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Presidential Documents

Title 3—

The President

Presidential Determination No. 2020–03 of October 25, 2019

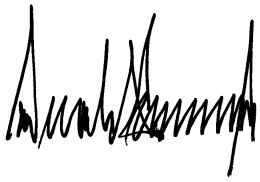
Presidential Determination Pursuant to Section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012

Memorandum for the Secretary of State[,] the Secretary of the Treasury[, and] the Secretary of Energy

By the authority vested in me as President by the Constitution and the laws of the United States, after carefully considering the reports submitted to the Congress by the Energy Information Administration, including the report submitted in October 2019, and other relevant factors, including global economic conditions, increased oil production by certain countries, the global level of spare petroleum production capacity, and the availability of strategic reserves, I determine, pursuant to section 1245(d)(4)(B) and (C) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, and consistent with prior determinations, that there is a sufficient supply of petroleum and petroleum products from countries other than Iran to permit a significant reduction in the volume of petroleum and petroleum products purchased from Iran by or through foreign financial institutions.

I will continue to monitor this situation closely.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register.*



THE WHITE HOUSE,
Washington, October 25, 2019

[FR Doc. 2019–24425
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Federal Register

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

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1600, 1610, 1700, 1735, 1737, 1740, 1744, 1751, 2003, 2200 and 2201

[Docket No. RUS–19–Telecom–0026]

RIN 0572–AC38

Repeal of Regulations Concerning the Rural Telephone Bank, the Public Television Station Digital Transition Grant Program, and the Local Television Loan Guarantee Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule informs the public that the Rural Utilities Service (RUS or Agency) is repealing the Rural Telephone Bank, Public Television Station Digital Transition Grant Program and the Local Television Loan Guarantee Program from the Code of Federal Regulations (CFR). This action removes expired and terminated programs from the CFR as repealed by the 2018 Agricultural Improvement Act (2018 Farm Bill). The statutory changes result from the 2018 Farm Bill. Additionally, conforming changes are being made to other regulations as a result of the aforementioned statutory changes.

DATES: This final rule will be effective January 6, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Rural Development Innovation Center—Regulatory Team 2, USDA, 1400 Independence Avenue SW, STOP 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 690–4492. Email to *thomas.dickson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The purpose of the Rural Telephone Bank (RTB) was to make loans for telecommunications infrastructure purposes. On October 1, 2005, the RTB ceased all business operations and began dissolution of equity to its stockholders, and in November 2007, the RTB was completely liquidated. For over a decade, the RTB statute remained, although the bank had ceased to exist. The 2018 Farm Bill repealed the provisions of the Rural Electrification Act of 1936 that created the RTB.

The purpose of the Rural Utilities Service (RUS) Public Television Station Digital Transition Grant Program (Grant Program) was to enable public television stations serving rural areas to transition from broadcasting in analog to digital, as required under the Federal Communications Commission (FCC) rules, by awarding grants through a competitive process. While stations were required to broadcast their main transmitter signal in digital, many rural stations had not completed the transition of all their equipment, especially translators. In 2011, the FCC adopted a final deadline to convert all translators by September 1, 2015. The RUS program was expired in 2015.

The purpose of the Local Television Loan Guarantee Program was to facilitate access, on a technology neutral basis by December 31, 2006, to signals of local television stations for households located in non-served areas and underserved areas. Although regulations and a notice were published, this program did not receive viable applications. As a result, the program was never funded.

The 2018 Farm Bill repealed all programs mentioned above and so RUS is adjusting the CFR accordingly to remove these programs. Along with the removal of these programs, several rules needed to be modified as well, since they mention the repealed programs. These include 7 CFR parts 1700, 1735, 1737, 1744, 1751, and 2003. Accordingly, the corresponding provisions in the above-referenced regulations are being amended to remove any reference to the programs mentioned above.

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined not to be significant for purposes of Executive Order 13563. Accordingly, the Office of Management and Budget (OMB) has waived the review process.

Congressional Review Act

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

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), it has been determined that this rule will not change the information collection and recordkeeping requirements previously approved and will not impose additional reporting or recordkeeping burden on users.

The Agency will request the current information collection and recordkeeping requirements for 7 CFR 1740, approved by OMB under 47 U.S.C. 1101 and assigned OMB Control Number 0572–0134 to be retired with this final rule.

The information collection and recordkeeping requirements of 7 CFR parts 2200 and 2201 were approved by OMB under 47 U.S.C. 1101 and was assigned OMB Control Number 0572–0135. This information collection was retired by OMB on December 31, 2006.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. There are no civil justice implications associated with this direct final rule.

Civil Rights Review

RUS has considered the potential civil rights implications of this rule on minorities, women, or 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 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 will not deny any persons or groups the benefits of a program or subject any persons or groups to discrimination.

Executive Order 13132, Federalism

This rule has been reviewed under Executive Order 13132, Federalism, which directs agencies to construe, in regulations and otherwise, a Federal statue to preempt state law only when the statue contains an express preemption provision. There are no federalism implications associated with this rule.

List of Subjects

7 CFR Part 1600

Sunshine Act.

7 CFR Part 1610

Loan programs-communications, Rural areas, Telephone.

7 CFR Part 1700

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7 CFR Part 1735

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7 CFR Part 2003

Organization and functions (Government agencies), Freedom of information, Rural areas, Volunteers.

7 CFR Parts 2200 and 2201

Loan programs-communications, Reporting and recordkeeping requirements, Rural areas, Telecommunications, Television.

Therefore, chapters XVI, XVII, XVIII, and XX of title 7 of the Code of Regulations are amended as follows:

Subtitle B—Regulations of the Department of Agriculture

Chapter XVI [Removed and Reserved]

■ 1. Under the authority of section 6602, Public Law 115–334, 132 Stat. 4490 7 CFR chapter XVI, consisting of parts 1600 through 1699, is removed and reserved.

Chapter XVII—Rural Utilities Service, Department of Agriculture

PART 1700—GENERAL INFORMATION

■ 2. The authority citation for part 1700 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* 6941 *et seq.;* 7 CFR 2.7.

Subpart A—General

■ 3. Amend § 1700.1 by revising paragraph (b) and removing paragraph (c).

The revision reads as follows:

§ 1700.1 General.

* * * * *

(b) The Secretary of Agriculture (Secretary) established the Rural Utilities Service (RUS) on October 20, 1994, pursuant to the Department of Agriculture Reorganization Act of 1994, (7 U.S.C. 6941 *et. seq.*). RUS was assigned responsibility for administering electric and telecommunications loan and loan guarantee programs previously administered by REA, including water and waste loans and grants previously administered by the Rural Development Administration, along with other functions as the Secretary determined appropriate. The rights, interests, obligations, duties, and contracts previously vested in REA were transferred to, and vested in RUS.

Subpart B—Agency Organization and Functions

■ 4. Amend § 1700.25 by revising the first two sentences to read as follows:

§ 1700.25 Office of the Administrator.

The Administrator of the Rural Utilities Service (RUS) is appointed by the President. The Under Secretary, Rural Development delegated to the Administrator, in 7 CFR part 2, responsibility for administering the programs and activities of RUS. * * *

■ 5. Amend § 1700.29 by revising the introductory text to read as follows:

§ 1700.29 Telecommunications Program.

RUS, through the Telecommunications Program, make loans and loan guarantees to furnish and improve telecommunications service in rural areas.

* * * * *

PART 1735—GENERAL POLICIES, TYPES OF LOANS, LOAN REQUIREMENTS—TELECOMMUNICATIONS PROGRAM

■ 6. The authority citation for part 1735 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* and 6941 *et seq.*

Subpart A—General

■ 7. Amend § 1 735.2 by revising the definitions of ''economic life'' and ''RUS cost-of-money loan'' and removing the definition of ''RTB loan''.

