, or documents information on all reports for a minimum of three years. This includes, but is not limited to, the producer's completed criminal history report, any records of required disposal, notifications of THC test results, and the license. This new information collection proposes to create seven new forms. These forms will be available on the USDA domestic hemp website, or copies can be requested from *farmbill.hemp@usda.gov.* AMS is in the process of building a database for applicants and producers to submit applications and reports. The forms and information collected on those forms are described below. The information reported for data collected under State and Tribal plans incorporates the burden to producers licensed under State and Tribal plans associated with providing the required information.

State and Tribal Hemp Producer Report. Every State or Tribe with an approved plan must provide AMS with information on the hemp producers covered under their plan using the State and Tribal Hemp Producer Report form. States and Tribes are required to submit this information to USDA not later than 30 days after the date it is received using this report. This report should be submitted to USDA on the first day of each month. If this date falls on a holiday or weekend, the report is due the next business day. This information should be submitted to USDA using a digital format compatible with USDA's information sharing systems, whenever possible.

If there are no changes from the previous reporting cycle, States and Tribes could check the box indicating there were no changes during the current reporting cycle. This information will be collected and maintained by USDA and made available in real time to Federal, State, and local law enforcement. States and Tribes will need to retain the information used to populate this form for three calendar years.

State and Tribal Hemp Producer Report

Estimate of Burden: Public burden for States and Tribes completing and maintaining this form is estimated to be an average of 0.34 hours per response.

Respondents: States and Tribes with USDA approved hemp production plans.

[8] *See* section 10114 of the 2018 Farm Bill and the USDA General Counsel's Legal Opinion on the Authorities for Hemp Production at *https://www.ams.usda.gov/content/legal-opinion-authorities-hemp-production.*

[9] The 6,700 figure represents the average number of growers operating under State and Tribal plans over the three years of the program. In actuality, we estimate 5,500 such growers in 2020, 6,700 growers in 2021 and 8,000 growers in 2022 who will participate through State and Tribal programs.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Responses: 1,200.

Estimated Total Annual Hours per Respondent: 0.333 hours.

Estimated Total Annual Reporting Hours: 400 hours (rounded).

Estimated Number of Record Keepers: 100.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 8.3 hours.

Estimated Total Annual Burden Hours (Including 8.3 hours): 408.3 hours.

Information and Record Keeping for State and Tribal Producer Report Responses

Estimate of Burden: Public burden for State and Tribal producers providing and maintaining the information for this form is estimated to be an average of 0.25 hours per response.

Estimated Number of Respondents: 8,000.

Estimated Number of Responses per Respondent: 0.3330.

Estimated Total Annual Responses: 2,664.

Estimated Total Annual Hours per Respondent: 0.167 hours.

Estimated Total Annual Burden Hours: 444.9 hours (2,664 × 0.1670 hours (10 mins)).

Estimated Number of Record Keepers: 2,664.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 221.1 hours.

Estimated Total Annual Burden and Record Keeping Hours for State and Tribal Producer Responses (Including 221.1 hours): 666 hours.

State and Tribal Hemp Disposal Report: States or Indian Tribes operating under approved hemp production plans must notify USDA of any occurrence of non-conforming plants or plant material and provide the disposal record of those plants and materials monthly. This includes plants or plant material which test above the acceptable hemp THC level or hemp otherwise produced in violation of this part. This information should be submitted to USDA using a digital format compatible with USDA's information sharing systems, whenever possible.

State and Tribal Hemp Disposal Report

Estimate of Burden: Public burden for the States and Tribes completing and maintaining this form is estimated to be an average of 0.34 hours per response.

Respondents: States and Tribes with USDA approved hemp production plans.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Responses: 1,200.

Estimated Total Annual Hours per Respondent: 0.333 hours.

Estimated Total Annual Reporting Hours: 400 hours (rounded).

Estimated Number of Record Keepers: 100.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 8.3 hours.

Estimated Total Annual Burden Hours (Including the 8.3 hours: 408.3 hours.

Information and Record Keeping for State and Tribal Producer Report Responses

Estimate of Burden: Public burden for State and Tribal producers providing and maintaining the information for this form is estimated to be an average of 0.25 hours per response.

Estimated Number of Respondents: 2,680.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 2,680.

Estimated Total Annual Hours per Respondent: 0.167 hours.

Estimated Total Annual Burden Hours: 447.6 hours.

Estimated Number of Record Keepers: 2,680.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 222.4 hours.

Estimated Total Annual Burden and Record Keeping Hours for State and Tribal Producer Responses (Including 222.4 hours): 670 hours.

State and Tribal Hemp Annual Report: Each year, AMS is required to provide an annual report to Congress regarding the implementation Subtitle G of the AMA. In order to ensure that AMS has the best available information on U.S. hemp production to populate this report, AMS is requiring States and Tribes to submit an annual report to AMS. This report includes a summary for all hemp planted, destroyed, and harvested under each State or Tribe's hemp production plan. States and Tribes would submit this information to USDA using the ''State and Tribal Hemp Annual Report'' form annually by December 15.

State and Tribal Hemp Annual Report

Estimate of Burden: Public burden for completing and maintaining the information on this form is estimated to be an average of 0.42 hours per response.

Respondents: States and Tribes with USDA approved hemp production plans.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 100.

Estimated Total Annual Hours per Respondent: 0.333 hours.

Estimated Total Annual Reporting Hours: 33.3 hours.

Estimated Number of Record Keepers: 100.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 8.3 hours.

Estimated Total Annual Burden Hours (Including the 8.3 hours): 41.6 hours.

Information and Record Keeping for State and Tribal Producer Report Responses

Estimate of Burden: Public burden for completing and maintaining the information for this form is estimated to be an average of 0.25 hours per response.

Estimated Number of Respondents: 6,700.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 6,700.

Estimated Total Annual Hours per Respondent: 0.167 hours.

Estimated Total Annual Burden Hours: 1,118.9 hours.

Estimated Number of Record Keepers: 6,700.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 556.10 hours.

Estimated Total Annual Burden and Record Keeping Hours for State and Tribal Producer Responses (Including 556.1 hours): 1,675 hours.

USDA Hemp Producer Licensing Application: To obtain a license from USDA, producers would need to complete the ''USDA Hemp Plan Producer Licensing Application'' form. This form will collect the information identified in § 990.21. By signing the application, the applicant would certify, should they become a licensed producer, they would abide by all rules and regulations relating to the USDA

plan, and to the truth and accuracy of the information provided in the application.

For the first application cycle, USDA will accept license applications for the first year after the effective date of the rule. After this initial period, license applications must be submitted between August 1 and October 31 of each year. Licenses do not renew automatically and must be renewed every three years. Applications for license renewal would be subject to the same terms and approved under the same criteria as initial license applications, unless there has been an intervening change in the applicable law or regulations since approval of the initial or last application. In such a case, the subsequently enacted change in law or regulation shall govern renewal of the license. Licenses will be valid until December 31 of the year three after the year in which license is issued. For example, if you apply for a license August 1, 2020 and are granted a license on September 15, 2020, the license would expire December 31, 2022. The license application will be available online at the USDA domestic hemp production program website, or copies can be requested by email at *farmbill.hemp@usda.gov.* Applications may be submitted electronically or through U.S. mail.

USDA Hemp Plan Producer Licensing Application

Estimate of Burden: Public burden for completing and maintaining this form is estimated to be an average of 0.25 hours per response.

Respondents: Producers applying for the USDA plan.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 0.3333.

Estimated Total Annual Responses: 333.

Estimated Total Annual Hours per Respondent: 0.167 hours.

Estimated Total Annual Reporting Hours: 55.6 hours.

Estimated Number of Record Keepers: 333.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 27.7 hours.

Estimated Total Annual Burden Hours (Including the 27.7 hours): 83.3 hours.

USDA Hemp Plan Disposal Notification: Producers licensed by USDA must test hemp prior to harvest, dispose of all non-compliant cannabis plants, and report to USDA disposal of all non-compliant cannabis plants. Producers must document the disposal of all marijuana in accordance with § 990.27. Reporting can be accomplished by either providing USDA with a copy of the documentation of disposal provided by the reverse distributor or by submitting a ''USDA Hemp Plan Producer Disposal Form'' to document the disposal process.

USDA Hemp Plan Producer Disposal Form

Estimate of Burden: Public burden for completing and maintaining this form is estimated to be an average of 0.42 hours per response.

Respondents: Producers covered under the USDA plan.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 400.

Estimated Total Annual Hours per Respondent: 0.333 hours.

Estimated Total Annual Reporting Hours: 133.3 hours.

Estimated Number of Record Keepers: 400.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 33.3 hours.

Estimated Total Annual Burden Hours (Including the 33.3 hours): 166.6 hours (rounded).

End of Year Harvest Reporting Requirements: The Farm Bill requires AMS to prepare and submit an annual report to Congress on the implementation of the domestic hemp production program. To ensure AMS has adequate planting, production, and harvest data necessary for this report, we are requiring producers to submit an annual harvest report. Each producer would need to submit to USDA an annual report of their total acreage planted, harvested, and, if applicable, disposed. If a producer has multiple growing and harvesting cycles throughout the year (*e.g.,* greenhouse and producers in warm climates) they should all be summarized and submitted on this form. Producers would submit this information to USDA using the ''USDA Hemp Plan Producer Annual Report'' form by December 15 each year.

USDA Hemp Plan Producer Annual Report

Estimate of Burden: Public burden for completing and maintaining this form is estimated to be an average of 0.42 hours per response.

Respondents: Producers applying for the USDA plan.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Responses: 1,000.

Estimated Total Annual Hours per Respondent: 0.333 hours.

Estimated Total Annual Reporting Hours: 333.3 hours.

Estimated Number of Record Keepers: 1,000.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 83.3 hours.

Estimated Total Annual Burden Hours (Including the 83.3 hours): 416.6 hours rounded.

Report of Acreage: Producers shall report name, address, license or authorizing number, geospatial location for each lot or greenhouse where hemp will be produced and hemp crop acreage to FSA. This will establish an identification system for hemp production nationwide and complies with the information sharing requirements of the 2018 Farm Bill.

Report of Acreage FSA 578

Estimate of Burden: Public burden for completing and maintaining this form is estimated to be an average of 0.58 hours per response.

Respondents: Producers under State, Tribal or the USDA plan.

Estimated Number of Respondents: 7,700.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual of Responses: 7,700.

Estimated Total Annual Hours per Respondent: 0.5 hours.

Estimated Total Annual Reporting Hours: 3,850.

Estimated Number of Record Keepers: 7,700.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 639.1 hours.

Estimated Total Annual Burden Hours (Including the 639.1 hours): 4,489.1 hours.

Laboratory Test Results Report: The Farm Bill requires that all domestically produced hemp be tested for total THC content on a dry weight basis. All test results, whether passing, failing, or re-tests must be reported to USDA.

Laboratory Test Results Report

Estimate of Burden: Public burden for completing and maintaining this form is estimated to be an average of 1.08 hours per response.

Respondents: Laboratories testing hemp for THC content.

Estimated Number of Respondents: 7,700.

Estimated Annual Number of Responses per Respondent: 2.

Estimated Total Annual of Responses: 15,400.

Estimated Total Annual Hours per Respondent: 0.5 hours.

Estimated Total Annual Reporting Hours: 7,700.

Estimated Number of Record Keepers: 7,700.

Estimated Total Annual Hours per Record Keeper: 0.083 hours.

Estimated Record Keeping Hours: 639.1 hours.

Estimated Total Annual Burden Hours (Including the 639.1 hours): 8,339.1 hours.

This new information collection assumes 9,100 total respondents, 17,363 burden hours, and annual costs of $989,714.94. This is calculated by multiplying the mean hourly wage of $57 by 17,363 hours. The mean hourly wage of a compliance officer, as reported in the May 2018 Occupational Employment Statistics Survey of the Bureau of Labor and Statistics, was $35 per hour. Assuming 39 percent of total compensation accounts for benefits, assumed total compensation of a compliance officer is $57 per hour.

Total Respondents, Burden Hours and Costs for Each New Form.

FORM	TOTAL BURDEN HOURS FOR EACH FORM	COST FOR EACH FORM	TOTAL RESPONDENTS FOR EACH FORM	TOTAL COST PER RESPONSE
State and Tribal Hemp Producer Report (State and Tribal Responses)	408.26	$ 23,270.82	100	$ 232.71
State and Tribal Hemp Producer Report (Producer Responses)	666	$ 37,962.00	8,000	$ 4.75
State and Tribal Hemp Disposal Report (State and Tribal Responses)	408.26	$ 23,270.82	100	$ 232.71
State and Tribal Hemp Disposal Report (Producer Responses)	670	$ 38,190.00	2,680	$ 14.25
State and Tribal Hemp Annual Report (State and Tribal Responses)	41.6	$ 2,372.91	100	$ 23.73
State and Tribal Hemp Annual Report (Producer Responses)	1,675	$ 95,475.00	6,700	$ 14.25
USDA Hemp Plan Producer Licensing Application (Producer Responses)	83.25	$ 4,745.25	1,000	$ 4.75
USDA Hemp Producer Disposal Form	166.52	$ 9,491.64	400	$ 23.73
USDA Hemp Producer Annual Report (Producer Responses)	416.3	$ 23,729.10	1,000	$ 23.73
Report of Acreage (Producer Responses)	4,489.10	$ 255,878.70	7,700	$ 33.23
Laboratory Test Results Report	8,339.10	$ 475,328.70	7,700	$ 61.73
	17,363.4	$ 989,714.94		

E-Government Act

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes. We recognize using an electronic system will promote efficiencies in developing and implementing the new USDA Domestic Hemp Production Program. Since this is a new program, AMS is working to make this process as effective and user-friendly as possible.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. This review included persons that are employees of the entities who are subject to these regulations. This interim rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this rule would not deny any persons or groups the benefits of the program or subject any persons or groups to discrimination.

A 60-day comment period is provided to allow interested persons to respond to this interim rule. All written comments received in response to this rule by the date specified will be considered.

Executive Order 13132 Federalism

AMS has examined the effects of provisions in the interim final rule on the relationship between the Federal Government and the States, as required by Executive Order 13132 on ''Federalism.'' Our conclusion is that this rule does have federalism implications because the rule has substantial direct effects on States, on the relationship between the national government and States, and on the distribution of power and responsibilities among the various levels of government. The federalism implications of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve State plans that meet statutory requirements and to audit a State's compliance with its State plans. Overall, the final rule attempts to

balance both the autonomy of the States with the necessity to create a Federal framework for the regulation of hemp production.

Section 3(b) of E.O. 13132 recognizes that national action limiting the policymaking discretion of States will be imposed ''. . . only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.'' Section 297B of the AMA is the statutory authority underlying the rules for USDA to review, approve, disapprove, or revoke State plans for hemp production. Until the passage of the 2018 Farm Bill, hemp was a schedule I controlled substance as it fell within the CSA definition of marijuana. When hemp was exempted from the definition of marijuana as part of the 2018 Farm Bill, in connection with removing it from that list, Congress established a national regulatory framework for the production of hemp. Because cannabis plants with a THC level higher than 0.3 are marijuana and on the Federal controlled substances list, ensuring that hemp produced under this program is not marijuana is of national significance.

In addition to establishing a national regulatory framework for hemp production, Congress expressly preempted State law with regard to the interstate transportation of hemp. Section 10114 of the 2018 Farm Bill States that ''[n]o State or Indian Tribe shall prohibit the transportation or shipment of hemp or hemp products produced in accordance with subtitle G of the Agricultural Marketing Act of 1946 (as added by section 10113) through the State or the territory of the Indian Tribe, as applicable.'' Thus, States and Indian Tribes may not prevent the movement of hemp through their States or territories even if they prohibit its production. Congress also expressly preempted a State's ability to prosecute negligent violations of its plan as a criminal act in section 297B(e)(2)(c). That preemption is incorporated into this rule.

Section 3(d)(2) of the E.O. 13132 requires the Federal Government to defer to the States to establish standards where possible. Section 4(a), however, expressly contemplates preemption when there is a conflict between exercising State and Federal authority under Federal statute. Section 297C of the AMA requires State plans to include six practice and procedures and a certification. It also expressly states that it does not preempt a State's ability to adopt more stringent requirements or to prohibit the production of hemp. Section 297D of the AMA requires USDA to promulgate regulations to implement subtitle G of the AMA which includes section 297B. Subpart B of the final rule repeats those requirements, providing more detail where necessary. States have wide latitude to develop the required practice and procedures. Subpart B includes more details on the testing and sampling of hemp plants to establish a national standard to determine whether the plants meet the statutory definition of hemp. Likewise, the final rule requires States to follow DEA requirements for disposal of marijuana for cannabis plants exceeding the acceptable hemp THC level. Finally, the interim final rule also reaffirms that States may adopt more stringent standards and prohibit hemp production within their jurisdiction.

Section 6 of E.O. 13132 requires consultation with State officials in development of the regulations. AMS conducted significant outreach with State officials including individual meetings, participation in conferences with State officials, and listening session where State officials from all States were invited. During our consultation with the States, representatives from various State agencies and offices expressed the following concerns about sampling and testing procedures. Most requested that USDA adopt uniform, national requirements to facilitate the marketing of hemp. Some States advocated that USDA defer to each State to determine the appropriate procedures for its plan. USDA recognizes the value of a national standard to promote consistency while allowing States the flexibility to adopt procedures that fit their circumstances. As explained above, USDA is adopting performance standards for sampling and testing. As long as the procedures in the State plans meet those standards, AMS will find those procedures acceptable.

As AMS implements this new program, we will continue to consult with State officials to obtain their feedback on implementation. We encourage States to submit comments on this interim final rule during the comment period which closes on December 30, 2019.

Finally, we have considered the cost burden that this rule would impose on States as discussed in the Regulatory Impact Analysis of this document.

AMS has assessed this final rule in light of the principles, criteria, and requirements in Executive Order 13132. We conclude that this final rule: Is not inconsistent with that E.O.; will not impose significant additional costs and burdens on the States; and will not affect the ability of the States to discharge traditional State governmental functions.

E.O. 13175 Consultation and Coordination With Indian Tribal Governments

AMS has examined the effects of provisions in the final rule on the relationship between the Federal Government and Tribal governments, as required by E.O. 13175 on ''Consultation and Coordination with Indian Tribal Governments.'' We conclude that the final rule does have substantial direct effects on tribal governments, on the relationship between the national government and tribal governments, and on the distribution of power and responsibilities among the various levels of government. The effects of the rule, however, flow from and are consistent with the underlying statute. Section 297B of the AMA, 7 U.S.C. 1639p, directs USDA to review and approve Tribal plans that meet statutory requirements and to audit a tribal government's compliance with its Tribal plans. Overall, the final rule attempts to balance both the autonomy of the tribal governments with the necessity to create a Federal framework for the regulation of hemp production.

As with State plans, tribal governments will have wide latitude in adopting the required procedures including adopting requirements that are more stringent than the statutory ones. For reasons stated above in the federalism analysis, AMS is adopting national standards for sampling, testing, and disposal of non-compliant plants that Tribal plans must adhere to.

AMS has conducted extensive outreach to tribal governments. On May 1 and 2, 2019, USDA held a formal tribal consultation on the 2018 Farm Bill including a session on hemp production. In addition to the listening sessions for the general public, USDA hosted one for tribal governments following the formal tribal consultation on May 2, 2019. USDA officials attended meetings with representatives of tribal governments.

During those outreach events, tribal representatives from several Tribal Governments expressed their opinion that the 2018 Farm Bill permitted the USDA Secretary to allow AMS to approve Tribe plans ahead of issuing regulations of the USDA plan. Approving plans immediately would allow those Tribes (and States) with a plan to begin planting for the commercial production of hemp in 2019. The USDA Secretary released a Notice to Trade (NTT) on February 27, 2019 to explain that tribal and State

plans would not be reviewed or approved until AMS finalized regulations ahead of the 2020 planting season. Additionally, the NTT stated that until regulations were in place, States, Tribes, and institutions of higher education can continue operating under authorities of the 2014 Farm Bill. The 2018 Farm Bill extension of the 2014 authority expires 12 months after USDA has established the plan and regulations required under the 2018 Farm Bill. A second Notice to Trade was issued on May 27, 2019 to clarify again that Tribal governments through the authorities in the 2014 Farm Bill are permitted grow industrial hemp for research purposes during the 2019 growing season. USDA appreciates the urgency in which the Indian Tribes wish to engage in this new economic opportunity. We have worked expeditiously to develop and promulgate this interim final rule so that States and Tribes will be able to submit their plans in time for the 2020 season.

Some tribal representatives stated that the Act requires that the tribal plans have the specified practice and procedures and USDA is not authorized to evaluate them as part of the review and approval process. We note that the statute requires that USDA approve plans that include procedures that meet the statutory requirements. For example, section 297B(a)(2)(A)(iii) required a procedure for effective disposal and USDA must evaluate whether the plan's procedure is effective.

Although Indian Tribes will incur costs in complying with final rule, those costs should be outweighed by the benefits that the Indian Tribes realize in commercial hemp production occurring within their territories.

Executive Orders 12866, 13563, and 13771

USDA is issuing this rule in conformance with Executive Orders 12866 and 13563, which 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, which include 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 meets the definition of an economically significant regulatory action under Executive Order 12866, as it is likely to result in an annual effect on the economy of $100 million or more. USDA considers this to be a deregulatory action as it allows the development of a niche market that cannot exist under current regulation. This action will expand production options and enable interested farmers to grow hemp.

USDA requests public comment on the estimated impacts of the rule, specifically whether there is information or data that may inform whether or not the market will experience a significant shift, either positive or negative, in the developing hemp market and on consumers. In addition, USDA seeks comments and requests any data or information on what impacts the regulation may have on current and future innovation in the areas of industrial hemp usages and how much such impacts on innovation may affect rural communities.

Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. This rule would establish a national regulatory oversight program for the production of hemp. This program is necessary to effectuate the Farm Bill mandate to coordinate State and tribal government hemp production regulations with the newly established Federal regulations for hemp production in States not regulated by State or Tribal plans. This program is intended to provide consistency in production, sampling and testing of hemp product to ensure compliance with the acceptable hemp THC level.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. The discussion on E.O. 13132, Federalism, above, addressed the extent in which the 2018 Farm Bill and the interim rule preempt State law. The discussion on E.O. 13179, Consultation and Coordination with Tribal governments, above, addresses the impact that the interim rule impacts tribal governments. The discussion above regarding appeals under new part 990, subpart D, describes the administrative procedures that must be exhausted prior to a judicial challenge.

Regulatory Impact Analysis/Initial Regulatory Flexibility Analysis

Introduction

The future of the hemp industry in the United States (U.S.) is anything but certain. While hemp was produced previously in the U.S. for hundreds of years, its usage diminished in favor of alternatives. Hemp fiber, for instance, which had been used to make rope and clothing, was replaced by less expensive jute and abaca imported from Asia. Ropes made from these materials were lighter and more buoyant, and more resistant to salt water than hemp rope, which required tarring. Improvements in technology further contributed to the decline in hemp usage. The cotton gin, for example, eased the harvesting of cotton, which replaced hemp in the manufacture of textiles.[10]

Hemp production in the U.S. has seen a massive resurgence in the last five years; however, it remains unclear whether consumer demand will meet the supply. From 2017 to 2018, acreage planted for hemp tripled, reaching 77,844 acres. Hemp planted acreage in 2018 was eight times the acreage planted just two years prior in 2016. Acreage in 2019 is expected to at least double from 2018.[11]

High prices for hemp, driven primarily by demand for use in producing CBD, relative to other crops, have driven increases in planting. Prices for hemp products vary from source to source. Prices for hemp fiber range from $0.07 per pound to $0.67 per pound, and prices for hemp grain or seed range from $0.65 per pound to $1.70 per pound. Prices for hemp flowers, in which concentrations of the cannabinoid cannabidiol, or CBD, are located, range from $3.50 to $30.00 per pound or more, depending on the CBD content. Producer interest in hemp production is largely driven by the potential for high returns from sales of hemp flowers to be processed into CBD oil. From 2017 to 2018, the number of licensed producers of hemp more than doubled to reach 3,543 producers.