The revisions read as follows:

§ 1735.2 Definitions

* * * * *

Economic life as applied to facilities financed by loan funds, means the number of years resulting from dividing 100 percent by the depreciation rate (expressed as a percent) approved by the regulatory body with jurisdiction over the telephone service provided by the borrower for the class of facility involved or, if no approved rate exists, by the median depreciation rate expressed as a percent as published by RUS in its Statistical Report, Rural Telephone Borrowers for all RUS borrowers for that class of facility.

* * * * *

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act bearing an interest rate as determined under § 1735.31(c).

* * * * *

Subpart B—Loan Purpose and Basic Policy

■ 8. Amend § 1735.10 by revising paragraphs (b) and (e) to read as follows:

§ 1735.10 General.

* * * * *

(b) RUS will not make hardship loans or RUS cost-of-money loans for any wireline local exchange service or similar fixed-station voice service that, in RUS' opinion, is inconsistent with the borrower achieving the requirements stated in the State's telecommunication modernization plan within the time frame stated in the plan (see 7 CFR part 1751, subpart B), unless RUS has determined that achieving the requirements as stated in such plan is not technically or economically feasible.

* * * * *

(e) No fees or charges are assessed for any type of loan or guarantee provided by RUS.

* * * * *

■ 9. Amend § 1735.17 by revising paragraph (b) to read as follows:

§ 1735.17 Facilities financed.

* * * * *

(b) RUS makes RUS cost-of-money to finance the improvement, expansion, construction, and acquisition of systems or facilities (excluding station apparatus owned by the borrower, headquarters facilities, and vehicles not used primarily in construction) to furnish and improve telephone service in rural areas, except as noted under paragraph (c) of this section.

* * * * *

Subpart C—Types of Loans

■ 10. Amend § 1735.30 by revising paragraphs (b)(2), (f), and (g) to read as follows:

§ 1735.30 Hardship loans.

* * * * *

(b) * * *

(2) Those facilities may, however, be financed with a RUS cost-of-money loans or a guaranteed loan if the borrower is eligible for such financing.

* * * * *

(f) On request of any borrower who is eligible for a hardship loan for which funds are not available, the borrower shall be considered to have applied for a RUS cost-of-money loans under sections 305 of the RE Act.

(g) Hardship loans may be made simultaneously with a RUS cost-of-money loans or guaranteed loans.

■ 11. Amend § 1735.31 by revising the section heading, paragraphs (a) introductory text, (b), (c) introductory text, and (d) through (f) to read as follows:

§ 1735.31 RUS cost-of-money.

(a) RUS makes cost-of-money loans, under section 305(d)(2) of the RE Act. To qualify for cost-of-money loans, a borrower must meet each of the following requirements:

* * * * *

(b) To determine the RUS cost-of-money, the total loan amount will be multiplied by the ratio of RUS cost-of-money funds appropriated for the fiscal year to the sum of RUS cost-of-money funds appropriated for the fiscal year in which the loan is approved. If during the fiscal year the amount of funds appropriated changes, the ratio will be adjusted accordingly and applied only to those loans approved afterwards.

(c) The RUS cost-of-money loan shall bear interest as described in paragraphs (c)(1) and (2) of this section.

* * * * *

(d) Generally, no more than 10 percent of lending authority from appropriations in any fiscal year for RUS cost-of-money loans may be loaned to a single borrower. RUS will publish by notice in the **Federal Register** the dollar limit that may be loaned to a single borrower in that particular fiscal year based on approved RUS lending authority.

(e) On request of any borrower who is eligible for RUS cost-of-money loans for which funds are not available, the borrower shall be considered to have applied for a loan guarantee under section 306 of the RE Act.

(f) RUS cost-of-money loans may be made simultaneously with hardship loans or guaranteed loans.

■ 12. Amend § 1735.32 by revising paragraph (a) to read as follows:

§ 1735.32 Guaranteed loans.

(a) *General.* Loan guarantees under this section will be considered for only those borrowers specifically requesting a guarantee. Borrowers may also specify that the loan to be guaranteed shall be made by the Federal Financing Bank (FFB). RUS provides loan guarantees pursuant to section 306 of the RE Act. Guaranteed loans may be made simultaneously with hardship loans or RUS cost-of-money loans. No fees or charges are assessed for any guarantee of a loan provided by RUS. In view of the Government's guarantee, RUS generally obtains a first lien on all assets of the borrower (see § 1735.46).

* * * * *

Subpart D—Terms of Loans

■ 13. Amend § 1735.43 by revising paragraphs (b) through (e) and removing paragraph (f).

The revisions read as follows:

§ 1735.43 Payments on Loans.

* * * * *

(b) Borrowers that have demonstrated to the satisfaction of the Administrator an inability to maintain the funded reserve or net plant to secured debt ratio requirements, if any, contained in their mortgage, may elect to replace notes with an original maturity that exceeded the composite economic life of the facilities financed with notes bearing a shorter maturity approximating the expected composite economic life of the facilities financed, if this will result in a shorter maturity for the loan. The principal balance of the notes (hereinafter in this section called the ''refunding notes'') issued to refund and substitute for the original notes would be the unpaid principal balance of the original notes. The refunding notes would mature at a date no later than the remaining economic life of the facilities financed by the loan, plus three years, as determined by the original feasibility study prepared in connection with the loan. Interest on the original note must continue to be paid through the closing date. All other payment terms, including the rate of interest on the refunding notes, would remain unchanged. Disposition of funds in the funded reserve will be determined by RUS at the closing date. RUS will notify the borrower in writing of the amendment of loan payment requirements and the terms and conditions thereof.

(c) A borrower qualifying under paragraph (b) of this section shall not be required to pay a prepayment premium on such portion of the payments under its new notes as exceeds the payments required under the notes being replaced.

(d) To apply for refunding notes, borrowers must send to the Area Office the following:

(1) A certified copy of a board resolution requesting an amendment of loan payment requirements and that certain notes be replaced;

(2) If applicable, evidence of approval by the regulatory body with jurisdiction over the telecommunications service provided by the borrower to issue refunding notes; and

(3) Such other documents as may be required by the RUS.

(e) Principal and interest will be repaid in accordance with the terms of the notes. Generally, interest is payable each month as it accrues. Principal

payments on each note generally are scheduled to begin 2 years after the date of the note. After this deferral period, interest and principal payments on all funds advanced during this 2-year period are scheduled in equal monthly installments. Principal payments on funds advanced 2 years or more after the date of the note will begin with the first billing after the advance. The interest and principal payments on each of these advances will be scheduled in equal monthly installments. This CFR part supersedes those portions of RUS Bulletin 320–12, ''Loan Payments and Statements'' with which it is in conflict.

■ 14. Revise § 1735.44 to read as follows:

§ 1735.44 Prepayment premiums.

The loan documents normally provide that RUS insured loans may be repaid in full at any time without prepayment premiums. Depending upon the lender, there may be prepayment premiums on loans guaranteed by RUS. See RUS Bulletin 320–12 for additional information. This CFR part supersedes those portions of RUS Bulletin 320–12, ''Loan Payments and Statements,'' with which it is in conflict.

■ 15. Amend § 1735.46 by revising paragraph (f) to read as follows:

§ 1735.46 Loan security documents.

* * * * *

(f) This section does not limit the rights of any parties to the mortgage other than RUS.

■ 16. Amend § 1735.47 by revising paragraph (a)(2) to read as follows:

§ 1735.47 Rescissions of loans.

(a) * * *

(2) Sufficient funds are available from sources other than RUS or FFB to complete the purposes of the loan being rescinded; or

* * * * *

PART 1737—PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED TELECOMMUNICATIONS LOANS

■ 17. The authority citation for part 1737 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et. seq.*).

Subpart A—General

■ 18. Amend § 1737.2 by revising the definition of ''RUS cost-of-money loan'' and removing the definition of ''RTB loan''.

The revision reads as follows:

§ 1737.2 Definitions.

* * * * *

RUS cost-of-money loan means a loan made under section 305(d)(2) of the RE Act bearing an interest rate as determined under 7 CFR 1735.31(c).

* * * * *

Subpart B—Preapplication Stage

■ 19. Amend § 1737.11 by revising paragraph (i) to read as follows:

§ 1737.11 Preapplication determinations.

* * * * *

(i) *Telecommunications modernization plan.* A borrower applying for hardship or concurrent RUS cost-of-money loans should refer to 7 CFR part 1751, subpart B.

Subpart G—Project Cost Estimation Procedures

■ 20. Amend § 1737.60 by revising the last sentence in paragraph (a) introductory text and paragraphs (a)(1) and (2) to read as follows:

§ 1737.60 Telephone loan budget.

(a) * * * The amount of funds included in any loan shall be limited for certain items:

(1) Operating funds for working capital or current operating deficiencies shall be included only in cases of financial hardship as determined by the Administrator.

(2) Contingencies shall not exceed 3 percent of the total amount of loan funds to be used for construction, engineering, operating equipment and operating funds.

* * * * *

Subpart H—Feasibility Determination Procedures

■ 21. Amend § 1737.71 by revising the first sentence of paragraph (a) to read as follows:

§ 1737.71 Interest rate to be considered for the purpose of assessing feasibility for loans

(a) For purposes of determining the creditworthiness of a borrower for RUS cost-of-money, the Administrator shall assume that the loan, if made, would bear interest at the Treasury rate on the date of determination as described in paragraph (b) of this section. * * *

* * * * *

PART 1740—[REMOVED AND RESERVED]

■ 22. Under the authority of section 6602, Pub. L. 115–334, 132 Stat. 4490, part 1740 is removed and reserved.

PART 1744—POST-LOAN POLICIES AND PROCEDURES COMMON TO GUARANTEED AND INSURED TELEPHONE LOANS

■ 23. The authority citation for part 1744 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.,* and 6941 *et seq.*

Subpart B—Lien Accommodations and Subordination Policy

■ 24. Amend § 1744.21 by revising the definitions of ''Administrator'', ''Advance'', ''RE Act (Act)'', and ''RUS'' to read as follows:

§ 1744.21 Definitions.

* * * * *

Administrator means the Administrator of RUS.

Advance means transferring funds from RUS or a lender guaranteed by RUS to the borrower's construction fund.

* * * * *

RE Act (Act) means the Rural Electrification Act of 1936 (7 U.S.C. 901 *et. seq.*).

RUS means the Rural Utilities Service, and includes its predecessor, the Rural Electrification Administration.

* * * * *

Subpart C—Advance and Disbursement of Funds

■ 25. Amend § 1744.67 by revising the paragraph (a)(2) introductory text to read as follows:

§ 1744.67 Temporary excess construction funds.

* * * * *

(a) * * *

(2) With RUS cost-of-money or FFB loan funds, the following apply:

* * * * *

■ 26. Amend § 1744.68 by revising paragraphs (a) introductory text and (a)(1), and the first sentence of paragraph (d) to read as follows:

§ 1744.68 Order and method of advances of telephone loan funds.

(a) Borrowers may specify the sequence of advances of funds under any combination of approved telephone loans from RUS or FFB, except that for all loans approved on or after November 1, 1993, the borrower may use loan funds:

(1) Only for purposes for which that type of loan (*i.e.* Hardship, RUS cost-of-money, or FFB) may be made; and

* * * * *

(d) Borrowers of RUS funds may request advances by wire service only

for amounts greater than $500,000 or for advances to borrowers outside the Continental United States. * * *

* * * * *

Subpart E—Borrower Investments

§ 1744.200 [Amended]

■ 27. Amend § 1744.200 by removing paragraph (b).

■ 28. Amend § 1744.201 by revising the definitions of ''Administrator'' and ''Borrower'' and removing the definition of ''RTB''.

The revisions read as follows:

§ 1744.201 Definitions.

* * * * *

Administrator means the Administrator of the Rural Utilities Service (RUS).

* * * * *

Borrower means any organization which has an outstanding loan made by RUS or guaranteed by RUS, or which is seeking such financing.

* * * * *

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURES

■ 29. The authority citation for part 1751 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.,* 1921 *et seq.;* Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

■ 30. Amend § 1751.100 by revising the definitions of ''Borrower'' and ''RUS cost-of-money loan'' and removing the definition of ''RTB loan''.

The revisions read as follows:

§ 1751.100 Definitions.

* * * * *

Borrower. Any organization that has received a RUS loan designation number and which has an outstanding telephone loan made by RUS or guaranteed by RUS, or which has a completed loan application with RUS.

* * * * *

RUS cost-of-money loan. A loan made under section 305(d)(2) of the RE Act bearing interest as determined under 7 CFR 1735.31(c).

* * * * *

■ 31. Amend § 1751.103 by revising the second sentence in paragraph (a) introductory text to read as follows:

§ 1751.103 Loan and loan advance requirements.

(a) * * *. In particular, beginning February 13, 1996, RUS will make RUS hardship and RUS cost-of-money loans for facilities and other RE Act purposes in a State only if:

* * * * *

Chapter XVIII—Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture

Subchapter I—Administrative Regulations

PART 2003—ORGANIZATION

■ 32. The authority citation for part 2003 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 6941; and 7 CFR 2.17.

§ 2003.1 [Amended]

■ 33. Amend § 2003.1 by removing the definition of ''RTB''.

■ 34. Amend § 2003.22 by revising paragraphs (b) introductory text, (b)(3) introductory text, and (b)(3)(iii) to read as follows:

§ 2003.22 – Functional organization of RUS.

* * * * *

(b) *Office of the Administrator.* According to 7 CFR 2.47, the Administrator has responsibility for managing and administering the programs and support functions of RUS to provide financial and technical support for rural infrastructure to include electrification, clean drinking water, telecommunications, and water disposal systems, pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1921 *et. seq.*), and the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et. seq.*). The office develops and implements strategic plans concerning the Rural Electrification Act of 1936, as amended.

* * * * *

(3) *Office of Assistant Administrator—Telecommunications Program.* Headed by the Assistant Administrator—Telecommunications Program, this office is responsible to the Administrator for directing and coordinating the National Rural Telecommunications, Distance Learning, and Telemedicine programs of RUS. The Assistant Administrator, Telecommunications Program, is responsible for developing, maintaining, and implementing regulations and program procedures on the processing and approval of grants, loans, and loan-related activities for all rural telecommunications borrowers and grant recipients. The office directs the following three divisions:

* * * * *

(iii) *Telecommunications Area Offices.* Headed by area directors, these four offices are responsible for administering the Telecommunications, Distance Learning, and Telemedicine programs for specific geographic areas, and serving as the single point of contact for all program applicants and borrowers within their respective areas. The offices provide guidance to applicants and borrowers on RUS loan policies and procedures and make recommendations to the Administrator on applications for loans, guarantees, and grants. The offices assure that borrower systems and facilities are designed and constructed in accordance with the terms of the loan, acceptable engineering practices and specifications, and acceptable loan security standards.

* * * * *

Chapter XX—[Removed and Reserved]

■ 35. Under the authority of section 6602, Pub. L. 115–334, 132 Stat. 4490, 7 CFR chapter XX, consisting of parts 2200 through 2299, is removed and reserved.

Chad Rupe,

Administrator, Rural Utilities Service.