The hemp plant is a varietal of the species *Cannabis sativa.* While belonging to the same species as the plant that produces marijuana, hemp is distinctive from marijuana in its chemical makeup. The marijuana plant contains high levels of the cannabinoid delta-9 tetrahydrocannabinol (THC), which is the chemical that produces psychoactive effects. Hemp may contain no greater than 0.3 percent THC on a dry weight basis.

The 2018 Farm Bill explicitly preserved the authority of the U.S. Food and Drug Administration (FDA) to regulate hemp products under the Federal Food, Drug, and Cosmetic Act (FD&C Act) and section 351 of the Public Health Service Act (PHS Act). Accordingly, products containing cannabis and cannabis-derived

[10] Presentation to USDA by Dr. Eric Walker, Assistant Professor in the Department of Plant Sciences at the University of Tennessee, on May 21, 2019.

[11] Vote Hemp, U.S. Hemp Crop Reports.

compounds are subject to the same authorities and requirements as FDA-regulated products containing any other substance.

Legislative History

The production of hemp has a long history in the United States (U.S.). Prior to the mid-20th century, hemp had been cultivated in the U.S. for hundreds of years to make flags, sails, rope, and paper. The first regulation of hemp occurred in 1937 with the Marihuana Tax Act, which required all producers of the species *Cannabis sativa* to register with and apply for a license from the Federal Government. The ''Hemp for Victory'' Campaign during World War II promoted production of hemp for rope to be used by U.S. military forces, but at the end of the war, the requirements in the Marihuana Tax Act resumed. In 1970, Congress passed the Controlled Substances Act, granting the Attorney General the authority to regulate production of hemp.

The Agricultural Act of 2014, also known as the 2014 Farm Bill, defined hemp as the plant *Cannabis sativa* L. and any part of that plant with concentrations of THC no greater than 0.3 percent on a dry weight basis. Prior to the 2014 Farm Bill, hemp had never been designated in a Federal law as different from cannabis generally. The 2014 Farm Bill authorized institutions of higher education and State departments of agriculture to allow for cultivation of hemp as part of a pilot program as authorized by State law for research. Research allowed under pilot programs included market research, so hemp was cultivated and sold as inputs into various consumer products under the 2014 Farm Bill. This analysis assumes that such cultivation would have continued and even expanded in the absence of the 2018 Farm Bill.

Need for Regulation

The Agriculture Improvement Act of 2018, known as the 2018 Farm Bill, removed hemp from the list of controlled substances, decontrolling hemp production in all U.S. States, and in territories of Indian Tribes, unless prohibited by State or Tribal Law. This action eliminates the uncertain legal status at the Federal level of hemp production and allows the U.S. Department of Agriculture (USDA) to provide hemp producers with crop insurance programs, potentially reducing risk to producers and providing easier access to capital. The statute also prohibits interference in the interstate transport of hemp by States, including those States which prohibit hemp production and sales. As a result, hemp producers will have access to nationwide markets. The rule is necessary to facilitate this market by creating a set of minimum standards to ensure that hemp being produced under this program meets all statutory requirements. Moreover, both the declassification of hemp, and the prohibition on interference with interstate transportation apply to hemp that is grown under an approved State or Tribal plan, or under a Federal license. As a result, this regulation facilitates provisions of the Farm Bill that would otherwise be self-implementing.

Overview of the Action

The 2018 Farm Bill granted regulatory authority of domestic hemp production to the State departments of agriculture, Tribal governments, and USDA. States and Tribes must submit to USDA plans which include provisions for maintaining information regarding the land on which hemp is produced, for testing the levels of THC, for disposal of plants that do not meet necessary requirements, and for procedures to ensure compliance with the requirements of the new part. State and Tribal Plans must be approved by USDA. This rule outlines requirements by which the USDA would approve plans submitted by States and Tribal governments for oversight of hemp production. The 2018 Farm Bill also directs USDA to develop a plan for use by hemp producers in States or Tribes where no State or Tribal Plan has been approved and which do not prohibit the cultivation of hemp. These actions will promote consistency in regulations governing the legal production of hemp across the country.

Baseline Definition

In order to measure the impacts of this rule on affected entities, AMS defines the baseline such that sales of hemp products from 2014 through 2019 will be treated as attributable to the 2014 Farm Bill only. While the 2018 Farm Bill permits commercial production of hemp, and the 2014 Farm Bill permits production of hemp for research purposes only, AMS assumes some of the increasing trend of U.S. hemp production would have continued under the provisions of the 2014 Farm Bill in the absence of the 2018 Farm Bill. AMS assumes, therefore, that only 50 percent of the growth in sales of hemp products from 2020 and beyond will be attributable to the 2018 Farm Bill. This assumption considers the rate at which hemp acreage has increased in recent years, the number of States whose hemp pilot programs produced a crop in recent years, and the number of States which have passed legislation following the signing of the 2018 Farm Bill in anticipation of this rule's enactment in time for the 2020 growing season. As this rule enables the 2018 Farm Bill, 50 percent of the growth in sales of hemp products beginning in 2020 will be attributable to this rule.

The 2018 Farm Bill provided that States, Tribes, and institutions of higher education may continue to operate under the authorities of the 2014 Farm Bill for the 2019 planting season. Under the 2018 Farm Bill, the authority of the 2014 Farm Bill expires one year from the time that USDA establishes the plan and regulations required under the 2018 Farm Bill. As this will occur in the fall of 2019, growers could continue to grow hemp under the provisions of the 2014 Farm Bill in the 2020 planting season. For the purpose of this analysis, however, AMS defines the 2020 planting season as the first year of this rule's impact, with 50 percent of the growth in sales in 2020 being counted as attributable to the 2018 Farm Bill and this enabling rule. This analysis considers the impact of this rule on affected entities from 2020 to 2022. This analysis utilizes hemp market data from industry associations, state departments of agriculture, and universities.

While the 2018 Farm Bill permits commercial production of hemp, and the 2014 Farm Bill permits production of hemp for research purposes only, AMS assumes the increasing trend of U.S. hemp production would have continued under the provisions of the 2014 Farm Bill in the absence of the 2018 Farm Bill. AMS assumes, therefore, that 50 percent of the growth in sales of hemp products from 2020 and beyond will be attributable to the 2018 Farm Bill. This assumption considers the rate at which hemp acreage has increased in recent years, the number of States whose hemp pilot programs produced a crop in recent years, and the number of States which have passed legislation following the signing of the 2018 Farm Bill in anticipation of this rule's enactment in time for the 2020 growing season. As this rule enables the 2018 Farm Bill, 50 percent of the growth in sales of hemp products beginning in 2020 will be attributable to this rule.

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Farm Bill. As this will occur in the fall of 2019, growers could continue to grow hemp under the provisions of the 2014 Farm Bill in the 2020 planting season. For the purpose of this analysis, however, AMS defines the 2020 planting season as the first year of this rule's impact, with 50 percent of the growth in sales in 2020 being counted as attributable to the 2018 Farm Bill and this enabling rule. This analysis considers the impact of this rule on affected entities from 2020 to 2022. This analysis utilizes hemp market data from industry associations, state departments of agriculture, and universities.

Affected Entities

Hemp producers in States and territories of Indian Tribes that allow for hemp production will be impacted by this rule.

State departments of agriculture and Tribal governments will also be affected by this rule. State departments of agriculture and Tribal governments will bear the responsibility to ensure that hemp producers abide by the State and Tribal plans for regulating hemp. Prior to the passage of the 2018 Farm Bill, at least 40 States had enacted hemp legislation.[12] With the passage of the 2018 Farm Bill, nearly all of the remaining U.S. States have followed suit. Discussions with State departments of agriculture that currently oversee hemp pilot programs indicate that the authorization requirements for growing hemp for research purposes are similar to those included in State Plans submitted to USDA for approval. The 2018 Farm Bill, however, includes greater requirements for authorization than what the 2014 Farm Bill mandated, such as information sharing and a criminal history report for licensees. States that oversaw pilot programs under the 2014 Farm Bill, therefore, will likely need additional resources to run the State programs under the 2018 Farm Bill. States and Indian Tribes that did not have a pilot program under the 2014 Farm Bill and that submit plans to USDA for a program under the 2018 Farm Bill may require hiring of new staff to oversee the program. States and Tribes will also be subject to reporting and recordkeeping requirements resulting from this rule. If a State or Tribe chooses not to develop its own plan, then hemp producers within that State or Tribe may utilize the plan developed by USDA, unless prohibited by State or Tribal Law.

Regulatory Impact Analysis

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives when an action is deemed to have significant impacts. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity.

Executive Order 13771 mandates that agencies provide the best approximation of total costs associated with a new or repealed regulation. AMS has prepared this Regulatory Impact Analysis with the purpose of accomplishing these objectives.

USDA considers this to be a deregulatory action under Executive Order 13771 as it allows for the development of a niche market that cannot exist under current regulation. This rule removes barriers to entry and enables domestic farmers to grow hemp.

Expected Benefits and Costs of the Rule

The 2018 Farm Bill grants authorization for production of hemp to all States and Indian Tribes, unless prohibited by State or Tribal Law. This rule enables States, Tribes, and USDA to regulate this authorization. This rule is expected to generate benefits and costs to hemp producers and State departments of agriculture and Tribal governments. The benefits of this rule are expected to outweigh the costs, however, and the burden on the impacted entities is anticipated to be minimal.

Benefits and Costs of Production

Farmers grow hemp for three products: Floral material, fiber, and grain. Based on data from State departments of agriculture and from surveys by the National Industrial Hemp Regulators, a working group comprised of industrial hemp program managers from State departments of agriculture, AMS estimates that about two-thirds of hemp acreage planted is for floral material, while the remaining third is divided evenly between fiber and grain.

The nascent market for industrial hemp causes estimates of yield and price for hemp products to vary widely from source to source. Table 1 shows a range of potential gross revenues received by producers using ranges of yield and price estimates from Vote Hemp, the University of Kentucky, the Kentucky Department of Agriculture, and the Congressional Research Service.[13] Using low and high estimates for yield and price from these sources, AMS calculated a potential range of gross revenue to producers of hemp products of $2,443 per acre to $25,682 per acre.

Table 1. Estimated gross revenue per planted acre to producers of hemp products

Product	Planted acre	Low yield/acre	High yield/acre	Low price/lb.	High price/lb.	Low gross revenue	High gross revenue
Flowers	2/3	1,000	1,200	$ 3.50	$ 30.00	$ 2,333	$ 24,000
Fiber	1/6	2,000	11,000	$ 0.07	$ 0.67	$ 23	$ 1,228
Grain	1/6	800	1,600	$ 0.65	$ 1.70	$ 87	$ 453
Estimated gross revenue received by producers per acre of hemp						$ 2,443	$ 25,682

Sources: Vote Hemp; University of Kentucky, Industrial Hemp Budget 2019; Kentucky Department of Agriculture; Congressional Research Service, Defining Hemp: A Fact Sheet.

Variable costs per acre to producers, as estimated by the University of Kentucky, are shown in Table 2. These variable costs are weighted by the portion of planted acreage for each product as estimated in Table 1. The

[12] Vote Hemp, 2017 U.S. Hemp Crop Report.

[13] Vote Hemp, U.S. Hemp Crop Report available at *https://www.votehemp.com/u-s-hemp-crop-report/*.

Mark, Tyler and Shepherd, Jonathan, Hemp & Enterprise CBD Budget Model available at *http://hemp.ca.uky.edu/*.

Johnson, Renee, Hemp as an Agricultural Commodity, Congressional Research Service, June 2018.

result is a weighted variable cost of $19,421 to produce one acre of hemp products.

Table 2. Variable costs per acre to producers of hemp products			
Product	Variable costs	Planted acre	Variable costs weighted by planted acre portion
Flowers	$ 28,638	2/3	$ 19,092
Fiber	$ 1,077	1/6	$ 180
Grain	$ 898	1/6	$ 150
Total			$ 19,421
Source: University of Kentucky, Industrial Hemp Budget 2019.			

To estimate producer returns above variable cost, the weighted variable cost per acre is subtracted from the low and high estimates of gross revenue per acre under the scenario of lowest yield and lowest price received per acre and the scenario of highest yield and highest price received per acre. Under the low estimate of gross revenue per acre, a hemp producer who plants two-thirds of an acre for flowers, and the remaining one-third acre split between fiber and grain loses $16,978 per acre. Under the high estimate of gross revenue per acre, a hemp producer sees a return of $6,260 above variable costs. It is important to consider that fixed costs are not included among these estimates; therefore, net returns will likely be lower than these results.

In addition to the previously-mentioned variable costs to grow hemp, AMS considered the opportunity costs to the hemp producer of crops that may have otherwise been planted. Using data from the National Agricultural Statistics Service (NASS), AMS calculated an average gross return per acre of cropland, weighted by area planted or bearing, of $591. This estimate represents the potential revenue per acre of the crop that a potential hemp producer foregoes to plant hemp instead of other crops including traditional field crops. However, hemp may also attract new producers not currently growing other crops. Subtracting this opportunity cost from the average gross revenue per acre (discussed in more detail below) yields a net social benefit estimate of approximately $2,060 per acre. For individual growers, however, returns may vary widely—and even be negative.

The per acre net return estimates are based largely on crop enterprise budgets which represent expected costs and returns assuming the grower actually brings a crop to market. There are many things that can preclude actually bringing a planted crop to market including; loss due to weather, pests, or disease, reduced output due to inexperience with the crop, and growing a crop that exceeds the acceptable hemp THC level.

The gross social benefit of the crop is best represented by what customers are willing to pay for the crop. To generate a social benefit per acre, we looked at data from the 2018 Processor/Handler Production Reports to the Kentucky Department of Agriculture. In 2018 Kentucky farmers were paid $17.75 million for harvested hemp materials from 6,700 planted acres. This results in a societal willingness to pay (assuming Kentucky is sufficiently representative of the United States) of around $2,650 per acre. Using this average accounts for acres with unusually high returns as well as acres with low or no returns.

So, while individual growers may see returns ranging from a loss of $17,578 to a return of $5,669 per acre, society can expect a benefit of $2,058 (= $2,650 − $591) per acre.

Estimated Number of Producers

In each year since the 2014 Farm Bill, the number of licensed producers and the amount of acreage planted has increased substantially. According to Vote Hemp, there were a total of 3,543 producer licenses issued by States in 2018, up from 1,456 in 2017, and 817 licenses in 2016. Planted acreage in 2018 was 77,844 acres, up from 25,723 in 2017, and 9,649 acres in 2016. No official estimates of hemp planted acreage, or the number of producer licenses exist for 2019 as of yet; however, industry members agree that 2019 planted acreage will likely at least double acreage planted in 2018. If this occurs, then hemp planted acreage will reach almost 160,000 acres in 2019. See Table 3 below. This increase in acreage is likely due in part to new producers entering the market and in part to current producers expanding their acreage.

Based on data from the State departments of agriculture in Colorado, Kentucky, and Oregon, which together make up 47 percent of planted acreage and 45 percent of producer licenses nationwide, average planted acreage per producer is 24 acres. Assuming that all 77,844 additional acres in 2019 are planted by new producers entering the market, and that each one plants the average of 24 acres, then 2019 should see approximately 3,244 new producers. This is a reasonable assumption given the growth in licenses year over year. Based on this, there should be approximately 6,787 U.S. hemp producers in 2019, as shown in Table 3. For purposes of this analysis, we expect the number of producers to increase at the same rate as increased hemp sales as discussed below.

Table 3. Number of producer licenses and planted acreage, 2016-2019e				
	2016	2017	2018	2019e
Number of licenses	817	1,456	3,543	6,787
Planted acres	9,649	25,723	77,844	155,688

Projected Growth in Gross Revenues

The Hemp Business Journal estimates sales of U.S. hemp-based products from 2018 to 2022. The growth rates of these sales from year to year are shown in Chart 1. It is important to remember that even though the 2018 Farm Bill removed hemp from the list of controlled substances, it preserved the authority of the Food and Drug Administration (FDA) to regulate products which contain cannabis. Sales of hemp-based products are expected to increase about 15 percent from 2018 to 2019. In 2020, sales are expected to grow about 14 percent, in 2021, 19 percent, and in 2022, 16 percent. While these growth rates represent consumer sales and may not necessarily accurately depict the state of the hemp market at the producer level, these estimates are the best available to AMS at this time. Although certain cannabis-derived compounds are generally prohibited to be added to food and dietary supplements, because of their status as pharmaceutical ingredients, the FDA has authority to issue a regulation allowing the use of such ingredients in food and dietary supplements. FDA has stated that they are actively considering this issue. If FDA does not provide clarity about their plans for future regulation of CBD, there will continue to be uncertainty and downward pressure on the CBD portion of the hemp market. This is important because the Hemp Business Journal estimates appear to assume that there are no prohibitions on adding CBD to consumer products. As a result, full realization of the benefits estimated here could be delayed pending regulatory certainty.

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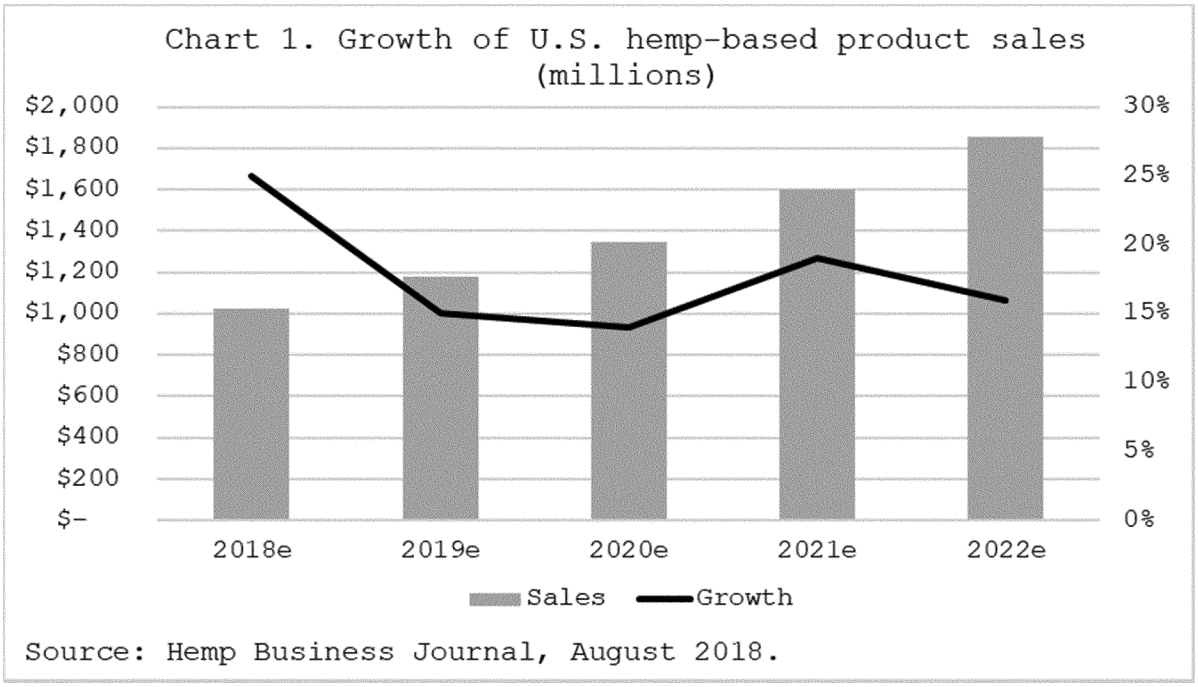
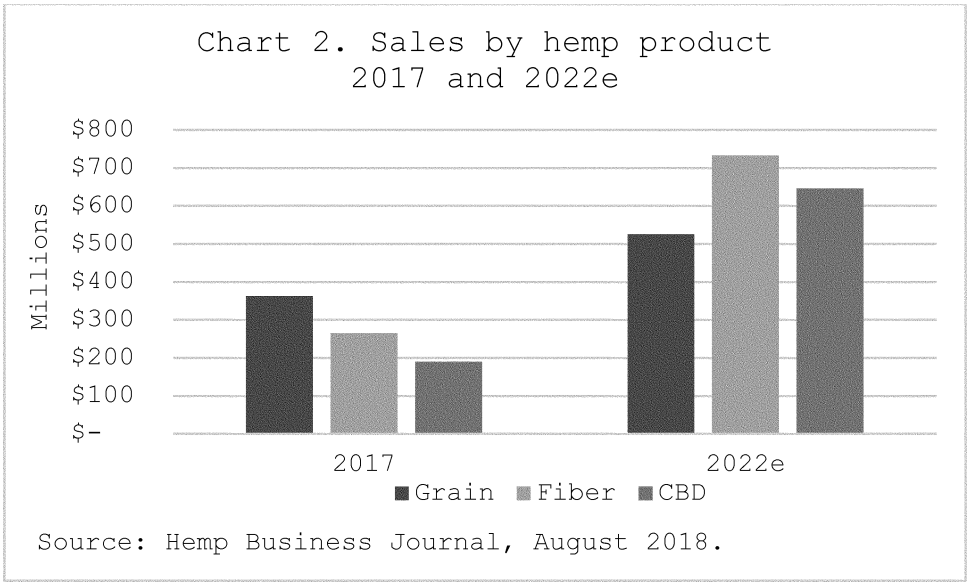
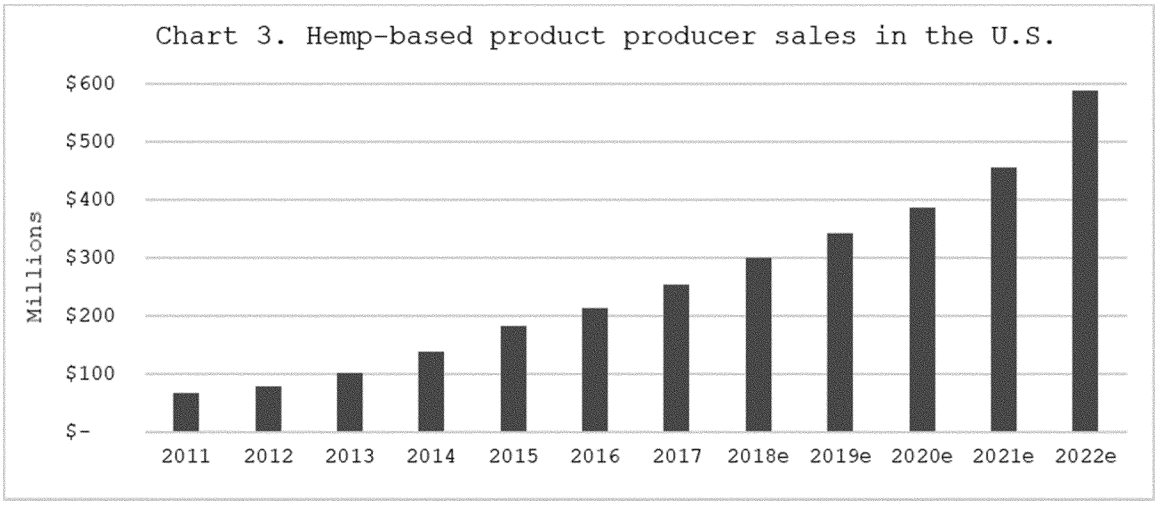




Data from the 2018 Processor/Handler Production Reports to the Kentucky Department of Agriculture also show that gross sales by processors reached $57.75 million in 2018. Of this, gross returns to farmers was approximately 31 percent of total processor gross sales. Applying 31 percent to the consumer sales estimates in the chart above provides an estimate of gross producer returns (and social willingness to pay) over the next four years.