[FR Doc. 2019–24310 Filed 11–6–19; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Docket No. R–1685; RIN 7100–AF 65]

Regulation A: Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

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

DATES:

Effective date: This rule is effective November 7, 2019.

Applicability date: The rate changes for primary and secondary credit were applicable on October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), or Justyna Bolter, Senior Attorney (202–452–2686), Legal Division, or Lyle Kumasaka, Lead Financial Institution & Policy Analyst (202–452–2382), or Laura Lipscomb, Assistant Director (202–912–7964), Division of Monetary Affairs; for users

of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

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

On October 30, 2019, the Board voted to approve a ¼ percentage point decrease in the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby decreasing from 2.50 percent to 2.25 percent the rate that each Reserve Bank charges for extensions of primary credit. In addition, the Board had previously approved the renewal of the secondary credit rate formula, the primary credit rate plus 50 basis points. Under the formula, the secondary credit rate in effect at each of the twelve Federal Reserve Banks decreased by ¼ percentage point as a result of the Board's primary credit rate action, thereby decreasing from 3.00 percent to 2.75 percent the rate that each Reserve Bank charges for extensions of secondary credit. The amendments to Regulation A reflect these rate changes.

The ¼ percentage point decrease in the primary credit rate was associated with a decrease in the target range for the federal funds rate (from a target range of 1¾ to 2 percent to a target range of 1½ to 1¾ percent) announced by the Federal Open Market Committee on October 30, 2019, as described in the Board's amendment of its Regulation D published elsewhere in today's **Federal Register**.

Administrative Procedure Act

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

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

Regulatory Flexibility Analysis

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

Paperwork Reduction Act

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

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

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

Authority and Issuance

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

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

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

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

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

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

(a) *Primary credit.* The interest rate at each Federal Reserve Bank for primary credit provided to depository institutions under § 201.4(a) is 2.25 percent.

(b) *Secondary credit.* The interest rate at each Federal Reserve Bank for secondary credit provided to depository institutions under 201.4(b) is 2.75 percent.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 1, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–24273 Filed 11–6–19; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Docket No. R–1684; RIN 7100–AF 64]

Regulation D: Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

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

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

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

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

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

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

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

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is amending Regulation D (Reserve Requirements of Depository Institutions) to revise the rate of interest paid on balances maintained to satisfy reserve balance requirements (''IORR'') and the rate of interest paid on excess balances (''IOER'') maintained at Federal Reserve Banks by or on behalf of eligible institutions. The final amendments specify that IORR is 1.55 percent and IOER is 1.55 percent, a 0.25 percentage point decrease from their prior levels. The amendments are intended to enhance the role of such rates of interest in moving the Federal funds rate into the target range established by the Federal Open Market Committee (''FOMC'' or ''Committee'').

DATES:

Effective date: The amendments to part 204 (Regulation D) are effective November 7, 2019.

Applicability date: The IORR and IOER rate changes are applicable beginning October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Special Counsel (202–452–3565), or Justyna Bolter, Senior Attorney (202–452–2686), Legal Division, or Francis Martinez, Senior Financial Institution & Policy Analyst (202–245–4217), or Laura Lipscomb, Assistant Director (202–912–7964), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (''the Act'') imposes reserve requirements on certain types of deposits and other liabilities of depository institutions.[1] Regulation D, which implements section 19 of the Act, requires that a depository institution meet reserve requirements by holding cash in its vault, or if vault cash is insufficient, by maintaining a balance in an account at a Federal Reserve Bank (''Reserve Bank'').[2] Section 19 also provides that balances maintained by or on behalf of certain institutions in an account at a Reserve Bank may receive earnings to be paid by the Reserve Bank at least once each quarter, at a rate or rates not to exceed the general level of short-term interest rates.[3] Institutions that are eligible to receive earnings on their balances held at Reserve Banks (''eligible institutions'') include depository institutions and certain other institutions.[4] Section 19 also provides that the Board may prescribe regulations concerning the payment of earnings on balances at a Reserve Bank.[5] Prior to these amendments, Regulation D specified a rate of 1.80 percent for both IORR and IOER.[6]

II. Amendments to IORR and IOER

The Board is amending § 204.10(b)(5) of Regulation D to specify that IORR is 1.55 percent and IOER is 1.55 percent. This 0.25 percentage point decrease in each rate was associated with a decrease in the target range for the federal funds rate, from a target range of 1¾ to 2 percent to a target range of 1½ to 1¾ percent, announced by the FOMC on October 30, 2019, with an effective date of October 31, 2019. The FOMC's press release on the same day as the announcement noted that:

> Information received since the Federal Open Market Committee met in September indicates that the labor market remains strong and that economic activity has been rising at a moderate rate. Job gains have been solid, on average, in recent months, and the unemployment rate has remained low. Although household spending has been rising at a strong pace, business fixed investment and exports remain weak. On a 12-month basis, overall inflation and inflation for items other than food and energy are running below 2 percent. Market-based measures of inflation compensation remain low; survey-based measures of longer-term inflation expectations are little changed.
>
> Consistent with its statutory mandate, the Committee seeks to foster maximum employment and price stability. In light of the implications of global developments for the economic outlook as well as muted inflation pressures, the Committee decided to lower the target range for the federal funds rate to 1½ to 1¾ percent. This action supports the Committee's view that sustained expansion of economic activity, strong labor market conditions, and inflation near the Committee's symmetric 2 percent objective are the most likely outcomes, but uncertainties about this outlook remain. The Committee will continue to monitor the implications of incoming information for the economic outlook as it assesses the appropriate path of the target range for the federal funds rate.

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

> The Board of Governors of the Federal Reserve System voted unanimously to lower the interest rate paid on required and excess reserve balances to 1.55 percent, effective October 31, 2019.

As a result, the Board is amending § 204.10(b)(5) of Regulation D to change IORR to 1.55 percent and IOER to 1.55 percent.

III. Administrative Procedure Act

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

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

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

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

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

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

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

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

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

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

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

IV. Regulatory Flexibility Analysis

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

V. Paperwork Reduction Act

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

List of Subjects in 12 CFR Part 204

Banks, Banking, Reporting and recordkeeping requirements.

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

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

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

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

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

§ 204.10 Payment of interest on balances.

* * * * *

(b) * * *

(5) The rates for IORR and IOER are:

TABLE 1 TO PARAGRAPH (B)(5)

	Rate (percent)
IORR	1.55
IOER	1.55

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 1, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–24272 Filed 11–6–19; 8:45 am]

BILLING CODE 6210–01–P

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0853; Product Identifier 2019–CE–036–AD; Amendment 39–19774; AD 2019–21–08]

RIN 2120–AA64

Airworthiness Directives; Textron Aviation Inc. (Type Certificate Previously Held by Beechcraft Corporation) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Textron Aviation Inc. (Textron) Models E33, E33A, E33C, F33, G33, 35–C33, 35–C33A, K35, M35, N35, P35, S35, V35, V35A, 36, and certain Models F33A, F33C, V35B, and A36 airplanes. This AD requires inspecting the right aileron flight control cable end fittings (terminal attachment fittings) and replacing any damaged cable assembly. This AD was prompted by reports of cracked and fractured right aileron flight control cable end fittings. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 22, 2019.

The FAA must receive comments on this AD by December 23, 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 *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 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.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0853; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, 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: Alan Levanduski, Aerospace Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4161; fax: (316) 946–4107; email: *alan.levanduski@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Within the last year, the FAA has received an estimated 17 reports of the right aileron flight control cable end fittings failing on Textron Models E33A, S35, V35, and A36 airplanes. There are two different cable assemblies installed on the right aileron flight control system. The forward aileron cable assembly connects the control wheel to the turnbuckle, and the aft aileron cable assembly connects the aileron surface to the turnbuckle. These failures have occurred at the swaged cable end fittings that thread into the turnbuckle. The location of the right aileron cable end fittings, just forward of the aft carry through spar and underneath a heating duct, creates an environment where corrosion may be accelerated. Also, the presence of the turnbuckle safety wire, combined with the location beneath the heating duct, makes corrosion and cracking difficult to detect. Some of the reports of failed cable end fittings revealed that the aileron cables had been held together only by the safety wire, while other reports were of complete aileron cable separation. Because of airplane design similarities, this unsafe condition could also occur on Models E33, E33C, F33, F33A, F33C, G33, 35–C33, 35–C33A, K35, M35, N35, P35, V35A, V35B, and 36.

This condition, if not addressed, could result in failure of the right aileron flight control cable assembly, un-commanded right roll of the airplane, and loss of roll control in the left direction, which may lead to loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

AD Requirements

This AD requires inspecting the right aileron flight control cable end fittings that thread into the turnbuckle for corrosion, pitting, and cracks and replacing any damaged cable assembly.

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 the quantity of recent reports of failure of the right aileron flight control cable end fittings necessitates that the corrective actions be accomplished within 30 days. 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 was not preceded by notice and an opportunity for public comment. However, the FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include the Docket Number FAA–2019–0853 and Product Identifier 2019–CE–036–AD at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this final rule. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Costs of Compliance

The FAA estimates that this AD affects 4,138 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the right aileron cable end fittings.	5 work-hours × $85 per hour = $425	Not applicable	$425	$1,758,650

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection. The FAA has no way of determining the number of airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement of a forward aileron cable assembly	6 work-hours × $85 per hour = $510	$1,123	$1,633
Replacement of an aft aileron cable assembly	4 work-hours × $85 per hour = $340	$785	$1,125

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 small airplanes, gliders, balloons, airships, domestic business jet transport airplanes, and associated appliances to the Director of the Policy and Innovation Division.

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 FAA has determined that it has good cause to adopt this rule without notice and comment, RFA analysis is not required.

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–21–08 Textron Aviation Inc. (Type Certificate Previously Held by Beechcraft Corporation) Airplanes: Amendment 39–19774; Docket No. FAA–2019–0853; Product Identifier 2019–CE–036–AD.

(a) Effective Date

This airworthiness directive (AD) is effective November 22, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Textron Aviation Inc. (Type Certificate previously held by Beechcraft Corporation) airplanes, certificated in any category:

(1) Models E33, E33A, E33C, F33, G33, 35–C33, 35–C33A, K35, M35, N35, P35, S35, V35, V35A, and 36, all serial numbers (S/Ns);

(2) Model F33A, S/Ns CE–290 through CE–680;

(3) Model F33C, S/Ns CJ–26 through CJ–128;

(4) Model V35B, S/Ns D–9069 through D–9961; and

(5) Model A36, S/Ns E–185 through E–925.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 2710, Aileron Control System.

(e) Unsafe Condition

This AD was prompted by reports of cracked and fractured right aileron flight control cable end fittings (terminal attachment fittings). The FAA is issuing this AD to detect and address damaged right aileron flight control cable end fittings. The unsafe condition, if not addressed, could result in failure of the right aileron flight control cable assembly, un-commanded right roll of the airplane, and loss of roll control in the left direction, which may lead to loss of control of the airplane.

(f) Compliance

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

(g) Inspection

Within 30 days after November 22, 2019 (the effective date of this AD) inspect the forward and aft right aileron flight control cable end fittings that thread into the turnbuckle. To gain access to the end fittings, you must remove the front seats and floorboards and, if installed, the rear seats and under-seat closeout. The end fittings are located underneath the heating duct, just forward of the aft carry through spar.

Note to paragraph (g) of this AD: Adjusting the turnbuckle relative to the end fittings will affect cable tension.

(1) Remove any safety wire from the end fittings and turnbuckle, if installed. Remove any sleeving and tape on the shank of the cable end fittings without gouging or scratching the fitting surface.

(2) Using a 10X magnification, a mirror, and a light source, inspect all exposed surfaces of both control cable end fittings for cracks, pitting, and corrosion.

(h) Follow-On Actions

Before further flight after the inspection required by paragraph (g) of this AD, do one of the following actions, as applicable:

(1) If there are no cracks, no pitting, and no corrosion, check cable tension and make any necessary adjustments, and replace safety wire; or

(2) If there is a crack or any pitting or corrosion, replace any damaged cable assembly.

(i) Credit for Previous Actions

(1) If you performed the actions required by paragraphs (g) and (h) of this AD before November 22, 2019 (the effective date of this AD) using one of the following documents, you met the requirements of this AD:

(i) American Bonanza Society (ABS) Air Safety Foundation Beechcraft Control Cable Turn Buckle Inspection Recommendation, dated February 8, 2019;

(ii) ABS Air Safety Foundation Recommended Beechcraft Control Cable Turnbuckle Inspection, Update 1, dated February 20, 2019; or

(iii) ABS Air Safety Foundation Recommended Beechcraft Control Cable Turnbuckle Inspection, Update 2, dated August 8, 2019.

(2) The ABS Air Safety Foundations recommended inspection documents are available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0853. You may also obtain copies of these documents by contacting the ABS at American Bonanza Society, 3595 N Webb Road, Suite 200, Wichita, KS 67226; email: *info@bonanza.org;* telephone: (316) 945–1700; fax: (316) 945–1710; or internet: *https://www.bonanza.org/.*

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k) of this AD.

(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.

(k) Related Information

For more information about this AD, contact Alan Levanduski, Aerospace Engineer, Wichita ACO Branch, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4161; fax: (316) 946–4107; email: *alan.levanduski@faa.gov.*

Issued in Kansas City, Missouri, on November 1, 2019.

Pat Mullen,

Manager, Aircraft Certification Service, Small Airplane Standards Branch, AIR–690.

[FR Doc. 2019–24325 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 500, 501, 580 and 801

RIN 1235–AA28

Authorizing Electronic Payments of Civil Money Penalties

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department) revises its regulations issued pursuant to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the H–2A provisions of the Immigration and Nationality Act (H–2A), the Fair Labor Standards Act (FLSA), and the Employee Polygraph Protection Act (EPPA) governing the payment of civil money penalties (CMPs) assessed by the Wage and Hour Division (WHD). The regulatory revisions expand the CMP payment methods beyond the options specified in the current text by allowing for the payment of CMPs through an electronic payment alternative, and otherwise amend the regulations to ensure uniform payment instructions. The existing MSPA, H–2A, FLSA, and EPPA regulations require persons assessed a CMP under those statutory schemes to remit payment in person or by mail using a certified check or money order. In recognition of modern payment methods, the Department is amending these regulations to allow for payment of the CMPs via an electronic payment alternative, any successor system, or by any additional payment method that the Department may deem acceptable in the future. This action revises the regulatory text in the appropriate regulations

administered by WHD. This action is intended to simplify payment methods for persons assessed a CMP, and does not impose any new regulatory requirements.

DATES: This rule is effective November 7, 2019.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210, telephone: (202) 693–0406 (this is not a toll-free number) or email: *WHDPRAComments@dol.gov.*

SUPPLEMENTARY INFORMATION: Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Publication of a Notice of Proposed Rulemaking is unnecessary since the agency is merely updating its regulations to add alternatives for payment of CMPs and to improve consistency among its regulations. The rulemaking does not mandate payment via electronic payment method.

This final rule is not a regulatory action under Executive Order 13771 because it is not a significant action under Executive Order 12866.