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If gross producer returns are 31 percent of total consumer sales, estimated total producer returns in 2018 were approximately $315 million. In 2019, estimated total producer returns will be approximately $362 million, in 2020, approximately $413 million, in 2021, approximately $491 million, and in 2022, approximately $570 million. Not all of the producer sales in Chart 3 are the direct result of this rule, however. The forecasts shown in Chart 1 were published by the Hemp Business Journal in the summer of 2018, before the 2018 Farm Bill was passed by Congress. This indicates that the hemp market was expected to grow regardless of the hemp provisions in the 2018 Farm Bill.

Total costs for State licensing, sampling, and testing under the pilot programs generally amounted to about $1,000 per producer. This includes administration of certified seed schemes in certain States. Measurable impacts to the hemp industry resulting from this rule will not occur until 2020. It is difficult to estimate the increase in total returns to producers as a result of this rule. AMS estimates that this rule is responsible for as much as 50 percent of the increase in total producer returns from year to year. This assumption considers the rate at which hemp acreage has increased in recent years, the number of States whose hemp pilot programs produced a crop in recent years, and the number of States which have passed legislation following the signing of the 2018 Farm Bill in anticipation of this rule's enactment in time for the 2020 growing season.

Because we would expect hemp production to continue to grow under preexisting State programs, we do not believe it is appropriate to attribute all production growth beyond 2020 to this rule. Since roughly half of the States had operating programs in 2018, we assumed that half of future projected growth could have occurred in the absence of this rule. Based on the total estimated producer returns, AMS estimates that increases in hemp sales directly resulting from the rule will be approximately $25.5 million in 2020, $64.5 million, cumulative, in 2021, and $104 million, cumulative, in 2022. Media reports about the 2018 Farm Bill's approach to hemp seem to indicate that there may be future innovation that would increase producer returns and investment. We request comment about the potential for innovation and the uncertainty and its impact on the market vis a vis steady state.

Costs of State and Tribal Plans

Under most State pilot programs administered under the 2014 Farm Bill, hemp producers paid fees to State departments of agriculture for State licenses to grow hemp, and for sampling and testing of THC content. These fees generally fully fund the program's operation and are a reasonable proxy for the costs to States of administering a plan. Total costs for State licensing, sampling, and testing under the pilot programs generally amounted to about $1,000 per producer. Discussions with State departments of agriculture that oversee hemp pilot programs indicate that the provisions for growing hemp for research purposes will be similar to those in the State Plans submitted to USDA for approval. While the 2018 Farm Bill added additional requirements for growing hemp that were not in the 2014 Farm Bill, it is difficult to determine how these additional requirements will impact fees for licensing, sampling, and testing paid by producers to States. For the purpose of this analysis, AMS finds that a cost of $1,000 per producer is the most reasonable estimate of these annual fees and, by extension the cost to States and Tribes of administering a regulatory program. We have no reason at this time to assume that the Federal government will be any more or less efficient at implementing the Federal program for producers who operate under a USDA license rather than a State or Tribal program. The Federal plan does not require licensed producers to use certified seed, nor will USDA provide producers with access to certified seed. Accordingly, we use this same $1,000 estimate as a proxy for the cost of administering a program by the Federal Government as well.

In addition to these fees, a producer bears the burden of gathering the information for and filling out an application for licensing. AMS estimates that the time required of a producer to apply for a license to grow hemp will be approximately 10 minutes or 0.17 hours. The mean hourly wage of a compliance officer, as reported in the May 2018 Occupational Employment

Statistics Survey of the Bureau of Labor and Statistics, was $35 per hour. Assuming 39 percent of total compensation accounts for benefits, total compensation of a compliance officer is $57 per hour. Multiplying this wage by the time spent to complete a license application results in an annual burden cost to producers of about $10 per license application.

State departments of agriculture and Tribal governments will likely need to increase their staff to successfully oversee hemp programs. States with pilot programs typically employ about four full-time staff members to manage their industrial hemp programs. The estimated increase in hemp acreage in 2019 indicates a likely increase in licenses and applications; therefore, States with hemp programs may need to hire additional employees. States and Tribes without hemp pilot programs under the 2014 Farm Bill that have their own plans in place under the 2018 Farm Bill will also need to hire new staff members. The fees paid by producers to States and Tribes to participate in the hemp program will likely cover the staffing costs.

Costs of USDA Plan

AMS has developed a Federal Plan for hemp producers to utilize when their State or Tribe does not have its own plan in place. The Federal Plan requires an initial application for a license. The license must then be renewed every three years. A criminal history report is required with every license application. The costs to a producer of completing a license application and of submitting a criminal history report will be quantified in the ''Costs of Reporting and Recordkeeping'' section. The Federal Plan also includes sampling and testing provisions, which will result in costs to producers. USDA will bear the costs of program administration and does not intend to charge producers a licensing fee unless Congress provides the authority to USDA to charge fees for this program in the future. On average, the annual fee that producers paid to States to participate in the pilot programs, which included licensing, was $1,000 per license. This will be used as a proxy for the cost to USDA of program administration.

Sampling and testing costs under the Federal Plan are tied to acreage and how licensees designate the lots where hemp is grown. Projected costs for sampling and testing an average 24-acre lot are summarized in Table 4.

Table 4. Costs to hemp producers of sampling and testing under the Federal Plan assuming an average 24-acre lot

Estimates	Sampling					
	Hourly wage	Time (hrs)	Avg drive time (hrs)	Avg mileage	Mileage rate ($/mile)	Total cost
Low	$ 152	0.5	2	107.5	$ 0.58	$ 443
High	$ 152	1	2	108	$ 0.58	$ 520

Estimates	Testing				Grand total per tested sample per lot
	Hourly wage	Time (hrs)	Testing & reporting	Total cost	
Low	$ 161	0.5	$ 75	$ 155	$ 599
High	$ 161	1	$ 150	$ 311	$ 830

The hourly total compensation, which includes wage and benefits, for a federally-contracted inspector who conducts sampling is $152, and the hourly total compensation for a federally-employed lab technician who tests the sample is $161. The standard rate for reimbursement for miles driven at the Federal level is $0.58 per mile. With information from State departments of agriculture, AMS calculated a range of time spent on sampling, and an average of time spent driving and miles driven by an inspector to and from the sampling location. The range of time spent on testing and of costs for testing and reporting were calculated using input from licensing and testing specialists within AMS. Depending upon the quality of the sample taken and the time spent on sampling and testing, the total cost of sampling and testing to a producer ranges from $599 to $830 per tested sample per 24-acre lot. AMS notes that transportation costs are fixed under this analysis assuming all lots tested are at the same farm. If a producer grows multiple varieties of hemp, or designates multiple lots of hemp with the same variety, then each lot is subject to individual sampling and testing. Total sampling and testing costs, therefore, depend upon the number and size of lots.

Costs of Reporting and Recordkeeping

The 2018 Farm Bill requires AMS to prepare and submit an annual report containing updates on the implementation of the domestic hemp production program to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. To help collect the information necessary to complete this report, and to collect additional information, as necessary, to administer the hemp program, AMS has developed seven new forms. These forms require specific information be submitted by States and Tribes operating their own domestic hemp plans, from producers participating in the USDA Plan, and from laboratories testing for THC content. The annual burden in time and cost has been evaluated for each form. These time and cost figures have been

approximated to the nearest whole number.

Respondents: States and Tribes Operating Their Own Plans

States and Tribes with approved plans are required to report certain information to USDA. USDA will collect this information from States and Tribes through three forms: The ''State and Tribal Hemp Producer Report'' form, the ''State and Tribal Hemp Disposal Report'' form, and the ''State and Tribal Hemp Annual Report'' form. AMS estimates that the time required of States and Tribes to fill in the information for each of these forms will be 20 minutes or 0.33 hours. The time required of producers to supply the information for the ''State and Tribal Hemp Producer Report'' form and the ''State and Tribal Hemp Disposal Report'' form will be 10 minutes, or 0.17 hours, apiece. The ''State and Tribal Hemp Producer Report'' form and the ''State and Tribal Hemp Disposal Report'' form are due to USDA every month. The annual time burden for States and Tribes to respond to each of these two forms, therefore, is 4 hours per respondent. The annual time burden for producers to supply the information for each of these forms will be 10 minutes, or 0.167 hours, per respondent, plus an additional 5 minute recordkeeping burden per form. The ''State and Tribal Hemp Annual Report'' form must be submitted to USDA once per year; the annual time burden, therefore, remains 0.33 hours per respondent. The ''State and Tribal Hemp Annual Report'' form is anticipated to place a burden on producers participating in the State and Tribal Plan of 15 minutes per producer (10 minutes for reporting and 5 minutes for recordkeeping).

Each of these forms required from States and Tribes is expected to generate a recordkeeping burden of 5 minutes or 0.08 hours, apiece, per recordkeeper. Altogether, the annual time burden of reporting and recordkeeping per State and Tribe operating under its own plan is estimated to be 9 hours. The mean hourly wage of a compliance officer, as reported in the May 2018 Occupational Employment Statistics Survey of the Bureau of Labor and Statistics, was $35 per hour. Assuming 39 percent of total compensation accounts for benefits, total compensation of a compliance officer is $57 per hour. Multiplying this by 9 hours results in a total annual burden cost to each State and Tribe operating under its own plan of $490. AMS estimates that 100 States and Tribes will operate under their own plans. The annual burden for these 100 States and Tribes of reporting and recordkeeping is 858 hours costing $49,046 per year.

The information necessary for States and Tribes to submit the ''States and Tribal Hemp Producer Report comes from the information supplied by producers in their license applications. AMS estimates that 8,000 producers will submit license applications over three years. AMS estimates a cost of approximately $10 per license application (based on approximately 10 minutes of burden). These costs will not occur uniformly over the three years as both new and existing processors will need to provide this information in the first year of the program. As result, AMS estimates a cost to producers operating under State and Tribal plans of $55,000 in 2020, $12,000 in 2021, and $13,000 in 2022—or an average cost of $27,000 per year.

In addition, producers will be required to prove that they do not have prior drug related convictions that would disqualify them from participation in the program. States have some flexibility in what they require of applicants to make this demonstration. However, for purposes of this analysis, we will use the same cost for States and Tribes that we use for USDA licensees, which is $54 per licensee. This results in estimated costs of $291,000 in 2020, $65,000 in 2021, and $70,000 in 2022—or an average cost of $142,000.

Additionally, AMS estimates that an average of 2,680 [14] producers will supply information to States and Tribes for the ''State and Tribal Hemp Disposal Report'' form each year at an estimated cost of $38,000 per year.

The total average annual burden on producers to supply information to States and Tribes associated with these two reports will be 1,169 hours, with an estimated cost (including criminal history information) of $230,000.

In addition, growers of crops that test above the acceptable hemp THC level are responsible for the proper disposal of those non-compliant crops. While the rule makes the producer responsible for the costs of this disposal, such disposal represents a real expenditure of societal resources; as such they are a cost of the rule irrespective of who is directly responsible for those costs. The opportunity cost of lost sales is already incorporated in our calculation of benefits since our average benefits per acre are based on total sales and total planted acres and non-compliant acres (which have zero value as hemp) are included in the average expected benefit. However, the additional physical costs of disposal are not represented in the calculation of benefits. As a result, we need to calculate the additional cost imposed by the disposal requirement.

We have no information on the cost of disposing of non-compliant hemp. So, we developed an assumed disposal cost of $200 per acre based on the estimated cost of the physical activities related to disposal. According to the University of Kentucky crop enterprise budgets for hemp, the cost of harvesting and transporting hemp grown for fiber is roughly $100 per acre.[15] We double this amount to account for the likelihood that there will be additional oversight and documentation required to demonstrate legal disposal. However, we still have no way to estimate any additional cost associated with the physical destruction required after the crop is removed from the farm.

Using this rough cost estimate, the average annual quantified cost of disposal under State and Tribal programs is $6.432 million.

Respondents: Producers Participating in the USDA Plan

To produce hemp under the USDA Plan, a producer, which may be an individual producer or a business, would need to complete the ''USDA Hemp Plan Producer Licensing Application'' form and be issued a license. AMS estimates the time required of a producer to fill out this form to be 10 minutes or 0.17 hours. The recordkeeping required for this form is estimated to be 5 minutes, or 0.08 hours. The total burden per respondent of this form is 15 minutes, or .25 hours. Licenses under the USDA Plan must be renewed every three years. Assuming that there will be 1,000 participants in the USDA Plan, AMS estimates that over a three-year period, there will be 667 respondents in each year. The total annual burden for this form, therefore, will be 167 hours with a cost of $9,541.

In addition to the ''USDA Hemp Plan Producer Licensing Application'' form to be submitted once every three years, producers must submit criminal history reports for each of their key participants. AMS estimates each

[14] There is no way to know for certain how many samples will test beyond the 0.3 percent threshold for THC on a dry-weight basis; however, based on information discussions with States that have a hemp program under the 2014 Farm Bill, AMS estimates that 20 percent of lots per year will produce cannabis that tests high for THC content.

[15] We used hemp grown for fiber as the basis for our assumption because hemp grown for flower or seed use more refined methods of harvesting that are no longer necessary if the resultant product (flower or seed) no longer has market value.

producer to have three key participants that would submit criminal history reports to USDA. The cost of a criminal history report is $18 apiece, which results in a cost of $54 per participant. As stated previously, AMS estimates that it will receive 333 license renewals in each year over a three-year period. The average annual cost of the criminal history reports that will accompany these renewals is $17,982 annually.

Similar to the required annual report submitted by States and Tribes to USDA, producers operating under the USDA Plan must submit the ''USDA Hemp Plan Producer Annual Report'' to USDA each year. AMS estimates the time burden of submitting this form to be 20 minutes, or 0.33 hours. The recordkeeping burden of this form is estimated to be 5 minutes, or 0.08 hours. Together, the burden of this form is 25 minutes, or 0.42 hours, per respondent. AMS estimates 1,000 participants in the USDA Plan. The total burden of this form, therefore, is 417 hours, costing $23,808 annually.

When a hemp sample tests above the acceptable hemp THC level, the material from the production area which the sample represents must be destroyed by a person authorized under the CSA to handle marijuana, such as a DEA-registered reverse distributor, or a duly authorized Federal, State, or local law enforcement officer or their designee. Producers must document the disposal of all marijuana. This can be accomplished by either providing USDA with a copy of the documentation of disposal provided by the reverse distributor or with the ''USDA Hemp Plan Producer Disposal Form''. AMS estimates the time required to complete this form to be 20 minutes, or 0.33 hours, which would be split between the producer and authorized agent who carries out the disposal. The recordkeeping required for this form would amount to 5 minutes, or 0.08 hours, per respondent. The total burden of this form is, therefore, 15 minutes, or 0.25 hours, for a producer, and 10 minutes, or 0.17 hours, for an authorized agent. Together, the burden is 25 minutes, or 0.42 hours, per respondent.

Using the same assumptions regarding the prevalence of non-compliant crops and the costs of disposal that were used in generating the estimates of hemp disposal reporting (and disposal) for State and Tribal programs, the 1,000 producers that will participate in the USDA Plan will generate 400 samples will test high for THC content. The total reporting burden of this form will amount to 167 hours and cost $9,523 annually. Additionally, producers operating under USDA licenses are expected to incur quantified disposal costs of $960,000 annually.

Altogether, the annual burden of the ''USDA Hemp Plan Producer Licensing Application'', the ''USDA Hemp Plan Producer Disposal Form'', and the ''USDA Hemp Plan Producer Annual Report'' amounts to an annual total of 666 hours and a cost of $37,962. Adding in the criminal history report cost brings the total to $55,962 annually.

Respondents: Laboratories

The Farm Bill requires that all domestically produced hemp be tested for total THC content on a dry-weight basis, whether produced under a State or Tribal Plan or the USDA Plan. To facilitate this, AMS is requiring all laboratories testing hemp for THC to submit all test results, whether passing or failing, via the ''Laboratory Test Results Report''. AMS estimates this form to generate a total annual reporting burden of 30 minutes, or 0.5 hours, per test or submitted form, and a total annual recordkeeping burden of 5 minutes, or 0.08 hours, per producer. Together, the reporting and recordkeeping burden for this form is 35 minutes, or .58 hours.

There is no way to know for certain how many tests laboratories will conduct in a single year and how many of them will be subject to re-testing. AMS estimates, however, that laboratories will receive two samples representing two lots of hemp material from 7,700 producers, resulting in 15,400 tests annually. The total annual burden of these tests and the accompanying ''Laboratory Test Results Report'' form is, therefore, 8,399 hours, and costs of $478,743.

Respondents: All Producers

The Farm Service Agency (FSA) collects information on crop acreage through the ''Report of Acreage'' form. All hemp producers will be required to fill in the information for this form once they receive their license or authorization from USDA, a State, or Tribe. AMS estimates this form to generate a reporting burden of 30 minutes, or 0.5 hours, and a recordkeeping burden of 5 minutes, or 0.08 hours. AMS assumes that an average of 7,700 producers will respond to this form each year, resulting in a total annual burden of 4,466 hours, and a cost of $254,562.

Total Reporting and Recordkeeping Costs for All Respondents

Altogether, the annual burden for reporting and recordkeeping for all respondents is 17,362 hours, costing a total of $$989,634 per year. This is the sum of the annual burden of reporting and recordkeeping to States and Tribes operating their own plans, to producers participating in the State and Tribal Plans, to producers participating in the USDA Plan, including the cost of a criminal history report for three key participants, and to laboratories testing samples for THC content.

Alternatives to the Rule

The actions in this rule are mandated by the 2018 Farm Bill, which enables States, Tribes, and USDA to establish rules and regulations for the domestic production of hemp. The statute requires USDA to develop criteria for approval of plans submitted by State and Tribal governments for regulation of domestic hemp production. If no State or Tribal Plan has been approved, then hemp producers in these States or Tribes may utilize the plan developed by USDA. These plans will promote a greater level of consistency in regulations governing the legal production of hemp across the United States.

In developing the sampling procedures for the Federal Plan, AMS considered the protocols for sampling used by State departments of agriculture and by countries that regulate hemp production. In addition, AMS reviewed sampling methods recommended by Codex Alimentarius, which is the central part of the Joint Food and Agriculture Organization (FAO)/World Health Organization (WHO) Food Standards Program and was established by FAO and WHO to protect consumer health and promote fair practices in food trade. After research and review of multiple sampling protocols, AMS adopted the best option among the alternatives.

The 2018 Farm Bill mandates testing using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic *acid* (THC-A) into THC. Testing methodologies meeting these requirements include those using gas or liquid chromatography with detection. These methods are the industry standard for post-decarboxylation testing. While these methods were chosen by AMS as the best option for testing, alternative sampling and testing protocols will be considered if they are comparable to the baseline mandated by the 2018 Farm Bill and established under the USDA Plan and Procedures.

Alternatives to the selected procedures for sampling and testing for THC content included connecting a

producer lot of cultivated hemp to a standard unit of measure. AMS considered describing one lot as one acre of hemp. This alternative was abandoned, however, as it would have required every acre of hemp to be sampled and tested, which would have resulted in high costs to producers and overwhelming volume to laboratories.

Net Benefits From the Rule

AMS has provided the approximation of the total costs and benefits associated with this new regulation. Using the costs and benefits introduced in the preceding sections, AMS has calculated the net benefits of this rule in Table 5 using an upper bound estimate of costs. The results shown in Table 5 were calculated using many assumptions. These figures are only estimates using the data that was available to AMS. The absence of industry and government data along with the high degree of uncertainty regarding the future of the hemp market makes accurately capturing the impact of this rule on the hemp industry an impossible task. Regardless, AMS estimated the net benefits of this rule in years 2020, 2021, and 2022 as shown in Table 5. AMS has also calculated the net benefits of the rule using a lower bound estimate of costs. The results of that analysis are shown in Table 5a. The assumptions used to calculate the lower bound estimate are discussed later in this document.

The costs and benefits associated with this rule will begin in the year 2020. From the signing of the 2018 Farm Bill to the enactment of this rule in time for the 2020 growing season, the domestic hemp market will be in a state of transition as cultivation of hemp moves from research only to commercialization. The hemp industry in 2018 represents the baseline of this analysis, and the first year which will see impacts from this rule is 2020. The time between will be considered a transitional period as the hemp industry adjusts to incorporate the provisions authorized in the 2018 Farm Bill.

The benefits of this rule primarily include producer sales that are estimated to be due to the hemp provisions in the 2018 Farm Bill and this rule which enables those provisions. Gross revenues represent the best proxy for consumer willingness to pay and social benefits.[16] As the demand for and sales of hemp increase over time, the number of licensees is estimated to grow proportionally (for the purposes of this analysis). As a result, we estimate the number of licensees (State, Tribal, or Federal) to increase from roughly 6,494 in 2020 to 7,720 in 2021, to 8,962 in 2022.

The benefits and cost of this rule are shown in Tables 5 (summarizing upper-bound cost estimates and associated net benefits) and 5a (summarizing lower-bound cost estimates and associated net benefits). In Table 5, the estimated net benefits of this rule amount to a loss of $4 million in 2020, a benefit of $23 million in 2021, and a benefit of $49 million in 2022. As noted previously, this calculation is based on an upper bound estimate of the costs of the rule. This estimate includes costs to all growers, not just the new entrants resulting from the rule. (In other words, we are incorporating a significant amount of cost that would have been incurred by producers even in the absence of this rule.)

Benefits are based on a share of growth being attributable to the rule while the cost calculations include the costs of compliance borne by all producers, including those that are already growing hemp under the 2014 program and those that would expect to grow hemp under that program in the event that USDA did not promulgate this rule. This leads to costs being overstated relative to the benefits calculated. Many of the costs estimated as attributable to this rule actually represent expenditures of resources that would have taken place under the 2014 program.

We did this for two reasons. The first is simply to demonstrate what we think the full cost of a program similar to the one we are promulgating would be. The second is because the specific requirements of this rule may be slightly different from requirements already in place in States operating hemp programs under the 2014 Farm Bill and we did not want to ignore the fact that these changes may have costs. Put another way, producers under the 2014 plan may already have been required to submit license applications, but not applications that were identical to what is being required. The preexisting State requirement may have been more or less costly, but this assumed that new and existing growers would bear the full cost of providing the information required under this program. Because we believe the 2018 requirements for producers are very similar to the plans already in operation, we think the estimates used to this point represent an upper bound estimate.

We have also developed a lower bound estimate of costs based on applying costs related to the rule only to those producers who would not have produced hemp in the absence of this rule. Requirements for States and Tribes are all new and will remain attributed to the rule. Similarly, the costs associated with producers reporting information to States and Tribes to facilitate State and Tribal reporting requirements will still be attributable to this rule.

The largest changes in estimated costs result from a reduction in the number of acres (and, by extension growers) directly attributable to this rule. In the upper bound cost case we include the transactions cost (*e.g.,* permit application, crop reporting, testing, disposal etc.) to every producer required to produce the $491 million worth of hemp in 2021—or 7,700 producers. In the lower bound we recognize that $362 million of that production is estimated to occur in 2019 before any new rule is published, so only $129 million could possibly be related to publication of a new rule. We also acknowledge that there were avenues available to further increase production under the 2014 program and that up to half of that $129 million in increased revenue could occur without this rule. As a result, only $65 million of that new growth in 2021 is attributable to this rule. It only takes 1,000 new growers to meet this level of increased demand. So, the lower bound is based on the costs associated with those 1,000 growers vs. the 7,700 used in calculating the upper bound.