I. Background

The Department's regulations at 29 CFR 500.144, 501.22, 580.18, and 801.43 provide instructions for the payment of CMPs assessed by WHD under MSPA, H–2A, the FLSA, and the EPPA. The instructions currently require that payment be remitted by certified check or money order, to be mailed or delivered to WHD. Many members of the public may find these payment methods sufficient. However, the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) analyzed WHD's CMP payment process and recommended that *Pay.gov* be used as an electronic payment option to improve its cash management practices and reduce paper-based collections. WHD accepted Fiscal Service's recommendation and has fully implemented *Pay.gov* as an additional method for paying CMPs. *Pay.gov* is a web transaction portal for public access to federal agency services, sponsored by the United States Department of the Treasury's Fiscal Service.[1] WHD believes that an electronic payment option provides members of the public with a faster and less costly payment method than the current options of delivering or mailing certified checks or money orders. Many members of the public may find it in their interest to remit CMP payments electronically, thereby avoiding the costs associated with money orders, certified checks, certified mail, or courier service, as well as the cost of personnel time required to mail or deliver the CMP payments to WHD. The Department also recognizes that commonly accepted and preferred payment methods may continue to evolve. Accordingly, in this final rule, the Department adds an option for electronic payment of CMPs on *www.pay.gov* (or any successor system), permits payment via additional means that the Department may deem acceptable, and directs persons who wish to remit payment to WHD by certified check or money order to do so pursuant to WHD instructions that are provided during the resolution of a WHD investigation.[2]

II. Summary of Changes to the Regulations

In 29 CFR 500.144, 501.22, 580.18, and 801.43, the regulatory text currently provides that a person assessed a CMP shall remit promptly by mail or in person the amount to the Secretary by certified check or money order, made payable to the order of WHD. The Department has added a payment alternative to all these provisions to allow persons the option of submitting payment of CMPs electronically through *Pay.gov* (or any successor system). Recognizing that commonly accepted and preferred payment methods may continue to evolve, the Department has further revised these regulations to permit payment via any additional payment method that the Department may deem acceptable in the future. Instructions for any such additional payment method would be provided during the resolution of a WHD investigation. Additionally, the current text of these regulations lack consistency in their instructions for mailing or delivering CMP payment to WHD when payment is made by certified check or money order. In this final rule, the Department has revised these regulations to eliminate those inconsistencies.

III. Administrative Procedure Act

Section 553(b)(3) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking in the **Federal Register** and solicit public comments when the agency has good cause to find that doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3). The Department finds that good cause exists to dispense with the notice and public comment procedures for these minor amendments to its regulations based on the conclusion that such procedures are unnecessary. This rule adds an electronic payment option for persons assessed a CMP to submit their CMP payments to the Department and makes other minor changes to ensure consistent payment instructions. This rule does not impose any new regulatory obligations. Therefore, the Department is issuing these regulatory revisions in a final rule.

Section 553(d) of the APA provides that substantive rules should take effect not less than thirty (30) days after the date they are published in the **Federal Register** unless ''otherwise provided by the agency for good cause found[.]'' 5 U.S.C. 553(d)(3). Since this rule merely provides alternative payment mechanisms and does not impose any additional regulatory requirements, the Department finds it is unnecessary to delay the effective date of the rule. Accordingly, the Department finds that good cause exists to make this rule effective on the date of publication.

IV. Executive Orders 12866, 13563; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulations, as affirmed by Executive Order 13563. Section 6(a)(3) of Executive Order 12866 requires that agencies assess both the costs and benefits of significant regulatory actions. Under Executive Order 12866, section 3(f), a ''significant regulatory action'' is one that meets any of several specified conditions, including the following: Having an annual effect on the economy of $100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f) and waived review. This rule simply provides persons with alternative options for providing CMP payments to WHD and removes detailed, somewhat

[1] *See https://www.pay.gov/public/home/notices.*

[2] The regulation at 29 CFR 503.26 similarly provides instructions for the payment of CMPs assessed by WHD under the H–2B provisions of the Immigration and Nationality Act. This final rule does not amend 29 CFR 503.26. Any revisions to that regulation will be issued separately.

inconsistent instructions for mailing or delivering checks or money orders for CMP payments. It does not impose any costs on employers or other persons, and does not meet any of the criteria for an economically significant rule specified by the Executive Order. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of the order.

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2). Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule is not subject to the PRA because any information collected under this rule is collected during the conduct of Department investigations, civil actions to which the agency is a party, or administrative proceedings, and therefore is exempt from the PRA's requirements. *See* 44 U.S.C. 3518; 5 CFR 1320.4(a)(2).

VI. Unfunded Mandates Reform Act

This Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, this rule does not impose any Federal mandate that may result in increased expenditures by State, local or Tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

VII. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This rule does not have federalism implications as outlined in Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 and determined it did not have ''tribal implications.'' The rule does not have ''substantial direct effects 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.'' As a result, no Tribal summary impact statement has been prepared.

List of Subjects

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Investigations, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 580

Administrative practice and procedure, Child labor, Penalties, Wages.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

Dated: October 25, 2019.

Cheryl M. Stanton,

Administrator.

For the reasons set forth above, the Department of Labor amends Title 29, Parts 500, 501, 580, and 801 of the Code of Federal Regulations as follows:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

■ 1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97–470, 96 Stat. 2583 (29 U.S.C. 1801–1872); Secretary's Order No. 01–2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74, 129 Stat. 584.

■ 2. Revise § 500.144 to read as follows:

§ 500.144 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a United States District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

PART 501—ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

■ 3. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114–74 at § 701.

■ 4. Revise § 501.22 to read as follows:

§ 501.22 Civil money penalties—payment and collection.

Where a civil money penalty is assessed in a final order by the WHD Administrator, by an ALJ, or by the Administrative Review Board (ARB), the amount of the penalty must be received by the WHD Administrator within 30 days of the date of the final order. The person assessed such penalty shall remit the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES

■ 5. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01–2014 (Dec. 19,

2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

■ 6. Revise § 580.18(a) to read as follows:

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Board pursuant to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

* * * * *

PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

■ 7. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100–347, 102 Stat. 646, 29 U.S.C. 2001–2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114–74 at § 701, 129 Stat 584.

■ 8. Revise § 801.43 to read as follows:

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor.

The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at *www.pay.gov* or any successor system; or by any additional payment method deemed acceptable by the Department.

[FR Doc. 2019–23849 Filed 11–6–19; 8:45 am]

BILLING CODE 4510–27–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules To Permit Parties To File and Serve Documents Electronically

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: The Federal Mine Safety and Health Review Commission (''the Commission'') published interim rules on December 23, 2013, that permitted parties to file and serve documents electronically with the Commission, and permitted comments on the rules. The Commission is adopting those interim rules as final rules without making further changes.

DATES:

Effective date: This final rule is effective December 23, 2019.

Comments due date: The Commission will accept written and electronic comments received on or before December 9, 2019.

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

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

SUPPLEMENTARY INFORMATION:

A. Background

In 2013, the Commission published interim rules that permitted parties to file and serve documents electronically. 78 FR 77354 (Dec. 23, 2013). The Commission stated that in 2014, it would begin using a new electronic case management system (''e-CMS'') in order to more efficiently manage its caseload. The Commission explained that although parties may file documents electronically through the system, parties may also continue to file documents non-electronically as they have in the past. The Commission published changes to its procedural rules as interim rules in order to explicitly permit electronic filing and service. The Commission subsequently published a correction to one of the interim rules (79 FR 3104 (Jan. 17, 2014)), and extended the comment period through July 31, 2014 (79 FR 20098 (Apr. 11, 2014)).