This alignment of new producers to new growth allows costs and benefits to be measured relative to a consistent baseline. However, we also acknowledge that this rule will impose costs on entities beyond just those new entrants into the market who supply a portion of the projected growth in demand for hemp. For example, States and Tribes face new reporting requirements under this rule. Those reporting requirements are independent of the number of licensed producers in their programs that produce to meet existing demand as opposed to those who's production is enabled by this rule. So, the reporting burden for States and Tribes is the same in both the upper bound and lower bound estimates. On the other hand, since State administrative costs are directly tied to the number of program participants, those costs to the State only grow as a function of the number of new entrants into the market. As a result, administrative costs for States and Tribes (as well as the Federal Government) are estimated to be

[16] We note that if gross willingness-to-pay is presented as a regulatory benefit, then marginal costs of production must be included as a line item in the regulatory cost analysis. An alternative, reduced-form approach would be to include only producer surplus (or the related concept of profits) and consumer surplus in the benefits analysis.

significantly lower in the lower bound estimate.

The following is a discussion of how each major cost or benefit category is modified to move from the upper bound estimate to the lower bound estimate.

Both revenues and opportunity cost were already based on only the new acres enabled by the rule, so those estimates do not change.

The estimate of State and Tribal administrative costs will decline. The upper bound cost estimate included the total cost of administering a hemp program. The lower bound recognizes that States and Tribes were already incurring administrative costs associated with existing production and would expect such costs to increase with increased production under the 2014 program. State and Tribal administrative costs would only increase as a result of new entrants directly enabled by the rule. Using 2021 as an example, 7,700 producers are required to produce all $491 million in projected demand for hemp. However, only 1,000 producers are required to produce the approximately $65 million in projected demand attributable to the rule. Some of those producers will operate under State and Tribal programs and some under USDA license. Based on the proportions used in calculating the upper bound cost, we assume 13 percent of growers to be operating under USDA license and 87 percent to be operating under State license. So, of the 7,700 producers operating in 2021 only 870 are expected to be growing under State or Tribal authority to meet demand increases attributable to the rule. So, the estimate of State and Tribal administrative costs goes from $6.7 million in the upper bound to $870,000 in the lower bound estimate.

Similarly, we assume that all producers will be subject to some form of licensing. In the upper bound estimate, we attribute all licensing costs to this rule even though we know that most, if not all, States already have some form of licensing as part of their 2014 programs. So, if we only account for the licensing costs of producers enabled under this rule, the upper bound estimate is $77,000 to $35,000 in 2021.

Like State and Tribal administrative costs, USDA administrative costs are tied to the number of entrants into the market in response to demand increases that can be fulfilled as a result of the rule. As previously discussed, this is estimated to be 130 producers in 2021 (the 1,000 new producers minus the 870 who register under State or Tribal programs) at a cost of $130,000.

Like licensing, we expect that most, if not all, State programs already have some form of product testing. As a result, only the testing of acres attributable to this rule should be included in the estimated cost of the rule. This results in a change from the upper bound estimate of $11.6 million to an estimated lower bound cost of $1.5 million. It should be noted, however, that existing sampling and testing regimes may be more or less stringent than the one imposed by this rule. As a result, this rule could impose additional costs, or represent cost savings, on producers not directly enabled by this rule. These cost changes are not reflected in the lower bound estimate.

As previously mentioned the reporting and recordkeeping burden on the States is independent of the number of program participants and is the same in both upper and lower bound estimates. Also, the burden on producers to supply the information required to be reported by the States and Tribes is required of all producers, so the estimate of those costs also remains the same under upper and lower bound estimates.

The reporting burden for producers operating under USDA license, on the other hand is a function of the number of new licensees and the lower bound estimates reflects this smaller number.

The reporting of information to the Farm Services Agency is a new requirement that applies to all producers. As a result, the estimated cost associated with these provisions of the rule are identical in both upper and lower bound estimates. Similarly, the requirement of testing labs to submit information is new and applies to all tests irrespective of whether or not the producer is new as a result of this rule. Laboratory reporting costs are, therefore, also the same in the upper and lower bound estimates.

Like sampling and testing, we assume that existing producers are already required to dispose of non-compliant crops. As a result, the estimated disposal cost (in 2021) goes from $7.4 million in the upper bound estimate to $960,000 in the lower bound estimate. Also, like sampling and testing, the validity of the estimate is a function of the relative costs of Federal disposal requirements relative to existing State disposal requirements. Any change in the costs of disposal (positive or negative) would apply to all producers, not just those new as a result of this rule.

The benefits and cost of this rule using the lower bound cost estimate are shown in Table 5a. The estimated net benefits of this rule amount to $18 million in 2020, a benefit of $47 million in 2021, and a benefit of $79 million in 2022.

The benefits of this rule primarily include producer sales that are estimated to be due to the hemp provisions in the 2018 Farm Bill and this rule which enables those provisions. Gross revenues represent the best proxy for consumer willingness to pay and social benefits. [17] As the demand for and sales of hemp increase over time, the number of licensees is estimated to grow proportionally (for the purposes of this analysis). As a result, we estimate the number of licensees (State, Tribal, or Federal) to increase from roughly 7,584 in 2020 to 8,818 in 2021, to 10,054 in 2022 and beyond.

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[17] We note that if gross willingness-to-pay is presented as a regulatory benefit, then marginal costs of production must be included as a line item in the regulatory cost analysis. An alternative, reduced-form approach would be to include only producer surplus (or the related concept of profits) and consumer surplus in the benefits analysis.

Table 5. Estimated aggregate lower bound net benefits, 2020 to 2022

2020e	Producer sales		
	Producers	$ 25,500,000	
	Opportunity Cost		
	Society		$ (5,700,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (5,500,000)
	Licensing application burden		
	Producers		$ (416,000)
	USDA Plan Administration		
	USDA		$ (1,000,000)
	Sampling and testing fees (avg)		
	Producers		$ (9,763,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (117,000)
	Producers under USDA Plan		$ (35,000)
	FSA reporting cost		$ (215,000)
	Laboratories testing for THC		$ (400,000)
	Disposal Cost		$ (6,240,000)
	NET BENEFITS	$ (3,956,000)	
2021e	Producer sales		
	Producers	$ 64,500,000	
	Opportunity Cost		
	Society		$ (14,000,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (6,700,000)
	Licensing application burden		
	Producers		$ (77,000)
	USDA Plan Administration		
	USDA		$ (1,000,000)
	Sampling and testing fees (avg)		
	Producers		$ (11,565,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (134,000)
	Producers under USDA Plan		$ (35,000)
	FSA reporting cost		$ (255,000)
	Laboratories testing for THC		$ (474,000)
	Disposal Cost		$ (7,392,000)
	NET BENEFITS	$ 22,798,000	
2022e	Producer sales		
	Producers	$ 104,000,000	
	Opportunity Cost		
	Society		$ (23,000,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (8,000,000)
	Licensing application burden		
	Producers		$ (83,000)
	USDA Plan Administration		
	USDA		$ (1,000,000)
	Sampling and testing fees (avg)		
	Producers		$ (13,518,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (152,000)
	Producers under USDA Plan		$ (35,000)
	FSA reporting cost		$ (298,000)
	Laboratories testing for THC		$ (554,000)
	Disposal Cost		$ (8,640,000)
	NET BENEFITS	$ 48,650,000	

Table 5a. Estimated aggregate upper bound net benefits, 2020 to 2022

2020e	Producer sales		
	Producers	$ 25,500,000	
	Opportunity Cost		
	Society		$ (5,700,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (348,000)
	Licensing application burden		
	Producers		$ (23,000)
	USDA Plan Administration		
	USDA		$ (52,000)
	Sampling and testing fees (avg)		
	Producers		$ (601,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (117,000)
	Producers under USDA Plan		$ (1,000)
	FSA reporting cost		$ (215,000)
	Laboratories testing for THC		$ (400,000)
	Disposal Cost		$ (384,000)
	NET BENEFITS	$ 17,589,000	
2021e	Producer sales		
	Producers	$ 64,500,000	
	Opportunity Cost		
	Society		$ (14,000,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (870,000)
	Licensing application burden		
	Producers		$ (35,000)
	USDA Plan Administration		
	USDA		$ (130,000)
	Sampling and testing fees (avg)		
	Producers		$ (1,502,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (134,000)
	Producers under USDA Plan		$ (6,000)
	FSA reporting cost		$ (255,000)
	Laboratories testing for THC		$ (474,000)
	Disposal Cost		$ (960,000)
	NET BENEFITS	$ 46,064,000	
2022e	Producer sales		
	Producers	$ 104,000,000	
	Opportunity Cost		
	Society		$ (23,000,000)
	State and Tribal Plan administrative costs		
	Producers (through fees)		$ (1,392,000)
	Licensing application burden		
	Producers		$ (59,000)
	USDA Plan Administration		
	USDA		$ (208,000)
	Sampling and testing fees (avg)		
	Producers		$ (2,403,000)
	Reporting and recordkeeping		
	State and Tribal Plan staff		$ (70,000)
	Producers under State and Tribal Plan		$ (152,000)
	Producers under USDA Plan		$ (10,000)
	FSA reporting cost		$ (298,000)
	Laboratories testing for THC		$ (554,000)
	Disposal Cost		$ (1,536,000)
	NET BENEFITS	$ 74,318,000	

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The net benefits in each of the three years have been discounted to reflect their present value and annualized. The results of these calculations are presented in Table 6 at using a discount rate of three percent and in Table 6a using a discount rate of seven percent. The final result of this analysis indicates that this rule is estimated to have annual net benefits of between 23 and 47 million dollars at a discount rate of three percent and between 21 and 44 million dollars at a discount rate of seven percent.

TABLE 6—ANNUALIZED COSTS, BENEFITS, AND NET BENEFIT

[At 3 percent]

	Lower bound	Upper bound
Benefit	$65,810,000	$65,810,000
Cost	19,016,000	43,172,000
Net Benefit	46,794,000	22,638,000

TABLE 6a—ANNUALIZED COSTS, BENEFITS, AND NET BENEFIT

[At 7 percent]

	Lower bound	Upper bound
Benefit	$62,440,000	$62,440,000
Cost	18,053,000	41,283,000
Net Benefit	44,386,000	21,156,000

Regulatory Flexibility Analysis

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. AMS has prepared this Regulatory Flexibility Analysis and has determined that this rule will have a significant economic impact on a substantial number of small businesses because many small businesses will not be able to participate in the hemp market without this rule.

Reasons Action Is Being Considered

The Agriculture Improvement Act of 2018 mandates that States and Tribes submit to USDA plans for regulation of hemp to include procedures for information management, testing for THC, and compliance with the regulation. State and Tribal plans must be approved by USDA. If no State or Tribal Plan has been approved, then hemp producers in those States or Tribes may use the plan developed by USDA, unless prohibited by State or Tribal Law.

Potentially Affected Small Entities

The Small Business Administration (SBA) defines, in 13 CFR part 121, small agricultural producers as those having annual receipts of no more than $750,000. Unfortunately, very little data exists that shows the annual receipts of industrial hemp producers. To conduct this analysis, however, AMS utilized State acreage data and an estimate of gross revenue per acre received by producers calculated using the 2018 Processor/Handler Production Reports to the Kentucky Department of Agriculture. USDA seeks comments on other reliable data sources that may be available.

AMS used State acreage data by producer from three of the four States with the largest amount of licensed acreage to serve as a proxy for the portion of small producers nationwide. Together, Colorado, Oregon, and Kentucky make up about 47 percent of planted acreage and 45 percent of producer licenses nationwide, according to Vote Hemp data. While acreage data by producer was not available for Montana, its State department of agriculture reported that very few hemp operations in Montana received annual receipts in excess of $750,000 in 2018.

Vote Hemp estimates that on average, about 70 percent of licensed acreage is planted. AMS applied this percentage to 2018 licensed acreage data from Colorado, Oregon, and Kentucky to estimate 2018 cultivated acreage. The estimate of gross revenue per acre to producers of $3,293 was used to find the number of acres required to generate an annual receipt of $750,000. The result is shown in Table 7.

Table 7. Hemp producers meeting the SBA definition of a small business in 2018

Gross revenue per acre	Acreage for annual receipt of $750,000	Portion of producers considered small by SBA
$ 3,293	228	99%

With a gross revenue of $3,293 per acre, a producer with no more than 228 acres would be considered small under SBA standards. Based on this estimate of gross revenue per acre, 99 percent of producers would meet the SBA definition of a small agricultural service firm. ''Using estimated costs from the RIA, anticipated costs per entity that want to enter the hemp industry are expected to be about $2,941 in 2020, and $2,900 in 2021. However, entry into this market is voluntary and benefits are anticipated to outweigh the estimated costs.''

Alternatives To Minimize Impacts of the Rule

The actions in this rule are mandated by the 2018 Farm Bill, which enables States, Tribes, and USDA to establish rules and regulations for the domestic production of hemp. The statute requires USDA to develop criteria for approval of plans submitted by State and Tribal governments for regulation of domestic hemp production. If no State or Tribal Plan has been approved, then hemp producers in these States or Tribes may utilize the plan developed by USDA. These plans will promote consistency in regulations governing the legal production of hemp across the U.S.

In developing the sampling procedures for the Federal Plan, AMS considered the protocols for sampling used by State departments of agriculture and by countries that regulate hemp production. In addition, AMS reviewed sampling methods recommended by Codex Alimentarius, which is the

central part of the Joint Food and Agriculture Organization (FAO)/World Health Organization (WHO) Food Standards Program and was established by FAO and WHO to protect consumer health and promote fair practices in food trade. After research and review of multiple sampling protocols, AMS adopted the best option among the alternatives.

The 2018 Farm Bill mandates testing using post-decarboxylation or other similarly reliable methods where the total THC concentration level considers the potential to convert delta-9-tetrahydrocannabinolic *acid* (THC-A) into THC. Testing methodologies meeting these requirements include those using gas or liquid chromatography with detection. These methods are the industry standard for post-decarboxylation testing. While these methods were chosen by AMS as the best option for testing, alternative sampling and testing protocols will be considered if they are comparable to the baseline mandated by the 2018 Farm Bill and established under the USDA Plan and Procedures.

Alternatives to the selected procedures for sampling and testing for THC content included connecting a producer lot of cultivated hemp to a standard unit of measure. AMS considered describing one lot as one acre of hemp. This alternative was abandoned, however, as it would have required every acre of hemp to be sampled and tested, which would have resulted in high costs to producers and overwhelming volume to laboratories.

Good Cause Analysis

Pursuant to the Administrative Procedure Act (APA), notice and comment are not required prior to the issuance of a final rule if an agency, for good cause, finds that ''notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' (5 U.S.C. 553(b)(B)).

USDA recognizes that courts have held that the good cause exception to notice and comment rulemaking is to be narrowly construed and only reluctantly countenanced. USDA does not take lightly its decision to forego a formal notice and comment process, but under a totality of the circumstances analysis, has concluded that this interim final rule (IFR), accompanied by a 60-day comment period, best balances Congress's interest in the expeditious implementation of a regulatory program for domestic hemp production with its longstanding interest in ensuring that an agency's decisions be informed and responsive. The IFR will also provide sorely needed guidance to the many stakeholders whose coordinated efforts are critical to the success of the domestic hemp production economy, and will serve the public's interest by expediting hemp entry into that market.

Congress's intention that USDA expeditiously develop a regulatory program for domestic hemp production is clear from language in the Agriculture Improvement Act of 2018, Public Law 115–334 (2018 Farm Bill), which the President signed into law on December 20, 2018. The 2018 Farm Bill amended the Agricultural Marketing Act of 1946 (Act) (7 U.S.C. 1621 *et seq.*) by adding subtitle G, Hemp Production. Upon enactment of the 2018 Farm Bill, hemp, as defined therein, is no longer a controlled substance. Section 10114 of the 2018 Farm Bill further clarifies that the interstate commerce of hemp is not prohibited, and that States and Indian Tribes cannot prohibit the transportation or shipment of hemp or hemp products produced in accordance with the Agricultural Marketing Act of 1946 through the State or territory of the Indian Tribe. However, the Act also states that it is unlawful to produce hemp unless produced pursuant to a State, Tribal, or USDA plan. *See* 7 U.S.C. 1639p(a)(1) and 1639q(c)(1). Congress provided that the Secretary approve or disapprove of any State or Tribal plan within 60 days of its submission. 7 U.S.C. 1639(p)(b).

In order to meet this 60-day approval deadline, Congress understood that USDA would need time to establish its own plan and develop a process for quickly (*i.e.,* within 60 days of submission) approving or disapproving of State and Tribal plans. Although the Act does not contain an express end-date by which such regulations and guidelines must be issued, in section 10113 of the 2018 Farm Bill, Congress provided that ''[t]he Secretary shall promulgate regulations and guidelines to implement this subtitle as *expeditiously as practicable.*'' (emphasis added). ''To ensure that the Secretary moved forward with issuing regulations in as timely a fashion as possible,'' the Act requires the Secretary to ''periodically report to Congress with updates regarding implementation of this title.'' H.R. Rep. 115–1072, at 738 (Dec. 10, 2018) (Conf. Rep.).

USDA takes seriously Congress's directive to issue regulations as expeditiously as practicable. USDA also understands that while Congress did not expect USDA to issue regulations within 60 days, it also did not anticipate the process extending two years into 2021. This is apparent from Congress's continued legislation on hemp. In Section 107 of the Additional Supplemental Appropriations for Disaster Relief Act, 2019, Public Law 116–20, (Disaster Relief Act), Congress required: ''Beginning not later than the 2020 reinsurance year, the Federal Crop Insurance Corporation [FCIC] shall offer coverage under the whole farm revenue protection insurance policy (or a successor policy or plan of insurance) for hemp (as defined in section 297A of the Agricultural Marketing Act of 1946 (7 U.S.C. 1639o)).'' Congress anticipated that regulations governing the interstate commerce of hemp would be issued prior to 2020; otherwise, the deadline in Section 107 of the Disaster Relief Act would be irrelevant. Additionally, several Members of Congress and Senators urged USDA to expedite the rulemaking or take steps to allow farmers to begin hemp production in 2019.

Despite USDA's diligence, the complexity of establishing a new regulatory program for domestic hemp production, a crop that could not be legally grown on a commercial basis under Federal law for several decades, has taken a substantial amount of time and resources. Adding a formal notice and comment period on top of that would push the effective date of USDA's domestic hemp production regulatory program well beyond 2020 and into 2021. This IFR effectuates Congress's will, which is one of several factors that provide good cause to justify foregoing a notice and comment period.

A second factor justifying good cause is that this rule not only affects AMS's ability to implement the congressionally mandated regulatory framework for a domestic program, but also provides critical guidance to numerous stakeholders that anxiously await the publication of this IFR. The FCIC's insurance policy program discussed above is just one of these. For FCIC to offer the whole farm revenue protection insurance policy in 2020 to lawful producers of hemp under the Act, the IFR must take effect this fall to provide the Risk Management Agency (RMA) sufficient time to take the necessary steps to authorize FCIC to offer the insurance coverage and for producers to engage in activities to qualify for the coverage for their hemp production.

In addition, the FSA, the Rural Business-Cooperative Service, and the Natural Resources and Conservation Service provide financial incentives and support used by agricultural producers and private sector entities. These agencies similarly need regulatory guidance to develop commercial instruments such as loan documents, re-insurance contracts, and commodity

disaster program provisions that are typically done on a crop year basis.

Individuals and commercial entities also need the IFR's guidance to engage in the production, harvesting, transportation, storage, and processing of hemp and hemp products. Absent an interim rule promptly implementing the regulatory program required by the 2018 Farm Bill, there are no procedures in place to determine whether a cannabis crop qualifies as hemp as defined in section 297A of the Agricultural Marketing Act of 1946. It is necessary to issue the IFR now to provide individuals and entities sufficient time to make the required plans and purchases and to obtain financing ahead of planting hemp in 2020.

The banking industry is awaiting these regulations in order to develop guidance regarding deposits derived from hemp operations. Without these regulations, the banking industry is not willing to take the risk of accepting deposits or lending money to these businesses. Additionally, with the IFR effective this fall, producers will be able to plan and execute the steps necessary to plant during the 2020 crop year. Those steps include identifying the land and acreage for the planting, contract for seed and other supplies, obtain financing, and identify and contract with potential buyers. Those steps are also necessary for producers to qualify for the USDA programs and products described above.

Finally, and importantly, law enforcement needs guidance from the IFR. While the States and Tribes may not prohibit the transportation of hemp produced under the 2014 Farm Bill, law enforcement does not currently have the means to quickly verify whether the cannabis being transported is hemp or marijuana. The IFR will assist law enforcement in identifying lawfully-produced hemp versus other forms of cannabis that may not be lawfully transported in interstate commerce.

Adding a formal notice and comment period would push the effective date of USDA's regulatory program well beyond 2020 and into 2021 and delay the guidance these stakeholders sorely need.

A third factor justifying good cause for this rule is that the Administrator has solicited comments through listening sessions and webinar that solicited the public participation and consultations with State and Tribal officials.[18] He is also allowing for a 60-day comment period for this IFR. The Administrator recognizes the value of public comment to refine the IFR and will keep an open mind as to any and all comment submissions. All written comments timely received will be considered before a final determination is made on this matter.

Finally, a fourth factor justifying good cause for the IFR is the public's interest in expediting the ability of the nation's farmers to enter the new agricultural market presented by hemp. As explained in the regulatory impact analysis above, USDA estimates that the industry should gain annualized benefits of almost $66 million once the rule becomes effective and the domestic hemp production program is implemented. Any delay in the issuing regulations will cause producers to forgo realizing those benefits in 2020. In fact, earlier this year, USDA faced litigation from a party who believed that the language in 7 U.S.C. 1639(p)(b) required USDA to approve State and tribal plans submitted to it in 60 days as soon as the law went into effect. *See Flandreau Santee Sioux Tribe* v. *United States Dep't of Agriculture et al.,* 4:19–cv–04094–KES (D.S.D.). The end of the spring planting season temporarily lowered the urgency felt by farmers seeking to enter the hemp market, but fall preparations for spring 2020's planting season are fast approaching. USDA has no doubt that it will again be subject to litigation if the IFR is not adopted in time for parties to prepare for the 2020 spring planting season.

Accordingly, the Administrator finds that, under the totality of the circumstances presented, there is good cause to forego notice and comment through the issuance of a notice of proposed rulemaking. By publishing this rule and making it effective this fall, USDA is complying with Congress's will, providing sorely needed guidance to all stakeholders, permitting public comment, and serving the public's interest in engaging in a new and promising economic endeavor. For similar reasons, the Administrator also finds good cause for the IFR to be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 990

Acceptable hemp THC level, Agricultural commodities, Cannabis, Corrective action plan, Delta-9 tetrahydrocannabinol, Drugs, Dry weight basis, Hemp, High-performance liquid chromatography, Laboratories, Marijuana.

■ For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, add 7 CFR part 990 to read as follows:

PART 990—DOMESTIC HEMP PRODUCTION PROGRAM

Subpart A—Definitions

Sec.
990.1 Meaning of terms.

Subpart B—State and Tribal Hemp Production Plans

990.2 State and Tribal plans; General authority.
990.3 State and Tribal plans; Plan requirements.
990.4 USDA approval of State and Tribal plans.
990.5 Audit of State or Tribal plan compliance.
990.6 Violations of State and Tribal plans.
990.7 Establishing records with USDA Farm Service Agency.
990.8 Production under Federal law.

Subpart C—USDA Hemp Production Plan

990.20 USDA requirements for the production of hemp.
990.21 USDA hemp producer license.
990.22 USDA hemp producer license approval.
990.23 Reporting hemp crop acreage with USDA Farm Service Agency.
990.24 Responsibility of a USDA licensed producer prior to harvest.
990.25 Standards of performance for detecting delta-9 tetrahydrocannabinol (THC) concentration levels.
990.26 Responsibility of a USDA producer after laboratory testing is performed.
990.27 Non-compliant cannabis plants.
990.28 Compliance.
990.29 Violations.
990.30 USDA producers; License suspension.
990.31 USDA licensees; Revocation.
990.32 Recordkeeping requirements.

Subpart D—Appeals

990.40 General adverse action appeal process.
990.41 Appeals under the USDA hemp production plan.
990.42 Appeals under a State or Tribal hemp production plan.

Subpart E—Administrative Provisions

990.60 Agents.
990.61 Severability.
990.62 Expiration of this part.
990.63 Interstate transportation of hemp.

Subpart F—Reporting Requirements

990.70 State and Tribal hemp reporting requirements.
990.71 USDA plan reporting requirements.

Authority: 7 U.S.C. 1639o note, 1639p, 16939q, and 1639r.

Subpart A—Definitions

§ 990.1 Meaning of terms.

Words used in this subpart in the singular form shall be deemed to impart the plural, and vice versa, as the case may demand. For the purposes of

[18] For example, public comments from the March 19, 2019 webinar can be found at *https://www.ams.usda.gov/rules-regulations/farmbill-hemp/webinar-comments.*

provisions and regulations of this part, unless the context otherwise requires, the following terms shall be construed, respectively, to mean:

Acceptable hemp THC level. When a laboratory tests a sample, it must report the delta-9 tetrahydrocannabinol content concentration level on a dry weight basis and the measurement of uncertainty. The acceptable hemp THC level for the purpose of compliance with the requirements of State, Tribal, or USDA hemp plans is when the application of the measurement of uncertainty to the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis produces a distribution or range that includes 0.3% or less. For example, if the reported delta-9 tetrahydrocannabinol content concentration level on a dry weight basis is 0.35% and the measurement of uncertainty is +/−0.06%, the measured delta-9 tetrahydrocannabinol content concentration level on a dry weight basis for this sample ranges from 0.29% to 0.41%. Because 0.3% is within the distribution or range, the sample is within the acceptable hemp THC level for the purpose of plan compliance. This definition of ''acceptable hemp THC level'' affects neither the statutory definition of hemp, 7 U.S.C. 1639o(1), in the 2018 Farm Bill nor the definition of ''marihuana,'' 21 U.S.C. 802(16), in the CSA.

Act. Agricultural Marketing Act of 1946.

Agricultural Marketing Service or *AMS.* The Agricultural Marketing Service of the U.S. Department of Agriculture.

Applicant. An applicant is:

(1) A State or Indian Tribe that has submitted a State or Tribal hemp production plan to USDA for approval under this part; or

(2) A producer in a State or territory of an Indian Tribe who is not subject to a State or Tribal hemp production plan and who has submitted an application for a license under the USDA hemp production plan under this part.

Cannabis. A genus of flowering plants in the family Cannabaceae of which *Cannabis sativa* is a species, and *Cannabis indica* and *Cannabis ruderalis* are subspecies thereof. Cannabis refers to any form of the plant in which the delta-9 tetrahydrocannabinol concentration on a dry weight basis has not yet been determined.

Controlled Substances Act (CSA). The Controlled Substances Act as codified in 21 U.S.C. 801 *et seq.*

Conviction. Means any plea of guilty or nolo contendere, or any finding of guilt, except when the finding of guilt is subsequently overturned on appeal, pardoned, or expunged. For purposes of this part, a conviction is expunged when the conviction is removed from the individual's criminal history record and there are no legal disabilities or restrictions associated with the expunged conviction, other than the fact that the conviction may be used for sentencing purposes for subsequent convictions. In addition, where an individual is allowed to withdraw an original plea of guilty or nolo contendere and enter a plea of not guilty and the case is subsequently dismissed, the individual is no longer considered to have a conviction for purposes of this part.

Corrective action plan. A plan established by a State, Tribal government, or USDA for a licensed hemp producer to correct a negligent violation or non-compliance with a hemp production plan and this part.

Criminal History Report. Criminal history report means the Federal Bureau of Investigation's Identity History Summary.

Culpable mental state greater than negligence. To act intentionally, knowingly, willfully, or recklessly.

Decarboxylated. The completion of the chemical reaction that converts THC-acid (THC-A) into delta-9-THC, the intoxicating component of cannabis. The decarboxylated value is also calculated using a conversion formula that sums delta-9-THC and eighty-seven and seven tenths (87.7) percent of THC-acid.

Decarboxylation. The removal or elimination of carboxyl group from a molecule or organic compound.

Delta-9 tetrahydrocannabinol or *THC.* Delta-9-THC is the primary psychoactive component of cannabis. For the purposes of this part, delta-9-THC and THC are interchangeable.

Drug Enforcement Administration or DEA. The United States Drug Enforcement Administration.

Dry weight basis. The ratio of the amount of moisture in a sample to the amount of dry solid in a sample. A basis for expressing the percentage of a chemical in a substance after removing the moisture from the substance. Percentage of THC on a dry weight basis means the percentage of THC, by weight, in a cannabis item (plant, extract, or other derivative), after excluding moisture from the item.

Entity. A corporation, joint stock company, association, limited partnership, limited liability partnership, limited liability company, irrevocable trust, estate, charitable organization, or other similar organization, including any such organization participating in the hemp production as a partner in a general partnership, a participant in a joint venture, or a participant in a similar organization.

Farm Service Agency or *FSA.* An agency of the United States Department of Agriculture.

Gas chromatography or *GC.* A type of chromatography in analytical chemistry used to separate, identify, and quantify each component in a mixture. GC relies on heat for separating and analyzing compounds that can be vaporized without decomposition.

Geospatial location. For the purposes of this part, ''geospatial location'' means a location designated through a global system of navigational satellites used to determine the precise ground position of a place or object.

Handle. To harvest or store hemp plants or hemp plant parts prior to the delivery of such plants or plant parts for further processing. ''Handle'' also includes the disposal of cannabis plants that are not hemp for purposes of chemical analysis and disposal of such plants.

Hemp. The plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis.

High-performance liquid chromatography or *HPLC.* A type of chromatography technique in analytical chemistry used to separate, identify, and quantify each component in a mixture. HPLC relies on pumps to pass a pressurized liquid solvent containing the sample mixture through a column filled with a solid adsorbent material to separate and analyze compounds.

Indian Tribe. As defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304).

Information sharing system. The database mandated under the Act which allows USDA to share information collected under State, Tribal, and USDA plans with Federal, State, Tribal, and local law enforcement.

Key participants. A sole proprietor, a partner in partnership, or a person with executive managerial control in a corporation. A person with executive managerial control includes persons such as a chief executive officer, chief operating officer and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

Law enforcement agency. Any Federal, State, or local law enforcement agency.

Lot. A contiguous area in a field, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

Marijuana. As defined in the CSA, ''marihuana'' means all parts of the plant Cannabis sativa L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. The term 'marihuana' does not include hemp, as defined in section 297A of the Agricultural Marketing Act of 1946, and does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination (7 U.S.C. 1639o). ''Marihuana'' means all cannabis that tests as having a concentration level of THC on a dry weight basis of higher than 0.3 percent.

Measurement of Uncertainty (MU). The parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement.

Negligence. Failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulations set forth under this part.

Phytocannabinoid. Cannabinoid chemical compounds found in the cannabis plant, two of which are Delta-9 tetrahydrocannabinol (delta-9 THC) and cannabidiol (CBD).

Plan. A set of criteria or regulations under which a State or Tribal government, or USDA, monitors and regulates the production of hemp.

Postdecarboxylation. In the context of testing methodologies for THC concentration levels in hemp, means a value determined after the process of decarboxylation that determines the total potential delta-9 tetrahydrocannabinol content derived from the sum of the THC and THC-A content and reported on a dry weight basis. The postdecarboxylation value of THC can be calculated by using a chromatograph technique using heat, gas chromatography, through which THCA is converted from its acid form to its neutral form, THC. Thus, this test calculates the total potential THC in a given sample. The postdecarboxylation value of THC can also be calculated by using a high-performance liquid chromatograph technique, which keeps the THC-A intact, and requires a conversion calculation of that THC-A to calculate total potential THC in a given sample. See the definition for decarboxylation.

Produce. To grow hemp plants for market, or for cultivation for market, in the United States.

Producer. Producer means a producer as defined in 7 CFR 718.2 that is licensed or authorized to produce hemp under this part.

Reverse distributor. A person who is registered with the DEA in accordance with 21 CFR 1317.15 to dispose of marijuana under the Controlled Substances Act.

Secretary. The Secretary of Agriculture of the United States.

State. Any one of the fifty States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and any other territory or possession of the United States.

State department of agriculture. The agency, commission, or department of a State government responsible for agriculture in the State.

Territory of the Indian Tribe has the same meaning as ''Indian Country'' in 18 U.S.C. 1151.

Tribal government. The governing body of an Indian Tribe.

USDA licensed hemp producer or licensee. A person, partnership, or corporation authorized by USDA to produce hemp.

Subpart B—State and Tribal Hemp Production Plans

§ 990.2 State and Tribal plans; General authority.

States or Indian Tribes desiring to have primary regulatory authority over the production of hemp in the State or territory of the Indian Tribe for which it has jurisdiction shall submit to the Secretary for approval, through the State department of agriculture (in consultation with the Governor and chief law enforcement officer of the State) or the Tribal government, as applicable, a plan under which the State or Indian Tribe monitors and regulates that production.

§ 990.3 State and Tribal plans; Plan requirements.

(a) *General requirements.* A State or Tribal plan submitted to the Secretary for approval must include the practice and procedures described in this paragraph (a).

(1) A State or Tribal plan must include a practice to collect, maintain, and report to the Secretary relevant, real-time information for each producer licensed or authorized to produce hemp under the State or Tribal plan regarding:

(i) Contact information as described in § 990.70(a)(1);

(ii) A legal description of the land on which the producer will produce hemp in the State or territory of the Indian Tribe including, to the extent practicable, its geospatial location; and

(iii) The status and number of the producer's license or authorization.

(2) A State or Tribal plan must include a procedure for accurate and effective sampling of all hemp produced, to include the requirements in this paragraph (a)(2).

(i) Within 15 days prior to the anticipated harvest of cannabis plants, a Federal, State, local, or Tribal law enforcement agency or other Federal, State, or Tribal designated person shall collect samples from the flower material from such cannabis plants for delta-9 tetrahydrocannabinol concentration level testing as described in §§ 990.24 and 990.25.

(ii) The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

(iii) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.

(iv) Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(v) A producer shall not harvest the cannabis crop prior to samples being taken.

(3) A State or Tribal plan must include a procedure for testing that is able to accurately identify whether the sample contains a delta-9 tetrahydrocannabinol content concentration level that exceeds the acceptable hemp THC level. The procedure must include a validated testing methodology that uses postdecarboxylation or other similarly reliable methods. The testing

methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic *acid* (THC-A) in hemp into THC and the test result measures total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this paragraph (a)(3) include, but are not limited to, gas or liquid chromatography with detection. The total THC concentration level shall be determined and reported on a dry weight basis.

(i) Any test of a representative sample resulting in higher than the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part. Lots tested and not certified by the DEA-registered laboratory at or below the acceptable hemp THC level may *not* be further handled, processed or enter the stream of commerce and the producer shall ensure the lot is disposed of in accordance with § 990.27.

(ii) Samples of hemp plant material from one lot shall not be commingled with hemp plant material from other lots.

(iii) Analytical testing for purposes of detecting the concentration levels of THC shall meet the following standards:

(A) Laboratory quality assurance must ensure the validity and reliability of test results;

(B) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose), and that the laboratory can successfully perform the testing;

(C) The demonstration of testing validity must ensure consistent, accurate analytical performance;

(D) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part; and

(E) An effective disposal procedure for hemp plants that are produced that do not meet the requirements of this part. The procedure must be in accordance with DEA reverse distributor regulations found at 21 CFR 1317.15.

(F) Measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(4) A State or Indian Tribe shall promptly notify the Administrator by certified mail or electronically of any occurrence of cannabis plants or plant material that do not meet the definition of hemp in this part and attach the records demonstrating the appropriate disposal of all of those plants and materials in the lot from which the representative samples were taken.

(5) A State or Tribal plan must include a procedure to comply with the enforcement procedures in § 990.6.

(6) A State or Tribal plan must include a procedure for conducting annual inspections of, at a minimum, a random sample of producers to verify that hemp is not produced in violation of this part. These procedures must enforce the terms of violations as stated in the Act and defined under § 990.6.

(7) A State or Tribal plan must include a procedure for submitting the information described in § 990.70 to the Secretary not more than 30 days after the date on which the information is received. All such information must be submitted to the USDA in a format that is compatible with USDA's information sharing system.

(8) The State or Tribal government must certify that the State or Indian Tribe has the resources and personnel to carry out the practices and procedures described in paragraphs (a)(1) through (7) of this section.

(9) The State or Tribal plan must include a procedure to share information with USDA to support the information sharing requirements in 7 U.S.C. 1639q(d). The procedure must include the requirements described in this paragraph (a)(9).

(i) The State or Tribal plan shall require producers to report their hemp crop acreage to the FSA, consistent with the requirement in § 990.7.

(ii) The State or Tribal government shall assign each producer with a license or authorization identifier in a format prescribed by USDA.

(iii) The State or Tribal government shall require producers to report the total acreage of hemp planted, harvested, and, if applicable, disposed. The State or Tribal government shall collect this information and report it to AMS.

(b) *Relation to State and Tribal law.* A State or Tribal plan may include any other practice or procedure established by a State or Indian Tribe, as applicable; *Provided,* That the practice or procedure is consistent with this part and Subtitle G of the Act.

(1) *No preemption.* Nothing in this part preempts or limits any law of a State or Indian Tribe that:

(i) Regulates the production of hemp; and

(ii) Is more stringent than this part or Subtitle G of the Act.

(2) *References in plans.* A State or Tribal plan may include a reference to a law of the State or Indian Tribe regulating the production of hemp, to the extent that the law is consistent with this part.

§ 990.4 USDA approval of State and Tribal plans.

(a) *General authority.* No plans will be accepted by USDA prior to October 31, 2019. No later than 60 calendar days after the receipt of a State or Tribal plan for a State or Tribal Nation in which production of hemp is legal, the Secretary shall:

(1) Approve the State or Tribal plan only if the State or Tribal plan complies with this part; or

(2) Disapprove the State or Tribal plan if the State or Tribal plan does not comply with this part. USDA shall provide written notification to the State or Tribe of the disapproval and the cause for the disapproval.

(b) *Amended plans.* A State or Tribal government, as applicable, must submit to the Secretary an amended plan if:

(1) The Secretary disapproves a State or Tribal plan if the State or Tribe wishes to have primary jurisdiction over hemp production within its State or territory of the Indian Tribe; or

(2) The State or Tribe makes substantive revisions to its plan or its laws which alter the way the plan meets the requirements of this part. If this occurs, the State or Tribal government must re-submit the plan with any modifications based on laws and regulation changes for USDA approval. Such re-submissions should be provided to USDA within 365 days from the date that the State or Tribal laws and regulations are effective. Producers shall continue to comply with the requirements of the existing plan while such modifications are under consideration by USDA. If State or Tribal government laws or regulations in effect under the USDA-approved plan change but the State or Tribal government does not re-submit a modified plan within one year from the effective date of the new law or regulation, the existing plan is revoked.

(3) USDA approval of State or Tribal government plans shall remain in effect unless an amended plan must be submitted to USDA because of a substantive revision to a State's or Tribe's plan, a relevant change in State or Tribal laws or regulations, or approval of the plan is revoked by USDA.

(c) *Technical assistance.* The Secretary may provide technical assistance to help a State or Indian Tribe develop or amend a plan. This may include the review of draft plans or other informal consultation as necessary.

(d) *Approved State or Tribal plans.* If the Secretary approves a State or Tribal plan, the Secretary shall notify the State or Tribe by letter or email.

(1) In addition to the approval letter, the State or Tribe shall receive their plan approval certificate either as an attachment or assessable via website link.

(2) The USDA shall post information regarding approved plans on its website.

(3) USDA approval of State or Tribal government plans shall remain in effect unless:

(i) The State or Tribal government laws and regulations in effect under the USDA-approved plan change, thus requiring such plan to be re-submitted for USDA approval.

(ii) A State or Tribal plan must be amended in order to comply with amendments to Subtitle G the Act and this part.

(e) *Producer rights upon revocation of State or Tribal plan.* If USDA revokes approval of the State or Tribal plan due to noncompliance as defined in § 990.5, producers licensed or authorized to produce hemp under the revoked State or Tribal plan may continue to produce for the remainder of the calendar year in which the revocation became effective. Producers may then apply to be licensed under the USDA plan for 90 days after the notification even if the time period does note coincide with the annual application window.

§ 990.5 Audit of State or Tribal plan compliance.

The Secretary may conduct an audit of the compliance of a State or Indian Tribe with an approved plan.

(a) *Frequency of audits.* Compliance audits may be scheduled, at minimum, once every three years and may include an onsite-visit, a desk-audit, or both. The USDA may adjust the frequency of audits if deemed appropriate based on program performance, compliance issues, or other relevant factors identified and provided to the State or Tribal governments by USDA.

(b) *Scope of audit review.* The audit may include, but is not limited to, a review of the following:

(1) The resources and personnel employed to administer and oversee its approved plan;

(2) The process for licensing and systematic compliance review of hemp producers;

(3) Sampling methods and laboratory testing requirements and components;

(4) Disposal of non-compliant hemp plants or hemp plant material practices, to ensure that correct reporting to the USDA has occurred;

(5) Results of and methodology used for the annual inspections of producers; and

(6) Information collection procedures and information accuracy (*i.e.,* geospatial location, contact information reported to the USDA, legal description of land).

(c) *Audit reports.* (1) Audit reports will be issued to the State or Tribal government within 60 days after the audit concluded. If the audit reveals that the State or Tribal government is not in compliance with its USDA approved plan, USDA will advise the State or Indian Tribe of non-compliances and the corrective measures that must be completed to come into compliance with the regulations in this part. The USDA will require the State or Tribe to develop a corrective action plan, which will be reviewed and approved by the USDA, and the State or Tribe will be able to demonstrate its compliance with the regulations in this part through a second audit by USDA. If the State or Tribe requests USDA assistance to develop a corrective action plan in the case of a first instance of noncompliance, the State or Tribe must request this assistance not later than 30 days after the issuance of the audit report. The USDA will approve or deny the corrective action plan within 60 days of its receipt.

(2) If the USDA determines that the State or Indian Tribe is not in compliance after the second audit, the USDA may revoke its approval of the State or Tribal plan for a period not to exceed one year. USDA will not approve a State or Indian Tribe's plan until the State or Indian Tribe demonstrates upon inspection that it is in compliance with all regulations in this part.

§ 990.6 Violations of State and Tribal plans.

(a) *Producer violations.* Producer violations of USDA-approved State and Tribal hemp production plans shall be subject to enforcement in accordance with the terms of this section.

(b) *Negligent violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to negligent producer violations as defined under this part. Negligent violations shall include, but not be limited to:

(1) Failure to provide a legal description of land on which the producer produces hemp;

(2) Failure to obtain a license or other required authorization from the State department of agriculture or Tribal government, as applicable; or

(3) Production of cannabis with a delta-9 tetrahydrocannabinol concentration exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (b)(3) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis.

(c) *Corrective action for negligent violations.* Each USDA-approved State or Tribal plan shall contain rules and regulations providing for the correction of negligent violations. Each correction action plan shall include, at minimum, the following terms:

(1) A reasonable date by which the producer shall correct the negligent violation.

(2) A requirement that the producer shall periodically report to the State department of agriculture or Tribal government, as applicable, on its compliance with the State or Tribal plan for a period of not less than the next 2 years from the date of the negligent violation.

(3) A producer that negligently violates a State or Tribal plan approved under this part shall not as a result of that violation be subject to any criminal enforcement action by the Federal, State, Tribal, or local government.

(4) A producer that negligently violates a USDA-approved State or Tribal plan three times in a 5-year period shall be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(5) The State or Tribe shall conduct an inspection to determine if the corrective action plan has been implemented as submitted.

(d) *Culpable violations.* Each USDA-approved State or Tribal plan shall contain provisions relating to producer violations made with a culpable mental state greater than negligence, including that:

(1) If the State department of agriculture or Tribal government with an approved plan determines that a producer has violated the plan with a culpable mental state greater than negligence, the State department of agriculture or Tribal government, as applicable, shall immediately report the producer to:

(i) The U.S. Attorney General; and

(ii) The chief law enforcement officer of the State or Indian Tribe, as applicable.

(2) Paragraphs (b) and (c) of this section shall not apply to culpable violations.

(e) *Felonies.* Each USDA-approved State or Tribal plan shall contain provisions relating to felonies. Such provisions shall state that:

(1) A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in the plan and producing hemp under the State or Tribal plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before that date.

(2) Any producer growing hemp lawfully with a license, registration, or authorization under a pilot program authorized by section 7606 of the Agricultural Act of 2014 (7 U.S.C. 5940) before October 31, 2019 shall be exempted from paragraph (e)(1) of this section.

(3) For producers that are entities, the State or Tribal plan shall determine which employee(s) of a producer shall be considered to be participating in the plan and subject to the felony conviction restriction for purposes of paragraph (e)(1) of this section.

(f) *False statement.* Each USDA-approved State or Tribal plan shall state that any person who materially falsifies any information contained in an application to participate in such program shall be ineligible to participate in that program.

(g) *Appeals.* For States and Tribes who wish to appeal an adverse action, subpart D of this part will apply.

§ 990.7 Establishing records with USDA Farm Service Agency.

All producers licensed to produce hemp under an USDA-approved State or Tribal plan shall report hemp crop acreage with FSA and shall provide, at minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location for each lot or greenhouse where hemp will be produced. If an applicant operates in more than one location, that information shall be provided for all production sites.

(b) If an applicant has production sites licensed under a USDA-approved State or Tribal plan, those sites will be covered under the respective plan and will not need to be included under the producer's application to become licensed under the USDA plan.

(c) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(d) License or authorization identifier.

§ 990.8 Production under Federal law.

Nothing in this subpart prohibits the production of hemp in a State or the territory of an Indian Tribe for which a State or Tribal plan is not approved under this subpart if the production of that hemp is in accordance with subpart C of this part, and if the production of hemp is not otherwise prohibited by the State or Indian Tribe.

Subpart C—USDA Hemp Production Plan

§ 990.20 USDA requirements for the production of hemp.

(a) *General hemp production requirements.* The production of hemp in a State or territory of an Indian Tribe where there is no USDA approved State or Tribal plan must be produced in accordance with this subpart provided that the production of hemp is not prohibited by the State or territory of an Indian Tribe where production will occur.

(b) *Convicted felon ban.* A person with a State or Federal felony conviction relating to a controlled substance is subject to a 10-year ineligibility restriction on participating in the plan and producing hemp under the USDA plan from the date of the conviction. An exception applies to a person who was lawfully growing hemp under the 2014 Farm Bill before December 20, 2018, and whose conviction also occurred before December 20, 2018.

(c) *Falsifying material information on application.* Any person who materially falsifies any information contained in an application to for a license under the USDA plan shall be ineligible to participate in the USDA plan.

§ 990.21 USDA hemp producer license.

(a) *General application requirements*—(1) *Requirements and license application.* Any person producing or intending to produce hemp must have a valid license prior to producing, cultivating, or storing hemp. A valid license means the license is unexpired, unsuspended, and unrevoked.