The Commission received three comments on the interim rules. Of those, the Commission received two comments from the Secretary of Labor through the U.S. Department of Labor's Office of the Solicitor. First, the Secretary noted that interim rule 29 CFR 2700.5(f)(1) provides that when filing is by electronic transmission, filing is effective upon ''successful receipt by the Commission,'' and requested clarification about what constitutes successful receipt by the Commission. Second, the Secretary commented that, as a practical matter, some documents may not be deliverable on the same day that a document is filed electronically, as required by interim rule 29 CFR 2700.7(c)(1).

During the past five years, the Commission has handled on a case-by-case basis any questions regarding what constitutes successful receipt in terms of electronic filing and the inability to effect service on the same day that a document was filed electronically. Given the infrequency with which such circumstances arise, the Commission has determined that it is appropriate to continue its current practice without making changes to the interim rules. However, the Commission has placed an example illustrating successful receipt in the electronic filing instructions on its website (*www.fmshrc.gov*).

The third comment that the Commission received noted that there is no Commission procedural rule that specifically requires that all pleadings be signed, although interim rule 29 CFR 2700.6 sets forth the manner in which pleadings should be signed and by whom. The commenter further questioned whom should sign a pleading in a discrimination proceeding brought by the Secretary on behalf of a miner pursuant to 30 U.S.C. 815(c)(2).

The Commission has determined that such comments do not pertain to the electronic filing and service changes addressed by the interim rules. Accordingly, the Commission has determined that it need not change the interim rules to address this comment. However, the Commission is currently drafting a notice of proposed rulemaking regarding changes to its procedural rules that are not restricted to electronic filing and service. The Commission is considering the third comment in the context of that proposed rulemaking.

B. Notice and Public Procedure

1. Executive Orders

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

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

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

2. Statutory Requirements

Although notice-and-comment rulemaking requirements under the Administrative Procedure Act (''APA'') do not apply to rules of agency procedure (5 U.S.C. 553(b)(3)(A)), the Commission invites members of the interested public to submit comments on this final rule. The Commission will accept public comment until December 9, 2019.

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

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

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

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

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

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

List of Subjects in 29 CFR Part 2700

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

PART 2700—PROCEDURAL RULES

■ Accordingly, the interim rule amending 29 CFR part 2700, which was published at 78 FR 77354 on December 23, 2013, and corrected at 79 FR 3104 on January 17, 2014, is adopted as final without change.

Dated: November 1, 2019.

Marco M. Rajkovich, Jr.,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 2019–24251 Filed 11–6–19; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0357; FRL–10000–96]

Dinotefuran; Pesticide Tolerance for Emergency Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of dinotefuran in or on fuzzy kiwifruit. This action is in response to EPA's granting of an emergency exemption under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on fuzzy kiwifruit. This regulation establishes a maximum permissible level for residues of dinotefuran in or on this commodity. The time-limited tolerance expires on December 31, 2022.

DATES: This regulation is effective November 7, 2019. Objections and requests for hearings must be received on or before January 6, 2020 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0357, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Publishing Office's e-CFR site at *https://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *https://www.epa.gov/aboutepa/about-office-chemical-safety-and-pollution-prevention-ocspp.*

C. How can I file an objection or hearing request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure

proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2019–0357 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before January 6, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2019–0357, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with FFDCA sections 408(e) and 408(l)(6) of, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of dinotefuran, and its metabolites DN,1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)urea, calculated as the stoichiometric equivalent of dinotefuran, in or on kiwifruit, fuzzy at 0.9 part per million (ppm). This time-limited tolerance expires on December 31, 2022.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of FFDCA section 408 and the safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.,* without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Dinotefuran on Fuzzy Kiwifruit and FFDCA Tolerance

According to the Alabama Department of Agriculture and Industries (ADAI), in 2017 brown marmorated stink bug (BMSB) damage was observed in a small block of nursery stock plants. This observation alerted the staff at the kiwi nursery to the potential of BMSB for the 2018 crop season. ADAI claimed that in 2018, BMSB severely damaged the kiwifruit crop, making it unmarketable. ADAI estimated losses as high as 50% for 2018 and projected 2019 losses to be over $1.6 million without the use of this section 18 emergency exemption.

After having reviewed the submission, EPA determined that an emergency condition exists for this State, and that the criteria for approval of an emergency exemption are met. EPA has authorized a specific exemption under FIFRA section 18 for the use of dinotefuran on fuzzy kiwifruit for control of brown marmorated stink bug in Alabama.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of dinotefuran in or on fuzzy kiwifruit. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent, non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in FFDCA section 408(l)(6). Although this time-limited tolerance expires on December 31, 2022, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amount specified in the tolerance remaining in or on fuzzy kiwifruit after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this time-limited tolerance at the time of that application. EPA will take action to revoke this time-limited tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this time-limited tolerance is being approved under emergency conditions, EPA has not made any decisions about whether dinotefuran meets FIFRA's registration requirements for use on fuzzy kiwifruit or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of dinotefuran by a State for special local needs under FIFRA section 24(c), nor does this tolerance by itself serve as the authority for persons in any State other than Alabama to use this pesticide on the applicable crop under FIFRA section 18, absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for dinotefuran, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT.**

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of, and to make a determination on, aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerance for residues of dinotefuran on kiwifruit, fuzzy at 0.9 ppm. EPA's assessment of exposures and risks associated with establishing the time-limited tolerance follows.

A. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/ safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks.*

A summary of the toxicological endpoints for dinotefuran used for human risk assessment is discussed in Unit III.B. of the final rule published in the **Federal Register** of April 10, 2013 (78 FR 21269) (FRL–9381–5).

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to dinotefuran, EPA considered exposure under the time-limited tolerance established by this action as well as all existing dinotefuran tolerances in 40 CFR 180.603. EPA assessed dietary exposures from dinotefuran in food as follows:

i. *Acute exposure.* Acute effects were identified for dinotefuran. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 2003–2008 National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). As to residue levels in food, EPA assumed tolerance-level residues, corrected for additional residues which are of concern for risk assessment, default processing factors when appropriate, and 100% crop treated assumptions.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 2003–2008 NHANES/ WWEIA. As to residue levels in food, EPA assumed tolerance-level residues, corrected for additional residues which are of concern for the risk assessment, default processing factors when appropriate, and 100% crop treated assumptions.

iii. *Cancer.* Based on the data referenced in Unit IV.A., EPA has concluded that dinotefuran does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for dinotefuran. Tolerance level residues and 100% CT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for dinotefuran in drinking water. These simulation models take into account data on the physical, chemical, and fate/ transport characteristics of dinotefuran. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/about-water-exposure-models-used-pesticide.*

Based on the Tier 1 Rice Model, the estimated drinking water concentrations (EDWCs) for surface water are 269 parts per billion (ppb) for acute exposure and 257 ppb for chronic exposure. Based on the use on turf, ornamentals, and Christmas trees, the EDWCs for ground water are 154 ppb for acute exposure and 132 ppb for chronic exposure.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 269 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration value of 257 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Dinotefuran is currently registered for uses that could result in short-term residential exposures: (Turf, ornamentals, indoor foggers, indoor broadcast, spot-ons, crack and crevice). Dinotefuran is also used on dogs, cats, and horses (spot-on and/or spray). The only potential post-application exposure pathway that was quantitatively assessed is the incidental oral exposure pathway for children 1 to less than 2 years old due to currently registered uses. The resulting margins of exposure (MOEs) range from 1,200 to 5,500,000 and are significantly greater than EPA's level of concern (LOC = 100). Residential exposure is not anticipated from the proposed use on kiwifruit; therefore, an updated residential exposure assessment was not conducted.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not made a common mechanism of toxicity finding as to dinotefuran and any other substances and dinotefuran does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that dinotefuran does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-*

assessing-pesticide-risks/cumulative-assessment-risk-pesticides.