(2) *Application window.* Applicants may submit an application for a new license to USDA between December 2, 2019 and November 2, 2020. In subsequent years, applicants may submit an application for a new license or renewal of an existing license to USDA from August 1 through October 31 of each year.

(3) *Required information on application.* The applicant shall provide the information requested on the application form, including:

(i) *Contact information.* Full name, residential address, telephone number and email address. If the applicant is a business entity, the full name of the business, the principal business location address, full name and title of the key participants, title, email address (if available) and employer identification number (EIN) of the business; and

(ii) *Criminal history report.* A current criminal history report for all key participants dated within 60 days prior to the application submission date. A license application will not be considered complete without all required criminal history reports.

(4) *Submission of completed application forms.* Completed application forms shall be submitted to USDA.

(5) *Incomplete application procedures.* Applications missing required information shall be returned to the applicant as incomplete. The applicant may resubmit a completed application.

(6) *License expiration.* USDA-issued hemp producer licenses shall be valid until December 31 of the year three years after the year in which license was issued.

(b) *License renewals.* USDA hemp producer licenses must be renewed prior to license expiration. Licenses are not automatically renewed. Applications for renewal shall be subject to the same terms, information collection requirements, and approval criteria as provided in this subpart for initial applications unless there has been an amendment to the regulations in this part or the law since approval of the initial or last application.

(c) *License modification.* A license modification is required if there is any change to the information submitted in the application including, but not limited to, sale of a business, the production, handling, or storage of hemp in a new location, or a change in the key participants producing under a license.

§ 990.22 USDA Hemp producer license approval.

(a) A license shall not be issued unless:

(1) The application submitted for USDA review and approval is complete and accurate.

(2) The criminal history report(s) submitted with the license application confirms that all key participants to be covered by the license have not been convicted of a felony, under State or Federal law, relating to a controlled substance within the past ten (10) years unless the exception in § 990.20(b) applies.

(3) The applicant has submitted all reports required as a participant in the hemp production program by this part.

(4) The application contains no materially false statements or misrepresentations and the applicant has not previously submitted an application with any materially false statements or misrepresentations.

(5) The applicant's license is not currently suspended.

(6) The applicant is not applying for a license as a stand-in for someone whose license has been suspended, revoked, or is otherwise ineligible to participate.

(7) The State or territory of Indian Tribe where the person produces or intends to produce hemp does not have a USDA-approved plan or has not submitted a plan to USDA for approval and is awaiting USDA's decision. For the first year, USDA will not accept request for licenses under the USDA plan until December 2, 2019 to allow States and Tribes to submit their plans.

(8) The State or territory of Indian Tribe where the person produces or intends to produce hemp does not prohibit the production of hemp.

(b) USDA shall provide written notification to applicants whether the application has been approved or denied unless the applicant is from a State or territory of an Indian Tribe that has a plan submitted to USDA and is awaiting USDA approval.

(1) If an application is approved, a license will be issued. Information regarding approved licenses will be available on the AMS website.

(2) Licenses will be valid until December 31 of the year three after the year in which the license was issued.

(3) Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated or encumbered.

(4) If a license application is denied, the notification from USDA will explain the cause for denial. Applicants may appeal the denial in accordance with subpart D of this part.

(c) If the applicant is producing in more than one location, the applicant may have more than one license to grow hemp. If the applicant has operations in a location covered under a State or Tribal plan, that operation must be licensed under the State or Tribal plan, not a USDA plan.

§ 990.23 Reporting hemp crop acreage with USDA Farm Service Agency.

All USDA plan producers shall report hemp crop acreage with FSA and shall provide, at minimum, the following information:

(a) Street address and, to the extent practicable, geospatial location of the lot, greenhouse, building, or site where hemp will be produced. All locations where hemp is produced must be reported to FSA.

(b) Acreage dedicated to the production of hemp, or greenhouse or indoor square footage dedicated to the production of hemp.

(c) The license number.

§ 990.24 Responsibility of a USDA licensed producer prior to harvest.

(a) Within 15 days prior to the anticipated harvest of cannabis plants, a producer shall have an approved Federal, State, local law enforcement agency or other USDA designated person collect samples from the flower material of such cannabis material for delta-9 tetrahydrocannabinol concentration level testing.

(b) The method used for sampling from the flower material of the cannabis plant must be sufficient at a confidence level of 95 percent that no more than one percent (1%) of the plants in the lot would exceed the acceptable hemp THC level. The method used for sampling must ensure that a representative sample is collected that represents a homogeneous composition of the lot.

(c) During a scheduled sample collection, the producer or an authorized representative of the producer shall be present at the growing site.

(d) Representatives of the sampling agency shall be provided with complete and unrestricted access during business hours to all hemp and other cannabis plants, whether growing or harvested, and all land, buildings, and other structures used for the cultivation, handling, and storage of all hemp and other cannabis plants, and all locations listed in the producer license.

(e) A producer shall not harvest the cannabis crop prior to samples being taken.

§ 990.25 Standards of performance for detecting delta-9 tetrahydrocannabinol (THC) concentration levels.

(a) Analytical testing for purposes of detecting the concentration levels of delta-9 tetrahydrocannabinol (THC) in the flower material of the cannabis plant shall meet the following standard:

(1) Laboratory quality assurance must ensure the validity and reliability of test results;

(2) Analytical method selection, validation, and verification must ensure that the testing method used is appropriate (fit for purpose) and that the laboratory can successfully perform the testing;

(3) The demonstration of testing validity must ensure consistent, accurate analytical performance; and

(4) Method performance specifications must ensure analytical tests are sufficiently sensitive for the purposes of the detectability requirements of this part.

(b) At a minimum, analytical testing of samples for delta-9 tetrahydrocannabinol concentration levels must use post-decarboxylation or other similarly reliable methods approved by the Secretary. The testing methodology must consider the potential conversion of delta-9 tetrahydrocannabinolic acid (THCA) in hemp into delta-9 tetrahydrocannabinol (THC) and the test result reflect the total available THC derived from the sum of the THC and THC-A content. Testing methodologies meeting the requirements of this paragraph (b) include, but are not limited to, gas or liquid chromatography with detection.

(c) The total delta-9 tetrahydrocannabinol concentration level shall be determined and reported on a dry weight basis. Additionally, measurement of uncertainty (MU) must be estimated and reported with test results. Laboratories shall use appropriate, validated methods and procedures for all testing activities and evaluate measurement of uncertainty.

(d) Any sample test result exceeding the acceptable hemp THC level shall be conclusive evidence that the lot represented by the sample is not in compliance with this part.

§ 990.26 Responsibility of a USDA producer after laboratory testing is performed.

(a) The producer shall harvest the crop not more than fifteen (15) days following the date of sample collection.

(b) If the producer fails to complete harvest within fifteen (15) days of sample collection, a secondary pre-harvested sample of the lot shall be required to be submitted for testing.

(c) Harvested lots of hemp plants shall not be commingled with other harvested lots or other material without prior written permission from USDA.

(d) Lots that meet the acceptable hemp THC level may enter the stream of commerce.

(e) Lots tested and *not* certified by the DEA-registered laboratory not exceeding the acceptable hemp THC level may *not* be further handled, processed, or enter the stream of commerce and the licensee shall ensure the lot is disposed of in accordance with § 990.27.

(f) Any producer may request additional testing if it is believed that the original delta-9 tetrahydrocannabinol concentration level test results were in error.

§ 990.27 Non-compliant cannabis plants.

(a) Cannabis plants exceeding the acceptable hemp THC level constitute

marijuana, a schedule I controlled substance under the Controlled Substances Act (CSA), 21 U.S.C. 801 *et seq.,* and must be disposed of in accordance with the CSA and DEA regulations found at 21 CFR 1317.15.

(b) Producers must notify USDA of their intent to dispose of non-conforming plants and verify disposal by submitting required documentation.

§ 990.28 Compliance.

(a) *Audits.* Producers may be audited by the USDA. The audit may include a review of records and documentation, and may include site visits to farms, fields, greenhouses, storage facilities, or other locations affiliated with the producer's hemp operation. The inspection may include the current crop year, as well as any previous crop year(s). The audit may be performed remotely or in person.

(b) *Frequency of audit verifications.* Audit verifications may be performed once every three (3) years unless otherwise determined by USDA. If the results of the audit find negligent violations, a corrective action plan may be established.

(c) *Assessment of producer's hemp operations for conformance.* The producer's operational procedures, documentation, and recordkeeping, and other practices may be verified during the onsite audit verification. The auditor may also visit the production, cultivation, or storage areas for hemp listed on the producer's license.

(1) *Records and documentation.* The auditor shall assess whether required reports, records, and documentation are properly maintained for accuracy and completeness.

(2) [Reserved]

(d) *Audit reports.* Audit reports will be issued to the licensee within 60 days after the audit is concluded. If USDA determines under an audit that the producer is not compliant with this part, USDA shall require a corrective action plan. The producer's implementation of a corrective action plan may be reviewed by USDA during a future site visit or audit.

§ 990.29 Violations.

Violations of this part shall be subject to enforcement in accordance with the terms of this section.

(a) *Negligent violations.* A hemp producer shall be subject to enforcement for negligently:

(1) Failing to provide an accurate legal description of land where hemp is produced;

(2) Producing hemp without a license; and

(3) Producing cannabis (marijuana) exceeding the acceptable hemp THC level. Hemp producers do not commit a negligent violation under this paragraph (a) if they make reasonable efforts to grow hemp and the cannabis (marijuana) does not have a delta-9 tetrahydrocannabinol concentration of more than 0.5 percent on a dry weight basis.

(b) *Corrective action for negligent violations.* For each negligent violation, USDA will issue a Notice of Violation and require a corrective action plan for the producer. The producer shall comply with the corrective action plan to cure the negligent violation. Corrective action plans will be in place for a minimum of two (2) years from the date of their approval. Corrective action plans will, at a minimum, include:

(1) The date by which the producer shall correct each negligent violation;

(2) Steps to correct each negligent violation; and

(3) A description of the procedures to demonstrate compliance must be submitted to USDA.

(c) *Negligent violations and criminal enforcement.* A producer that negligently violates this part shall not, as a result of that violation be subject to any criminal enforcement action by any Federal, State, Tribal, or local government.

(d) *Subsequent negligent violations.* If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

(e) *Negligent violations and license revocation.* A producer that negligently violates the license 3 times in a 5-year period shall have their license revoked and be ineligible to produce hemp for a period of 5 years beginning on the date of the third violation.

(f) *Culpable mental state greater than negligence.* If USDA determines that a licensee has violated the terms of the license or of this part with a culpable mental state greater than negligence:

(1) USDA shall immediately report the licensee to:

(i) The U.S. Attorney General; and

(ii) The chief law enforcement officer of the State or Indian territory, as applicable, where the production is located; and

(2) Paragraphs (a) and (b) of this section shall not apply to culpable violations.

§ 990.30 USDA producers; License suspension.

(a) USDA may issue a notice of suspension to a producer if USDA or its representative receives some credible evidence establishing that a producer has:

(1) Engaged in conduct violating a provision of this part; or

(2) Failed to comply with a written order from the USDA–AMS Administrator related to negligence as defined in this part.

(b) Any producer whose license has been suspended shall not handle or remove hemp or cannabis from the location where hemp or cannabis was located at the time when USDA issued its notice of suspension, without prior written authorization from USDA.

(c) Any person whose license has been suspended shall not produce hemp during the period of suspension.

(d) A producer whose license has been suspended may appeal that decision in accordance with subpart D of this part.

(e) A producer whose license has been suspended and not restored on appeal may have their license restored after a waiting period of one year from the date of the suspension.

(f) A producer whose license has been suspended may be required to complete a corrective action plan to fully restore the license.

§ 990.31 USDA licensees; Revocation.

USDA shall immediately revoke the license of a USDA producer if such producer:

(a) Pleads guilty to, or is convicted of, any felony related to a controlled substance; or

(b) Made any materially false statement with regard to this part to USDA or its representatives with a culpable mental state greater than negligence; or

(c) Is found to be growing cannabis exceeding the acceptable hemp THC level with a culpable mental state greater than negligence or negligently violated this part three times in five years.

§ 990.32 Recordkeeping requirements.

(a) USDA producers shall maintain records of all hemp plants acquired, produced, handled, or disposed of as will substantiate the required reports.

(b) All records and reports shall be maintained for at least three years.

(c) All records shall be made available for inspection by USDA inspectors, auditors, or their representatives during reasonable business hours. The following records must be made available:

(1) Records regarding acquisition of hemp plants;

(2) Records regarding production and handling of hemp plants;

(3) Records regarding storage of hemp plants; and

(4) Records regarding disposal of all cannabis plants that do not meet the definition of hemp.

(d) USDA inspectors, auditors, or their representatives shall have access to any premises where hemp plants may be held during reasonable business hours.

(e) All reports and records required to be submitted to USDA as part of participation in the program in this part which include confidential data or business information, including but not limited to information constituting a trade secret or disclosing a trade position, financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of USDA or their representatives. Confidential data or business information may be shared with applicable Federal, State, Tribal, or local law enforcement or their designee in compliance with the Act.

Subpart D—Appeals

§ 990.40 General adverse action appeal process.

(a) Persons who believe they are adversely affected by the denial of a license application under the USDA hemp production program may appeal such decision to the AMS Administrator.

(b) Persons who believe they are adversely affected by the denial of a license renewal under the USDA hemp production program may appeal such decision to the AMS Administrator.

(c) Persons who believe they are adversely affected by the termination or suspension of a USDA hemp production license may appeal such decision to the AMS Administrator.

(d) States and territories of Indian Tribes that believe they are adversely affected by the denial of a proposed State or Tribal hemp plan may appeal such decision to the AMS Administrator.

§ 990.41 Appeals under the USDA hemp production plan.

(a) *Appealing a denied USDA-plan license application.* A license applicant may appeal the denial of a license application.

(1) If the AMS Administrator sustains an applicant's appeal of a licensing denial, the applicant will be issued a USDA hemp production license.

(2) If the AMS Administrator denies an appeal, the applicant's license application will be denied. The applicant may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing a denied USDA-plan license renewal.* A producer may appeal the denial of a license renewal.

(1) If the AMS Administrator sustains a producer's appeal of a licensing renewal decision, the applicant's USDA hemp production license will be renewed.

(2) If the AMS Administrator denies the appeal, the applicant's license will not be renewed. The denied producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Appealing a USDA-plan license termination or suspension.* A USDA hemp plan producer may appeal the termination or suspension of a license.

(1) If the AMS Administrator sustains the appeal of a license termination or suspension, the producer will retain their license.

(2) If the AMS Administrator denies the appeal, the producer's license will be terminated or suspended. The producer may request a formal adjudicatory proceeding within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(d) *Filing period.* The appeal of a denied license application, denied license renewal, suspension, or termination must be filed within the time-period provided in the letter of notification or within 30 business days from receipt of the notification, whichever occurs later. The appeal will be considered ''filed'' on the date received by the AMS Administrator. The decision to deny a license application or renewal, or suspend or terminate a license, is final unless a formal adjudicatory proceeding is requested within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(e) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(f) *What to include.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

§ 990.42 Appeals under a State or Tribal hemp production plan.

(a) *Appealing a State or Tribal hemp production plan application.* A State or Tribe may appeal the denial of a proposed State or Tribal hemp production plan by the USDA.

(1) If the AMS Administrator sustains a State or Tribe's appeal of a denied hemp plan application, the proposed State or Tribal hemp production plan shall be established as proposed.

(2) If the AMS Administrator denies an appeal, the proposed State or Tribal hemp production plan shall not be approved. Prospective producers located in the State or territory of the Indian Tribe may apply for hemp licenses under the terms of the USDA plan. The State or Tribe may request a formal adjudicatory proceeding be initiated within 30 days to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(b) *Appealing the suspension or termination of a State or Tribal hemp production plan.* A State or Tribe may appeal the revocation by USDA of an existing State or Tribal hemp production plan.

(1) If the AMS Administrator sustains a State or Tribe's appeal of a State or Tribal hemp production plan suspension or revocation, the associated hemp production plan may continue.

(2) If the AMS Administrator denies an appeal, the State or Tribal hemp production plan will be suspended or revoked as applicable. Producers located in that State or territory of the Indian Tribe may continue to produce hemp under their State or Tribal license until the end the calendar year in which the State or Tribal plan's disapproval was effective or when the State or Tribal license expires, whichever is earlier. Producers may apply for a USDA license under subpart C of this part unless hemp production is otherwise prohibited by the State or Indian Tribe. The State or Indian Tribe may request a formal adjudicatory proceeding be initiated to review the decision. Such proceeding shall be conducted pursuant to the U.S. Department of Agriculture's Rules of Practice Governing Formal Adjudicatory Proceedings, 7 CFR part 1, subpart H.

(c) *Filing period.* The appeal of a State or Tribal hemp production plan suspension or revocation must be filed within the time-period provided in the letter of notification or within 30

business days from receipt of the notification, whichever occurs later. The appeal will be considered ''filed'' on the date received by the AMS Administrator. The decision to deny a State or Tribal plan application or suspend or revoke approval of a plan, is final unless the decision is appealed in a timely manner.

(d) *Where to file.* Appeals to the Administrator must be filed in the manner as determined by AMS.

(e) *What to include in appeal.* All appeals must include a copy of the adverse decision and a statement of the appellant's reasons for believing that the decision was not proper or made in accordance with applicable program regulations in this part, policies, or procedures.

Subpart E—Administrative Provisions

§ 990.60 Agents.

As provided under 7 CFR part 2, the Secretary may name any officer or employee of the United States or name any agency or division in the United States Department of Agriculture, to act as their agent or representative in connection with any of the provisions of this part.

§ 990.61 Severability.

If any provision of this part is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this part or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 990.62 Expiration of this part.

This part expires on November 1, 2021 unless extended by notification in the **Federal Register**. State and Tribal plans approved under subpart B of this part remain in effect after November 1, 2021 unless USDA disapproves the plan. USDA hemp producer licenses issued under subpart C of this part remain in effect until they expire unless USDA revokes or suspends the license.

§ 990.63 Interstate transportation of hemp.

No State or Indian Tribe may prohibit the transportation or shipment of hemp or hemp products lawfully produced under a State or Tribal plan approved under subpart B of this part, under a license issued under subpart C of this part, or under 7 U.S.C. 5940 through the State or territory of the Indian Tribe, as applicable.

Subpart F—Reporting Requirements

§ 990.70 State and Tribal hemp reporting requirements.

(a) *State and Tribal hemp producer report.* Each State and Tribes with a plan approved under this part shall submit to USDA, by the first of each month, a report providing the contact information and the status of the license or other authorization issued for each producer covered under the individual State and Tribal plans. If the first of the month falls on a weekend or holiday, the report is due by the first business day following the due date. The report shall be submitted using a digital format compatible with USDA's information sharing systems, whenever possible. The report shall contain the information described in this paragraph (a).

(1)(i) For each new producer who is an individual and is licensed or authorized under the State or Tribal plan, the report shall include full name of the individual, license or authorization identifier, business address, telephone number, and email address (if available).

(ii) For each new producer that is an entity and is licensed or authorized under the State or Tribal plan, the report shall include full name of the entity, the principal business location address, license or authorization identifier, and the full name, title, and email address (if available) of each employee for whom the entity is required to submit a criminal history record report.

(iii) For each producer that was included in a previous report and whose reported information has changed, the report shall include the previously reported information and the new information.

(2) The status of each producer's license or authorization.

(3) The period covered by the report.

(4) Indication that there were no changes during the current reporting cycle, if applicable.

(b) *State and Tribal hemp disposal report.* If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance with the Controlled Substances Act and DEA regulations found at 21 CFR 1317.15. States and Tribes with plans approved under this part shall submit to USDA, by the first of each month, a report notifying USDA of any occurrence of non-conforming plants or plant material and providing a disposal record of those plants and materials. This report would include information regarding name and contact information for each producer subject to a disposal during the reporting period, and date disposal was completed. If the first of the month fall on a weekend or holiday, reports are due by the first business day following the due date. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) Producer license or authorization identifier.

(3) Location information, such as lot number, location type, and geospatial location or other location descriptor for the production area subject to disposal.

(4) Information on the agent handling the disposal.

(5) Disposal completion date.

(6) Total acreage.

(c) *Annual report.* Each State or Tribe with a plan approved under this part shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) Total planted acreage.

(2) Total harvested acreage.

(3) Total acreage disposed.

(d) *Test results report.* Each producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. The test results report shall contain the information described in this paragraph (d) for each sample tested.

(1) Producer's license or authorization identifier.

(2) Name of producer.

(3) Business address of producer.

(4) Lot identification number for the sample.

(5) Name and DEA registration number of laboratory.

(6) Date of test and report.

(7) Identification of a retest.

(8) Test result.

§ 990.71 USDA plan reporting requirements.

(a) *USDA hemp plan producer licensing application.* USDA will accept applications from December 2, 2019 through November 2, 2020. Thereafter applicants, may submit a USDA Hemp Licensing Application to USDA from August 1 through October 31 of each year. Licenses will be valid until December 31 of the year three years after the license is issued. The license application will be used for both new applicants and for producers seeking renewal of their license. The application shall include the information described in this paragraph (a).

(1) *Contact information.* (i) For an applicant who is an individual, the application shall include full name of the individual, business address, telephone number, and email address (if available).

(ii) For an applicant that is an entity, the application shall include full name of the entity, the principal business location address, and the full name, title, and email address (if available) of each key participant of the entity.

(2) *Criminal history report.* As part of a complete application, each applicant shall provide a current Federal Bureau of Investigation's Identity History Summary. If the applicant is a business entity, a criminal history report shall be provided for each key participant.

(i) The applicant shall ensure the criminal history report accompanies the application.

(ii) The criminal history report must be dated within 60 days of submission of the application submittal.

(3) *Consent to comply with program requirements.* All applicants submitting a completed license application, in doing so, consent to comply with the requirements of this part.

(b) *USDA hemp plan producer disposal form.* If a producer has produced cannabis exceeding the acceptable hemp THC level, the cannabis must be disposed of in accordance with the Controlled Substances Act and DEA regulations found at 21 CFR 1317.15. Forms shall be submitted to USDA no later than 30 days after the date of completion of disposal. The report shall contain the information described in this paragraph (b).

(1) Name and address of the producer.

(2) Producer's license number.

(3) Geospatial location, or other valid land descriptor, for the production area subject to disposal.

(4) Information on the agent handling the disposal.

(5) Date of completion of disposal.

(6) Signature of the producer.

(7) Disposal agent certification of the completion of the disposal.

(c) *USDA hemp plan producer annual report.* Each producer shall submit an annual report to USDA. The report form shall be submitted by December 15 of each year and contain the information described in this paragraph (c).

(1) Producer's license number.

(2) Producer's name.

(3) Producer's address.

(4) Lot, location type, geospatial location, total planted acreage, total acreage disposed, and total harvested acreage.

(d) *Test results report.* Each producer must ensure that the DEA-registered laboratory that conducts the test of the sample(s) from its lots reports the test results for all samples tested to USDA. The test results report shall contain the information described in this paragraph (d) for each sample tested.

(1) Producer's license number.

(2) Name of producer.

(3) Business address of producer.

(4) Lot identification number for the sample.

(5) Name and DEA registration number of laboratory.

(6) Date of test and report.

(7) Identification of a retest.

(8) Test result.

Dated: October 28, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–23749 Filed 10–30–19; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 211 October 31, 2019

Part V

The President

Proclamation 9955—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

Federal Register
Vol. 84, No. 211
Thursday, October 31, 2019

Presidential Documents

Title 3—

The President

Proclamation 9955 of October 25, 2019

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. In Proclamation 9687 of December 22, 2017, after considering the factors set forth in sections 501 and 502(c) of the Trade Act of 1974, as amended, (the ''1974 Act'') (19 U.S.C. 2461 and 2462(c)), I suspended the duty-free treatment accorded under the Generalized System of Preferences (GSP) (19 U.S.C. 2461 *et seq.*) to certain eligible articles that are the product of Ukraine. I did so after considering, in particular, the extent to which Ukraine was providing adequate and effective protection of intellectual property rights, in accordance with section 502(c)(5) of the 1974 Act (19 U.S.C. 2462(c)(5)).

2. Having once again considered the factors set forth in sections 501 and 502(c) of the 1974 Act, and in particular section 502(c)(5), I have determined that Ukraine has made progress in providing adequate and effective protection of intellectual property rights. Accordingly, it is appropriate to terminate the suspension of the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Ukraine, effective 5 days after the date of this proclamation.

3. In Executive Order 11844 of March 24, 1975, the President designated Thailand as a beneficiary developing country for purposes of the GSP.

4. Sections 502(d)(1) and 503(c)(1) of the 1974 Act (19 U.S.C. 2462(d)(1) and 2463(c)(1)) provide that the President may withdraw, suspend, or limit the application of the duty-free treatment accorded under the GSP with respect to any beneficiary developing country and any article upon consideration of the factors set forth in sections 501 and 502(c) of the 1974 Act (19 U.S.C. 2461 and 2462(c)).

5. Section 502(c)(7) of the 1974 Act (19 U.S.C. 2462(c)(7)) provides that, in determining whether to designate any country as a beneficiary developing country under the GSP, the President shall take into account whether or not such country has taken or is taking steps to afford to workers in that country (including any designated zone in that country) internationally recognized worker rights.

6. Pursuant to sections 502(d)(1) and 503(c)(1) of the 1974 Act (19 U.S.C. 2462(d)(1) and 2463(c)(1)), and having considered the factors set forth in sections 501 and 502(c), including in particular section 502(c)(7) (19 U.S.C. 2462(c)(7)), I have determined that Thailand is not taking steps to afford to workers in Thailand internationally recognized worker rights. Accordingly, it is appropriate to suspend the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Thailand, effective 6 months after the date of this proclamation.

7. Pursuant to section 503(c)(1) of the 1974 Act, the President may withdraw, suspend, or limit the application of the duty-free treatment accorded to specified articles under the GSP when imported from designated beneficiary developing countries.

8. Section 503(c)(2)(A) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)) subjects beneficiary developing countries, except those designated as least-developed

beneficiary developing countries or beneficiary sub-Saharan African countries as provided in section 503(c)(2)(D) of the 1974 Act (19 U.S.C. 2463(c)(2)(D)), to competitive need limitations on the duty-free treatment afforded to eligible articles under the GSP.

9. Pursuant to section 503(c)(2)(A) of the 1974 Act, I have determined that in 2018 certain beneficiary developing countries exported eligible articles in quantities exceeding the applicable competitive need limitations. I hereby terminate the duty-free treatment for such articles from such beneficiary developing countries.

10. Section 503(c)(2)(F)(i) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(i)) provides that the President may disregard the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act (19 U.S.C. 2463(c)(2)(A)(i)(II)) with respect to any eligible article from any beneficiary developing country if the aggregate appraised value of the imports of any such article into the United States during the preceding calendar year does not exceed the amount set forth in section 503(c)(2)(F)(ii) of the 1974 Act (19 U.S.C. 2463(c)(2)(F)(ii)).

11. Pursuant to section 503(c)(2)(F)(i) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act should be disregarded with respect to certain eligible articles from certain beneficiary developing countries.

12. Section 503(d)(1) of the 1974 Act (19 U.S.C. 2463(d)(1)) provides that the President may waive the application of the competitive need limitations in section 503(c)(2) of the 1974 Act (19 U.S.C. 2463(c)(2)) with respect to any eligible article from any beneficiary developing country if certain conditions are met.

13. Pursuant to section 503(d)(1) of the 1974 Act, I have received the advice of the United States International Trade Commission on whether any industry in the United States is likely to be adversely affected by such waivers of the competitive need limitations provided in section 503(c)(2) of the 1974 Act. I have determined, based on that advice and the considerations described in sections 501 and 502(c) of the 1974 Act, and having given great weight to the considerations in section 503(d)(2) of the 1974 Act (19 U.S.C. 2463(d)(2)), that such waivers are in the national economic interest of the United States. Accordingly, I have determined that the competitive need limitations of section 503(c)(2) of the 1974 Act should be waived with respect to an article from a certain beneficiary developing country.

14. Section 503(c)(2)(C) of the 1974 Act (19 U.S.C. 2463(c)(2)(C)) provides that a country that is no longer treated as a beneficiary developing country with respect to an eligible article may be redesignated as a beneficiary developing country with respect to such article, subject to the considerations set forth in sections 501 and 502 of the 1974 Act, if imports of such article from such country did not exceed the competitive need limitations in section 503(c)(2)(A) of the 1974 Act during the preceding calendar year.

15. Pursuant to section 503(c)(2)(C) of the 1974 Act, and having taken into account the considerations set forth in sections 501 and 502 of the 1974 Act, I have determined to redesignate certain countries as beneficiary developing countries with respect to certain eligible articles that during the preceding calendar year had been imported in quantities not exceeding the competitive need limitations of section 503(c)(2)(A) of the 1974 Act.

16. Section 503(c)(2)(E) of the 1974 Act (19 U.S.C. 2463(c)(2)(E)) provides that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act shall not apply with respect to any eligible article if a like or directly competitive article was not produced in the United States in any of the preceding three calendar years.

17. Pursuant to section 503(c)(2)(E) of the 1974 Act, I have determined that the competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act does not apply with respect to a certain eligible article from a certain beneficiary developing country.

18. In Proclamation 9072 of December 23, 2013, the President designated Mali as a beneficiary sub-Saharan African country pursuant to section 506A(a)(1) of the 1974 Act (19 U.S.C. 2466a(a)(1)), as added by section 111(a) of the African Growth and Opportunity Act (Title I, Public Law 106–200) (AGOA).

19. Section 112(c) of the AGOA, as amended in section 6002 of the Africa Investment Incentive Act of 2006 (Division D, Title VI, Public Law 109–432 (19 U.S.C. 3721(c))), provides special rules for certain apparel articles imported from ''lesser developed beneficiary sub-Saharan African countries.''

20. I have determined that Mali satisfies the criterion for treatment as a ''lesser developed beneficiary sub-Saharan African country'' under section 112(c) of the AGOA.

21. The short-form name of ''Macedonia'' has changed to ''North Macedonia,'' and I have determined that general note 4(a) and Chapter 99, Subchapter III, U.S. notes 17(b)(2) and 18(b), to the HTS should be modified to reflect this change.

22. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of the 1974 Act, and of other Acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including title V and section 604 of the 1974 Act; sections 111(a) and 112(c) of the AGOA; and section 6002 of the Africa Investment Incentive Act of 2006, do hereby proclaim that:

(1) The suspension of the duty-free treatment accorded under the GSP to certain eligible articles that are the product of Ukraine is terminated, effective 5 days after the date of this proclamation.

(2) In order to reflect in the HTS this termination of the suspension of certain benefits with respect to Ukraine, general note 4(d) and pertinent subheadings of the HTS are modified as set forth in Annex 1 to this proclamation.

(3) The duty-free treatment accorded under the GSP to certain eligible articles that are the product of Thailand is suspended, effective 6 months after the date of this proclamation.

(4) In order to reflect in the HTS this suspension of certain benefits under the GSP with respect to Thailand, general note 4(d) and pertinent subheadings of the HTS are modified as set forth in Annex 2 to this proclamation.

(5) In order to provide that one or more countries should no longer be treated as beneficiary developing countries with respect to one or more eligible articles for purposes of the GSP, the Rates of Duty 1–Special subcolumn for the corresponding HTS subheadings and general note 4(d) to the HTS are modified as set forth in section A and B of Annex 3 and Annex 7 to this proclamation.

(6) In order to redesignate certain articles as eligible articles for purposes of the GSP, the Rates of Duty 1–Special subcolumn for the corresponding HTS subheadings and general note 4(d) to the HTS are modified as set forth in sections C, D, E, and F of Annex 3 and sections A and B of Annex 6 to this proclamation.

(7) The competitive need limitation provided in section 503(c)(2)(A)(i)(II) of the 1974 Act is disregarded with respect to the eligible articles in the HTS subheadings and to the beneficiary developing countries set forth in Annex 4 to this proclamation.

(8) A waiver of the application of section 503(c)(2) of the 1974 Act shall apply to the eligible article in the HTS subheading and to the beneficiary developing country set forth in Annex 5 to this proclamation.

(9) For purposes of section 112(c) of the AGOA, Mali is a lesser developed beneficiary sub-Saharan African country.

(10) In order to provide for Mali the tariff treatment intended under section 112 of the AGOA, note 2(d) to subchapter XIX of chapter 98 of the HTS is modified by inserting in alphabetical sequence in the list of lesser developed beneficiary sub-Saharan African countries ''Republic of Mali''.

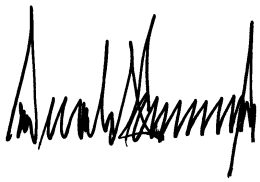
(11) The modification to the HTS made by paragraph (10) of this proclamation shall enter into effect on the 30th day after publication of this proclamation in the *Federal Register*.

(12) In order to reflect the change in the name of Macedonia, general note 4(a) and Chapter 99, Subchapter III, U.S. notes 17(b)(2) and 18(b), to the HTS are modified as set forth in Annex 7 to this proclamation.

(13) The modifications to the HTS set forth in Annex 3, Annex 6, and Annex 7 of this proclamation shall be effective with respect to articles entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on November 1, 2019.

(14) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth 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.



Billing code 3295–F0–P

Annex 1

To modify the Harmonized Tariff Schedule of the United States to restore certain articles that are the product of Ukraine for purposes of the Generalized System of Preferences

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time 5 days after the date of this proclamation, the Harmonized Tariff Schedule of the United States (HTS) is modified for the following subheadings:

1. General Note 4(d) is modified:

A. By striking the following subheadings and the country set out opposite them:

"0710.80.70	Ukraine	2005.20.00	Ukraine	2204.10.00	Ukraine
0712.39.10	Ukraine	2005.99.97	Ukraine	2204.21.80	Ukraine
0713.10.40	Ukraine	2007.99.05	Ukraine	2206.00.90	Ukraine
0902.10.10	Ukraine	2007.99.10	Ukraine	2209.00.00	Ukraine
0910.91.00	Ukraine	2007.99.20	Ukraine	3307.30.10	Ukraine
0910.99.60	Ukraine	2007.99.25	Ukraine	3307.30.50	Ukraine
1104.12.00	Ukraine	2007.99.45	Ukraine	3506.10.50	Ukraine
1104.29.90	Ukraine	2007.99.75	Ukraine	3924.90.56	Ukraine
1604.13.90	Ukraine	2008.19.90	Ukraine	3925.30.10	Ukraine
1604.17.10	Ukraine	2009.50.00	Ukraine	3926.20.30	Ukraine
1604.18.10	Ukraine	2009.89.65	Ukraine	3926.20.90	Ukraine
1604.18.90	Ukraine	2009.89.70	Ukraine	3926.90.21	Ukraine
1604.19.22	Ukraine	2103.20.20	Ukraine	3926.90.30	Ukraine
1604.19.82	Ukraine	2103.90.80	Ukraine	3926.90.45	Ukraine
1604.20.05	Ukraine	2103.90.90	Ukraine	3926.90.99	Ukraine
1704.90.35	Ukraine	2104.20.50	Ukraine	4015.19.10	Ukraine
1806.32.90	Ukraine	2106.90.98	Ukraine	4016.91.00	Ukraine
1904.10.00	Ukraine	2201.10.00	Ukraine	4201.00.30	Ukraine
1905.90.90	Ukraine	2202.10.00	Ukraine	4202.92.50	Ukraine
2001.10.00	Ukraine	2202.91.00	Ukraine	4202.99.10	Ukraine
2001.90.38	Ukraine	2202.99.90	Ukraine	4203.10.20	Ukraine

4203.21.80	Ukraine	8414.51.90	Ukraine	8543.70.89	Ukraine
4419.11.00	Ukraine	8414.59.65	Ukraine	8543.70.91	Ukraine
4419.12.00	Ukraine	8419.89.95	Ukraine	8543.70.97	Ukraine
4419.19.90	Ukraine	8421.23.00	Ukraine	8543.70.99	Ukraine
4419.90.90	Ukraine	8456.11.90	Ukraine	8703.10.50	Ukraine
4420.10.00	Ukraine	8464.90.01	Ukraine	8711.40.60	Ukraine
4420.90.80	Ukraine	8465.94.00	Ukraine	8711.50.00	Ukraine
6204.39.60	Ukraine	8468.10.00	Ukraine	9005.80.40	Ukraine
6204.49.10	Ukraine	8479.89.94	Ukraine	9005.80.60	Ukraine
6216.00.35	Ukraine	8480.49.00	Ukraine	9013.80.90	Ukraine
6307.90.98	Ukraine	8480.71.80	Ukraine	9030.89.01	Ukraine
6406.90.10	Ukraine	8480.79.90	Ukraine	9031.20.00	Ukraine
6406.90.30	Ukraine	8501.32.20	Ukraine	9032.89.60	Ukraine
6506.99.60	Ukraine	8501.40.40	Ukraine	9205.10.00	Ukraine
6912.00.48	Ukraine	8501.51.40	Ukraine	9207.90.00	Ukraine
6913.90.50	Ukraine	8501.51.60	Ukraine	9304.00.20	Ukraine
7113.19.29	Ukraine	8504.31.40	Ukraine	9404.90.20	Ukraine
7113.20.50	Ukraine	8509.40.00	Ukraine	9405.20.80	Ukraine
7117.19.15	Ukraine	8531.80.15	Ukraine	9506.12.80	Ukraine
7323.93.00	Ukraine	8531.80.90	Ukraine	9506.91.00	Ukraine
7615.10.50	Ukraine	8539.50.00	Ukraine	9506.99.60	Ukraine
8210.00.00	Ukraine	8543.70.45	Ukraine	9620.00.50	Ukraine”
8413.30.90	Ukraine	8543.70.71	Ukraine		

B. By deleting the country “Ukraine” set out opposite the following HTS subheadings:

2202.99.36	7113.11.50	8413.30.10
3307.20.00	7113.19.50	
4011.10.50	7615.10.30	

2. The following HTS subheadings are modified by deleting from the rates of duty 1 – special subcolumn, the symbol "A*" and by inserting in lieu thereof "A":

0710.80.70	2007.99.45	3926.90.30
0712.39.10	2007.99.75	3926.90.45
0713.10.40	2008.19.90	3926.90.99
0902.10.10	2009.50.00	4015.19.10
0910.91.00	2009.89.65	4016.91.00
0910.99.60	2009.89.70	4201.00.30
1104.12.00	2103.20.20	4202.92.50
1104.29.90	2103.90.80	4202.99.10
1604.13.90	2103.90.90	4203.10.20
1604.17.10	2104.20.50	4203.21.80
1604.18.10	2106.90.98	4419.11.00
1604.18.90	2201.10.00	4419.12.00
1604.19.22	2202.10.00	4419.19.90
1604.19.82	2202.91.00	4419.90.90
1604.20.05	2202.99.90	4420.10.00
1704.90.35	2204.10.00	4420.90.80
1806.32.90	2204.21.80	6204.39.60
1904.10.00	2206.00.90	6204.49.10
1905.90.90	2209.00.00	6216.00.35
2001.10.00	3307.30.10	6307.90.98
2001.90.38	3307.30.50	6406.90.10
2005.20.00	3506.10.50	6406.90.30
2005.99.97	3924.90.56	6506.99.60
2007.99.05	3925.30.10	6912.00.48
2007.99.10	3926.20.30	6913.90.50
2007.99.20	3926.20.90	7113.19.29
2007.99.25	3926.90.21	7113.20.50

7117.19.15	8480.79.90	9005.80.40
7323.93.00	8501.32.20	9005.80.60
7615.10.50	8501.40.40	9013.80.90
8210.00.00	8501.51.40	9031.20.00
8413.30.90	8501.51.60	9032.89.60
8414.51.90	8504.31.40	9205.10.00
8414.59.65	8509.40.00	9207.90.00
8419.89.95	8531.80.15	9304.00.20
8421.23.00	8531.80.90	9404.90.20
8456.11.90	8539.50.00	9405.20.80
8464.90.01	8543.70.45	9506.12.80
8465.94.00	8543.70.71	9506.91.00
8468.10.00	8543.70.99	9506.99.60
8479.89.94	8703.10.50	9620.00.50
8480.49.00	8711.40.60	
8480.71.80	8711.50.00	

Annex 2

To modify the Harmonized Tariff Schedule of the United States to remove certain articles that are the product of Thailand for purposes of the Generalized System of Preferences

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time 6 months after the date of this proclamation, the Harmonized Tariff Schedule of the United States (HTS) is modified for the following subheadings:

1. General Note 4(d) is modified:

A. By adding the following subheadings, in numerical sequence, and the country set out opposite them:

"0302.23.00	Thailand	0306.93.20	Thailand	0811.10.00	Thailand
0302.91.20	Thailand	0307.60.00	Thailand	0811.20.20	Thailand
0303.33.00	Thailand	0601.10.15	Thailand	0811.20.40	Thailand
0303.34.00	Thailand	0601.10.45	Thailand	0902.20.10	Thailand
0303.39.01	Thailand	0601.10.60	Thailand	0910.12.00	Thailand
0303.53.00	Thailand	0601.10.75	Thailand	1106.10.00	Thailand
0303.81.00	Thailand	0601.10.90	Thailand	1207.70.00	Thailand
0303.91.20	Thailand	0601.20.90	Thailand	1404.90.40	Thailand
0303.92.00	Thailand	0602.10.00	Thailand	1515.50.00	Thailand
0304.94.90	Thailand	0603.19.01	Thailand	1604.13.90	Thailand
0304.95.90	Thailand	0603.90.00	Thailand	1604.14.50	Thailand
0304.96.00	Thailand	0604.90.60	Thailand	1604.16.40	Thailand
0304.97.00	Thailand	0710.80.50	Thailand	1604.17.10	Thailand
0304.99.91	Thailand	0710.80.65	Thailand	1604.17.80	Thailand
0305.10.40	Thailand	0710.80.70	Thailand	1604.18.10	Thailand
0305.63.20	Thailand	0710.80.93	Thailand	1604.18.90	Thailand
0305.64.50	Thailand	0711.59.90	Thailand	1604.19.22	Thailand
0305.69.60	Thailand	0713.90.11	Thailand	1604.19.25	Thailand
0306.14.20	Thailand	0713.90.61	Thailand	1604.19.32	Thailand
0306.33.20	Thailand	0713.90.81	Thailand	1604.19.82	Thailand

1604.20.05	Thailand	2005.70.75	Thailand	2101.20.90	Thailand
1604.31.00	Thailand	2005.99.10	Thailand	2102.20.20	Thailand
1605.10.05	Thailand	2005.99.20	Thailand	2102.20.60	Thailand
1605.10.40	Thailand	2005.99.55	Thailand	2103.10.00	Thailand
1605.30.05	Thailand	2005.99.85	Thailand	2103.30.40	Thailand
1605.56.15	Thailand	2005.99.97	Thailand	2106.90.03	Thailand
1605.58.55	Thailand	2007.91.40	Thailand	2106.90.06	Thailand
1702.90.05	Thailand	2007.91.90	Thailand	2106.90.12	Thailand
1702.90.52	Thailand	2008.30.10	Thailand	2106.90.15	Thailand
1806.90.05	Thailand	2008.30.48	Thailand	2106.90.18	Thailand
1806.90.15	Thailand	2008.30.60	Thailand	2106.90.42	Thailand
1806.90.25	Thailand	2008.30.96	Thailand	2106.90.44	Thailand
1806.90.55	Thailand	2008.99.13	Thailand	2106.90.52	Thailand
1902.11.40	Thailand	2008.99.21	Thailand	2106.90.54	Thailand
1902.19.40	Thailand	2008.99.23	Thailand	2106.90.58	Thailand
1902.20.00	Thailand	2008.99.28	Thailand	2106.90.82	Thailand
1902.30.00	Thailand	2008.99.40	Thailand	2202.91.00	Thailand
1904.30.00	Thailand	2008.99.45	Thailand	2811.22.10	Thailand
1905.90.90	Thailand	2008.99.63	Thailand	2822.00.00	Thailand
2005.10.00	Thailand	2008.99.65	Thailand	2825.90.10	Thailand
2005.20.00	Thailand	2008.99.91	Thailand	2825.90.20	Thailand
2005.59.00	Thailand	2009.81.00	Thailand	2825.90.90	Thailand
2005.70.02	Thailand	2009.89.65	Thailand	2832.20.00	Thailand
2005.70.06	Thailand	2009.89.70	Thailand	2910.90.10	Thailand
2005.70.12	Thailand	2009.89.80	Thailand	2910.90.91	Thailand
2005.70.16	Thailand	2009.90.20	Thailand	2918.15.10	Thailand
2005.70.23	Thailand	2101.20.32	Thailand	2918.15.50	Thailand
2005.70.25	Thailand	2101.20.54	Thailand	2918.30.90	Thailand

2922.49.49	Thailand	3924.10.40	Thailand	4420.90.80	Thailand
2922.49.80	Thailand	3925.20.00	Thailand	4421.91.30	Thailand
2923.20.20	Thailand	3925.30.10	Thailand	4421.91.97	Thailand
2931.90.26	Thailand	3925.30.50	Thailand	4421.99.30	Thailand
2931.90.90	Thailand	3926.40.00	Thailand	4421.99.97	Thailand
2938.90.00	Thailand	4009.11.00	Thailand	4601.93.05	Thailand
2940.00.60	Thailand	4009.21.00	Thailand	4601.93.20	Thailand
3307.10.10	Thailand	4009.31.00	Thailand	4602.11.05	Thailand
3307.10.20	Thailand	4009.41.00	Thailand	4602.11.09	Thailand
3603.00.30	Thailand	4010.31.60	Thailand	4602.11.45	Thailand
3603.00.90	Thailand	4011.80.20	Thailand	4602.12.05	Thailand
3604.90.00	Thailand	4011.80.80	Thailand	4602.12.16	Thailand
3808.69.10	Thailand	4011.90.20	Thailand	4602.12.23	Thailand
3912.31.00	Thailand	4011.90.80	Thailand	4602.12.45	Thailand
3916.20.00	Thailand	4016.91.00	Thailand	4602.90.00	Thailand
3917.39.00	Thailand	4409.10.05	Thailand	5702.91.30	Thailand
3920.43.10	Thailand	4412.31.45	Thailand	5702.92.10	Thailand
3920.43.50	Thailand	4412.39.30	Thailand	5702.99.05	Thailand
3920.69.00	Thailand	4412.99.70	Thailand	5702.99.20	Thailand
3920.92.00	Thailand	4414.00.00	Thailand	5703.10.20	Thailand
3921.12.11	Thailand	4417.00.80	Thailand	6116.99.35	Thailand
3921.12.19	Thailand	4419.11.00	Thailand	6117.80.85	Thailand
3921.12.50	Thailand	4419.19.10	Thailand	6204.49.10	Thailand
3921.13.11	Thailand	4419.19.90	Thailand	6216.00.08	Thailand
3921.13.50	Thailand	4419.90.10	Thailand	6216.00.35	Thailand
3924.10.10	Thailand	4419.90.90	Thailand	6216.00.46	Thailand
3924.10.20	Thailand	4420.10.00	Thailand	6217.10.85	Thailand
3924.10.30	Thailand	4420.90.45	Thailand	6307.90.85	Thailand

6307.90.98	Thailand	6913.90.50	Thailand	7307.11.00	Thailand
6405.90.20	Thailand	6914.90.80	Thailand	7307.19.30	Thailand
6406.20.00	Thailand	7002.39.00	Thailand	7307.29.00	Thailand
6506.99.30	Thailand	7013.99.30	Thailand	7307.93.60	Thailand
6506.99.60	Thailand	7013.99.35	Thailand	7307.93.90	Thailand
6701.00.30	Thailand	7019.90.50	Thailand	7318.15.60	Thailand
6701.00.60	Thailand	7113.19.10	Thailand	7318.15.80	Thailand
6702.90.10	Thailand	7113.19.21	Thailand	7318.19.00	Thailand
6702.90.35	Thailand	7113.19.25	Thailand	7320.10.30	Thailand
6702.90.65	Thailand	7113.19.29	Thailand	7320.10.90	Thailand
6802.92.00	Thailand	7113.19.30	Thailand	7321.81.10	Thailand
6909.11.40	Thailand	7113.20.10	Thailand	7323.91.50	Thailand
6909.12.00	Thailand	7113.20.21	Thailand	7323.93.00	Thailand
6911.10.15	Thailand	7113.20.25	Thailand	7323.99.30	Thailand
6911.10.25	Thailand	7113.20.29	Thailand	7323.99.70	Thailand
6911.10.35	Thailand	7113.20.30	Thailand	7323.99.90	Thailand
6911.10.37	Thailand	7113.20.50	Thailand	7324.10.00	Thailand
6911.10.38	Thailand	7114.20.00	Thailand	7408.29.10	Thailand
6911.10.41	Thailand	7116.20.05	Thailand	7408.29.50	Thailand
6911.10.45	Thailand	7116.20.15	Thailand	7410.22.00	Thailand
6911.10.60	Thailand	7116.20.30	Thailand	7411.29.10	Thailand
6912.00.10	Thailand	7116.20.35	Thailand	7411.29.50	Thailand
6912.00.35	Thailand	7116.20.40	Thailand	7412.20.00	Thailand
6912.00.41	Thailand	7117.11.00	Thailand	7413.00.10	Thailand
6912.00.46	Thailand	7117.90.20	Thailand	7413.00.50	Thailand
6912.00.48	Thailand	7117.90.30	Thailand	7413.00.90	Thailand
6912.00.50	Thailand	7117.90.55	Thailand	7418.10.00	Thailand
6913.10.20	Thailand	7117.90.90	Thailand	7418.20.10	Thailand

7418.20.50	Thailand	8301.20.00	Thailand	8458.11.00	Thailand
7604.29.10	Thailand	8301.60.00	Thailand	8458.91.10	Thailand
7604.29.30	Thailand	8304.00.00	Thailand	8458.91.50	Thailand
7604.29.50	Thailand	8306.10.00	Thailand	8460.12.00	Thailand
7605.29.00	Thailand	8306.21.00	Thailand	8460.39.00	Thailand
7607.11.30	Thailand	8306.30.00	Thailand	8461.50.40	Thailand
7607.11.60	Thailand	8402.20.00	Thailand	8461.50.80	Thailand
7607.11.90	Thailand	8404.10.00	Thailand	8462.31.00	Thailand
7610.90.00	Thailand	8404.20.00	Thailand	8462.39.00	Thailand
7615.20.00	Thailand	8404.90.00	Thailand	8462.41.00	Thailand
7801.10.00	Thailand	8411.81.80	Thailand	8466.10.01	Thailand
7907.00.10	Thailand	8411.82.80	Thailand	8466.92.50	Thailand
7907.00.20	Thailand	8413.30.90	Thailand	8466.93.30	Thailand
7907.00.60	Thailand	8413.91.10	Thailand	8466.93.53	Thailand
8108.90.30	Thailand	8414.59.30	Thailand	8466.93.75	Thailand
8108.90.60	Thailand	8414.59.65	Thailand	8466.93.98	Thailand
8210.00.00	Thailand	8414.80.90	Thailand	8466.94.65	Thailand
8211.91.50	Thailand	8414.90.10	Thailand	8466.94.85	Thailand
8211.91.80	Thailand	8419.60.10	Thailand	8467.19.10	Thailand
8211.92.20	Thailand	8419.90.95	Thailand	8477.10.90	Thailand
8211.92.40	Thailand	8422.11.00	Thailand	8477.20.00	Thailand
8211.92.60	Thailand	8443.16.00	Thailand	8479.50.00	Thailand
8211.92.90	Thailand	8448.31.00	Thailand	8480.79.90	Thailand
8211.93.00	Thailand	8450.12.00	Thailand	8481.20.00	Thailand
8215.99.20	Thailand	8450.90.40	Thailand	8481.30.10	Thailand
8215.99.24	Thailand	8450.90.60	Thailand	8481.30.90	Thailand
8215.99.40	Thailand	8451.29.00	Thailand	8482.30.00	Thailand
8215.99.50	Thailand	8457.10.00	Thailand	8483.40.50	Thailand

8483.40.70	Thailand	8537.10.91	Thailand	9017.20.40	Thailand
8483.40.80	Thailand	8537.20.00	Thailand	9017.20.80	Thailand
8483.40.90	Thailand	8538.90.30	Thailand	9031.20.00	Thailand
8484.10.00	Thailand	8538.90.40	Thailand	9033.00.90	Thailand
8501.31.20	Thailand	8538.90.60	Thailand	9202.90.20	Thailand
8501.31.40	Thailand	8539.10.00	Thailand	9202.90.40	Thailand
8501.31.50	Thailand	8539.21.40	Thailand	9202.90.60	Thailand
8501.31.60	Thailand	8539.90.00	Thailand	9205.10.00	Thailand
8501.31.80	Thailand	8543.10.00	Thailand	9205.90.14	Thailand
8501.32.20	Thailand	8543.70.20	Thailand	9205.90.18	Thailand
8501.32.60	Thailand	8543.70.45	Thailand	9205.90.40	Thailand
8501.40.20	Thailand	8543.70.71	Thailand	9206.00.20	Thailand
8501.40.40	Thailand	8543.70.99	Thailand	9206.00.80	Thailand
8501.40.50	Thailand	8544.19.00	Thailand	9207.10.00	Thailand
8501.40.60	Thailand	8607.99.10	Thailand	9207.90.00	Thailand
8501.63.00	Thailand	8607.99.50	Thailand	9208.10.00	Thailand
8506.80.00	Thailand	8711.50.00	Thailand	9208.90.00	Thailand
8510.30.00	Thailand	8716.80.50	Thailand	9209.92.20	Thailand
8511.10.00	Thailand	8903.92.00	Thailand	9209.92.40	Thailand
8513.90.20	Thailand	8903.99.15	Thailand	9209.92.80	Thailand
8513.90.40	Thailand	8903.99.20	Thailand	9209.94.40	Thailand
8514.20.40	Thailand	8903.99.90	Thailand	9209.94.80	Thailand
8514.20.60	Thailand	9001.30.00	Thailand	9209.99.10	Thailand
8516.50.00	Thailand	9001.40.00	Thailand	9209.99.18	Thailand
8518.10.80	Thailand	9004.90.00	Thailand	9209.99.80	Thailand
8536.69.80	Thailand	9006.40.60	Thailand	9404.30.40	Thailand
8537.10.30	Thailand	9013.10.10	Thailand	9405.40.40	Thailand
8537.10.60	Thailand	9013.10.50	Thailand	9405.40.60	Thailand

9405.40.84	Thailand	9615.19.60	Thailand
9405.50.20	Thailand	9615.90.20	Thailand
9405.50.30	Thailand	9615.90.30	Thailand
9405.50.40	Thailand	9615.90.40	Thailand
9506.19.80	Thailand	9615.90.60	Thailand
9506.62.80	Thailand	9620.00.10	Thailand
9506.91.00	Thailand	9620.00.20	Thailand
9506.99.12	Thailand	9620.00.25	Thailand
9506.99.30	Thailand	9620.00.50	Thailand
9506.99.45	Thailand	9620.00.55	Thailand
9506.99.50	Thailand	9620.00.65	Thailand
9506.99.55	Thailand	9620.00.70	Thailand”
9506.99.60	Thailand		
9507.20.40	Thailand		
9507.20.80	Thailand		
9507.30.60	Thailand		
9507.30.80	Thailand		
9507.90.20	Thailand		
9507.90.40	Thailand		
9507.90.60	Thailand		
9507.90.80	Thailand		
9603.30.20	Thailand		
9603.90.80	Thailand		
9609.10.00	Thailand		
9610.00.00	Thailand		
9613.10.00	Thailand		
9615.19.20	Thailand		
9615.19.40	Thailand		

B. By adding the country "Thailand" set out opposite the following HTS subheadings:

0302.45.11	1702.90.35	4412.31.61
0302.46.11	1702.90.40	4412.31.92
0302.54.11	1806.90.01	4412.39.40
0302.55.11	1806.90.90	4412.99.31
0302.56.11	2008.30.37	4412.99.41
0302.59.11	2008.50.20	4412.99.80
0302.71.11	2008.99.80	4412.99.90
0302.72.11	2825.90.15	4418.91.90
0302.73.11	2918.22.10	4418.99.90
0302.79.11	2918.22.50	4421.91.60
0302.84.11	3307.49.00	4421.99.60
0302.85.11	3603.00.60	6116.10.08
0302.89.11	3907.30.00	6910.10.00
0304.91.90	4409.29.06	8413.30.10
0304.92.90	4412.10.05	8450.90.20
0304.93.90	4412.31.26	8481.30.20
0305.20.20	4412.31.42	8516.71.00
1702.30.22	4412.31.48	9013.10.30
1702.90.10	4412.31.52	9506.11.40

2. The following HTS subheadings are modified by deleting from the rates of duty 1 – special subcolumn, the symbol "A" and by inserting in lieu thereof "A*":

0302.23.00	0303.53.00	0304.95.90
0302.91.20	0303.81.00	0304.96.00
0303.33.00	0303.91.20	0304.97.00
0303.34.00	0303.92.00	0304.99.91
0303.39.01	0304.94.90	0305.10.40

0305.63.20	0902.20.10	1806.90.25
0305.64.50	0910.12.00	1806.90.55
0305.69.60	1106.10.00	1902.11.40
0306.14.20	1207.70.00	1902.19.40
0306.33.20	1404.90.40	1902.20.00
0306.93.20	1515.50.00	1902.30.00
0307.60.00	1604.13.90	1904.30.00
0601.10.15	1604.14.50	1905.90.90
0601.10.45	1604.16.40	2005.10.00
0601.10.60	1604.17.10	2005.20.00
0601.10.75	1604.17.80	2005.59.00
0601.10.90	1604.18.10	2005.70.02
0601.20.90	1604.18.90	2005.70.06
0602.10.00	1604.19.22	2005.70.12
0603.19.01	1604.19.25	2005.70.16
0603.90.00	1604.19.32	2005.70.23
0604.90.60	1604.19.82	2005.70.25
0710.80.50	1604.20.05	2005.70.75
0710.80.65	1604.31.00	2005.99.10
0710.80.70	1605.10.05	2005.99.20
0710.80.93	1605.10.40	2005.99.55
0711.59.90	1605.30.05	2005.99.85
0713.90.11	1605.56.15	2005.99.97
0713.90.61	1605.58.55	2007.91.40
0713.90.81	1702.90.05	2007.91.90
0811.10.00	1702.90.52	2008.30.10
0811.20.20	1806.90.05	2008.30.48
0811.20.40	1806.90.15	2008.30.60

2008.30.96	2106.90.44	3604.90.00
2008.99.13	2106.90.52	3808.69.10
2008.99.21	2106.90.54	3912.31.00
2008.99.23	2106.90.58	3916.20.00
2008.99.28	2106.90.82	3917.39.00
2008.99.40	2202.91.00	3920.43.10
2008.99.45	2811.22.10	3920.43.50
2008.99.63	2822.00.00	3920.69.00
2008.99.65	2825.90.10	3920.92.00
2008.99.91	2825.90.20	3921.12.11
2009.81.00	2825.90.90	3921.12.19
2009.89.65	2832.20.00	3921.12.50
2009.89.70	2910.90.10	3921.13.11
2009.89.80	2910.90.91	3921.13.50
2009.90.20	2918.15.10	3924.10.10
2101.20.32	2918.15.50	3924.10.20
2101.20.54	2918.30.90	3924.10.30
2101.20.90	2922.49.49	3924.10.40
2102.20.20	2922.49.80	3925.20.00
2102.20.60	2923.20.20	3925.30.10
2103.10.00	2931.90.26	3925.30.50
2103.30.40	2931.90.90	3926.40.00
2106.90.03	2938.90.00	4009.11.00
2106.90.06	2940.00.60	4009.21.00
2106.90.12	3307.10.10	4009.31.00
2106.90.15	3307.10.20	4009.41.00
2106.90.18	3603.00.30	4010.31.60
2106.90.42	3603.00.90	4011.80.20

4011.80.80	4602.12.16	6909.11.40
4011.90.20	4602.12.23	6909.12.00
4011.90.80	4602.12.45	6911.10.15
4016.91.00	4602.90.00	6911.10.25
4409.10.05	5702.91.30	6911.10.35
4412.31.45	5702.92.10	6911.10.37
4412.39.30	5702.99.05	6911.10.38
4412.99.70	5702.99.20	6911.10.41
4414.00.00	5703.10.20	6911.10.45
4417.00.80	6116.99.35	6911.10.60
4419.11.00	6117.80.85	6912.00.10
4419.19.10	6204.49.10	6912.00.35
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4419.90.10	6216.00.35	6912.00.46
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4420.10.00	6217.10.85	6912.00.50
4420.90.45	6307.90.85	6913.10.20
4420.90.80	6307.90.98	6913.90.50
4421.91.30	6405.90.20	6914.90.80
4421.91.97	6406.20.00	7002.39.00
4421.99.30	6506.99.30	7013.99.30
4421.99.97	6506.99.60	7013.99.35
4601.93.05	6701.00.30	7019.90.50
4601.93.20	6701.00.60	7113.19.10
4602.11.05	6702.90.10	7113.19.21
4602.11.09	6702.90.35	7113.19.25
4602.11.45	6702.90.65	7113.19.29
4602.12.05	6802.92.00	7113.19.30

7113.20.10	7323.91.50	7907.00.10
7113.20.21	7323.93.00	7907.00.20
7113.20.25	7323.99.30	7907.00.60
7113.20.29	7323.99.70	8108.90.30
7113.20.30	7323.99.90	8108.90.60
7113.20.50	7324.10.00	8210.00.00
7114.20.00	7408.29.10	8211.91.50
7116.20.05	7408.29.50	8211.91.80
7116.20.15	7410.22.00	8211.92.20
7116.20.30	7411.29.10	8211.92.40
7116.20.35	7411.29.50	8211.92.60
7116.20.40	7412.20.00	8211.92.90
7117.11.00	7413.00.10	8211.93.00
7117.90.20	7413.00.50	8215.99.20
7117.90.30	7413.00.90	8215.99.24
7117.90.55	7418.10.00	8215.99.40
7117.90.90	7418.20.10	8215.99.50
7307.11.00	7418.20.50	8301.20.00
7307.19.30	7604.29.10	8301.60.00
7307.29.00	7604.29.30	8304.00.00
7307.93.60	7604.29.50	8306.10.00
7307.93.90	7605.29.00	8306.21.00
7318.15.60	7607.11.30	8306.30.00
7318.15.80	7607.11.60	8402.20.00
7318.19.00	7607.11.90	8404.10.00
7320.10.30	7610.90.00	8404.20.00
7320.10.90	7615.20.00	8404.90.00
7321.81.10	7801.10.00	8411.81.80

8411.82.80	8466.92.50	8501.40.20
8413.30.90	8466.93.30	8501.40.40
8413.91.10	8466.93.53	8501.40.50
8414.59.30	8466.93.75	8501.40.60
8414.59.65	8466.93.98	8501.63.00
8414.80.90	8466.94.65	8506.80.00
8414.90.10	8466.94.85	8510.30.00
8419.60.10	8467.19.10	8511.10.00
8419.90.95	8477.10.90	8513.90.20
8422.11.00	8477.20.00	8513.90.40
8443.16.00	8479.50.00	8514.20.40
8448.31.00	8480.79.90	8514.20.60
8450.12.00	8481.20.00	8516.50.00
8450.90.40	8481.30.10	8536.69.80
8450.90.60	8481.30.90	8537.10.30
8451.29.00	8482.30.00	8537.10.60
8457.10.00	8483.40.50	8537.10.91
8458.11.00	8483.40.70	8537.20.00
8458.91.10	8483.40.80	8538.90.30
8458.91.50	8483.40.90	8538.90.40
8460.12.00	8484.10.00	8538.90.60
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8461.50.40	8501.31.40	8539.21.40
8461.50.80	8501.31.50	8539.90.00
8462.31.00	8501.31.60	8543.10.00
8462.39.00	8501.31.80	8543.70.20
8462.41.00	8501.32.20	8543.70.45
8466.10.01	8501.32.60	8543.70.71

8543.70.99	9205.90.40	9506.99.30
8544.19.00	9206.00.20	9506.99.45
8607.99.10	9206.00.80	9506.99.50
8607.99.50	9207.10.00	9506.99.55
8711.50.00	9207.90.00	9506.99.60
8716.80.50	9208.10.00	9507.20.40
8903.92.00	9208.90.00	9507.20.80
8903.99.15	9209.92.20	9507.30.60
8903.99.20	9209.92.40	9507.30.80
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9033.00.90	9405.50.20	9615.19.40
9202.90.20	9405.50.30	9615.19.60
9202.90.40	9405.50.40	9615.90.20
9202.90.60	9506.19.80	9615.90.30
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9205.90.18	9506.99.12	

Annex 3

To modify the Harmonized Tariff Schedule of the United States to reflect changes in products eligible for duty-free treatment under the Generalized System of Preferences

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on November 1, 2019, the Harmonized Tariff Schedule of the United States (HTS) is modified for the following subheadings:

Section A

For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A" and inserting the symbol "A*" in lieu thereof:

3823.11.00

8702.10.31

Section B

General note 4(d) to the HTS is modified by adding in numerical sequence the following subheading numbers and the countries set out opposite such subheading numbers:

"3823.11.00 Indonesia

8702.10.31 North Macedonia"

Section C

For each of the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A*" and inserting the symbol "A" in lieu thereof:

0603.13.00

Section D

General note 4(d) to the HTS is modified by deleting the following subheading number and country:

"0603.13.00 Thailand"

Section E

General note 4(d) to the HTS is modified by deleting, for the subheading number set out below, the country set out opposite:

4412.10.05 "Indonesia"

Section F

The HTS is modified as provided herein, with the language in the new tariff provisions inserted in the HTS columns labeled *Heading/Subheading, Article Description, Rates of Duty 1-General, Rates of Duty 1-Special,* and *Rates of Duty 2*, respectively:

Subheading 4412.31.41 is deleted and the following new provisions are inserted in lieu thereof:

Heading/ Subheading	Article description	Rates of Duty		
		1		2
		General	Special	
[4412	Plywood, veneered panels and similar laminated wood:			
	Other plywood consisting solely of sheets of wood (other than bamboo), each ply not exceeding 6 mm in thickness:			
4412.31	With at least one outer ply of tropical wood:			
	Not surface covered, or surface covered with a clear or transparent material which does not obscure the grain, texture or markings of the face ply:			
	Other:]			
	"With at least one outer ply of the following tropical woods: Dark Red Meranti, Light Red Meranti, White Lauan, Sipo, Limba, Okoumé, Obeche, Acajou D'Afrique, Sapelli, Virola, Mahogany, Palissandre de Para, Palissandre de Rio or Palissandre de Rose:			
4412.31.42	With a face ply of mahogany (Swietenia spp. or Khaya spp.).	8%	Free (A*,AU, BH,CA,CL, CO,D,E,IL,JO, MA,MX,OM, P,PA,PE,SG) 1.6% (KR)	40%
4412.31.45	Panels not exceeding 3.6 mm in thickness and exceeding 1.2 m in width and 2.2 m in length	8%	Free (A,AU, BH,CA,CL, CO,D,E,IL,JO, MA,MX,OM, P,PA,PE,SG) 1.6% (KR)	40%
4412.31.48	Other.	8%	Free (A*,AU, BH,CA,CL, CO,D,E,IL,JO, MA,MX,OM, P,PA,PE,SG) 1.6% (KR)	40%"

Section G

General note 4(d) is modified by deleting for the subheading number set out below, the country set out opposite:

4412.31.41 "Indonesia";

And inserting in numerical sequence the following subheading numbers and the countries set out opposite such subheading numbers:

"4412.31.42 Indonesia

4412.31.48 Indonesia"

Annex 4

HTS subheadings and countries for which the Competitive Need Limitation provided in Section 503(c)(2)(A)(i)(ll) is disregarded:

0304.91.90	Thailand	3824.99.31	Brazil
0406.10.04	Ecuador	4010.35.30	Argentina
0708.90.05	Argentina	4101.20.40	Pakistan
0711.59.90	Thailand	4101.50.40	Brazil
0908.22.20	Indonesia	4103.20.20	Thailand
1202.30.40	Paraguay	4106.21.90	Pakistan
1701.91.42	Brazil	4106.22.00	Pakistan
1702.90.52	Indonesia	4206.00.13	Brazil
1703.10.30	Brazil	4602.12.23	Indonesia
1806.90.01	Thailand	7113.20.29	Jordan
1901.20.02	Brazil	9032.90.21	Thailand
2009.89.65	Brazil	9303.30.40	Serbia
2202.99.37	The Philippines	9603.10.90	Sri Lanka
2849.10.00	Brazil		

Annex 5

HTS subheading and country granted a waiver of the application of Section 503(c)(2)(A) of the 1974 Act:

9001.50.00 Thailand

Annex 6

To modify the Harmonized Tariff Schedule of the United States to conform to changes made in Annex 3

Section A

Effective with respect to goods of Korea, under the terms of general note 33 to the Harmonized Tariff Schedule of the United States (HTS), as provided herein on January 1 of each of the successive years, for each of the enumerated subheadings of the HTS in the following table, the Rates of Duty 1-Special subcolumn is modified (i) by inserting in such subcolumn for each subheading the rate of duty specified for such subheading in the table column titled 2020 before the symbol "KR" in the parentheses, and (ii) for the subsequent dated table column on January 1, 2021, the rates of duty in such subcolumn for such subheadings set forth before the symbol "KR" in parentheses are deleted and the rates of duty for such dated table column are inserted in each enumerated subheading in lieu thereof:

Subheading	2020	2021
4412.31.42	0.8%	Free
4412.31.45	0.8%	Free
4412.31.48	0.8%	Free

Section B

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on November 1, 2019, the HTS is modified by deleting in Chapter 99, subchapter III, U.S. note 20(f) "4412.31.41" and inserting, in numerical order, the following subheadings:
"4412.31.42
4412.31.45
4412.31.48"

Annex 7

To Modify the Harmonized Tariff Schedule of the United States to recognize the change in name of Macedonia to North Macedonia

General note 4(a) to the Harmonized Tariff Schedule of the United States is modified by deleting "Macedonia" and inserting "North Macedonia" in alphabetical order.

Chapter 99, Subchapter III, U.S. note 17(b)(2) is modified by deleting "Macedonia" and inserting "North Macedonia" in alphabetical order.

Chapter 99, Subchapter III, U.S. note 18(b) is modified by deleting "Macedonia" and inserting "North Macedonia" in alphabetical order.

[FR Doc. 2019–24008

Filed 10–30–19; 11:15 a.m.]

Billing code 7020–02–C

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