C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* There was no evidence (qualitative or quantitative) of increased susceptibility of the young following *in utero* exposures to rats and rabbits and following pre- and post-natal exposure to rats for 2-generations.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for dinotefuran is complete.

ii. The neurotoxic potential of dinotefuran has been adequately considered. Dinotefuran is a neonicotinoid and has a neurotoxic mode of pesticidal action. Consistent with the mode of action, changes in motor activity were seen in repeat-dose studies, including the subchronic neurotoxicity study. Additionally, decreased grip strength and brain weight were observed in the offspring of a multi-generation reproduction study albeit at doses close to the limit dose. For these reasons, a developmental neurotoxicity (DNT) study was required. The DNT study did not show evidence of a unique sensitivity of the developing nervous system; no effects on neurobehavioral parameters were seen in the offspring at any dose, including the limit dose.

iii. There is no evidence that dinotefuran results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100% CT and tolerance-level residues corrected for additional residues of concern for risk assessment. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to dinotefuran in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by dinotefuran.

D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to dinotefuran will occupy 11% of the aPAD for children 1 to 2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dinotefuran from food and water will utilize 5.2% of the cPAD for (children 1 to 2 years old) the population group receiving the greatest exposure. Based on the explanation in the unit regarding residential use patterns, chronic residential exposure to residues of dinotefuran is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Dinotefuran is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to dinotefuran.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 720 for children 1 to less than 2 years old from post-application hand-to-mouth exposures from fogger applications in indoor rooms or areas to control fleas. Although adults are expected to have short-term handler and post-application exposures to dinotefuran due to registered residential use patterns, quantitative dermal and inhalation assessments are not required since there was no dermal and inhalation hazard identified in the toxicity database. Therefore, the short-term aggregate assessment for adults is equivalent to the chronic dietary exposure and risk estimate for the most highly exposed adult population subgroup, adults 20 to 49 years old, and is not of concern (1.4% cPAD). Because EPA's level of concern for dinotefuran is an MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level).

Dinotefuran is currently registered for uses that could result in intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to dinotefuran.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that the combined intermediate-term food, water, and residential exposures result in aggregate MOEs of 1,400 for children 1 to less than 2 years old. The recommended residential exposure estimates for use in the children 1 to less than 2 years old intermediate- and chronic/long-term aggregate assessment reflects post-application hand-to-mouth exposures from pet spot-on applications to small dogs. Although adults are expected to also have long-term post-application exposures to dinotefuran due to the pet spot-on treatments, quantitative dermal and inhalation assessments are not required since there was no dermal and inhalation hazard identified in the toxicity database and oral exposure is not anticipated for adults. Therefore, the intermediate- and chronic/long-term aggregate assessment for adults is equivalent to the chronic dietary exposure and risk estimate for the most highly exposed adult population subgroup, adults 20 to 49 years old, and is not of concern (1.4% cPAD). Because EPA's level of concern for dinotefuran is an MOE of 100 or below, these MOEs are not of concern.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of

evidence of carcinogenicity in two adequate rodent carcinogenicity studies, dinotefuran is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to dinotefuran residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (high performance liquid chromatography/tandem mass spectrometry (HPLC/MS/MS method for the determination of residues of dinotefuran, and the metabolites DN, and UF; an HPLC/ultraviolet (UV) detection method for the determination of residues of dinotefuran; and HPLC/MS and HPLC/MS/MS methods for the determination of DN and UF) are available to enforce the tolerance expression.

The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established an MRL for residues of dinotefuran on kiwifruit, fuzzy.

VI. Conclusion

Therefore, a time-limited tolerance is established for residues of dinotefuran and its metabolites DN,1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl)urea, calculated as the stoichiometric equivalent of dinotefuran, in or on kiwifruit, fuzzy at 0.9 ppm. This tolerance expires on December 31, 2022.

VII. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA sections 408(e) and 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs,'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with FFDCA sections 408(e) and 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 25, 2019.

Daniel Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.603, add alphabetically an entry for ''Kiwifruit, fuzzy'' to the table in paragraph (b) to read as follows:

§ 180.603 Dinotefuran; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration date
* * * * *		
Kiwifruit, fuzzy ...	0.9	12/31/2022

* * * * *

[FR Doc. 2019–24268 Filed 11–6–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 18–143, 10–90, 14–58; FCC 19–95]

The Uniendo a Puerto Rico Fund and the Connect America USVI Fund, Connect America Fund, ETC Annual Reports and Certifications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) takes major steps to promote the deployment of advanced, hardened networks in the Territories by allocating nearly a billion dollars in Federal universal service support in Puerto Rico and the U.S. Virgin Islands.

DATES: Effective December 9, 2019, except for §§ 54.313, 54.316, 54.1503, 54.1505, 54.1508, and 54.1513 through 54.1515. The Commission will publish a document in the **Federal Register** announcing the effective date of those rules.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (Order) and Order on Reconsideration in WC Docket Nos. 18–143, 10–90, 14–58; FCC 19–95, adopted on September 26, 2019 and released on September 30, 2019. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW, Washington, DC 20554 or at the following internet address: *https://docs.fcc.gov/public/attachments/FCC-19-95A1.pdf.*

I. Introduction

1. In the span of a few short weeks in September 2017, Hurricane Irma and then Hurricane Maria caused widespread devastation to Puerto Rico and the U.S. Virgin Islands (together the Territories). The storms produced extensive damage to infrastructure throughout the Territories, damaging or destroying communications networks, and leaving residents without essential lines of communication during and after these dangerous storms. The recovery of communications networks in the Territories has been especially challenging due to their remoteness from the mainland United States and the higher costs of deployment providers face there. The Commission to date has provided carriers with approximately $130 million in funding from the Universal Service Fund (USF or Fund) to assist with network restoration, bringing the total high-cost universal service support invested in the Territories since the 2017 hurricanes to more than $382.4 million.

2. Most carriers now report that service has been completely or substantially restored. But the Commission's work is not done; it knows that hurricanes will hit Puerto Rico and the U.S. Virgin Islands again. So, looking to the future, the Commission must improve and expand broadband networks in the Territories. The Commission's long-term goal is to facilitate the deployment of fast, resilient, and reliable networks to all parts of the islands that will stand the test of time and provide digital opportunity to all Americans living in Puerto Rico and the U.S. Virgin Islands.

3. The Commission therefore takes major steps to promote the deployment of advanced, hardened networks in the Territories by allocating nearly a billion dollars in Federal universal service support in Puerto Rico and the U.S. Virgin Islands. For Stage 2 of the Uniendo a Puerto Rico Fund, the Commission allocates more than $500 million over ten years in fixed broadband support and more than $250 million over three years in mobile broadband support. The Commission likewise allocates more than $180 million over ten years and $4 million over three years for Stage 2 Connect USVI Fund fixed and mobile support, respectively. These funds will facilitate the improvement and expansion of existing fixed and mobile networks in the Territories, and provide for the deployment of new broadband networks, so that those living in Puerto Rico and the U.S. Virgin Islands will have access to and benefit from the same high-speed broadband services that residents of the mainland United States enjoy. Indeed, some of the funds that the Commission authorizes are specifically allocated to facilitate the deployment of 5G, the next generation of wireless connectivity, in the Territories. In short, the steps the Commission takes in the Order, in addition to the private investment made by providers, will help ensure that broadband is deployed on a reasonable and timely basis to the residents of the Territories and that it remains deployed following future storms.

II. Report and Order

4. To ensure the continued expansion and improvement of fixed voice and broadband service in the Territories, the Commission adopts a single-round competitive proposal process for Stage 2 fixed support for the Uniendo a Puerto Rico Fund and Connect USVI Fund. The Commission divides Puerto Rico into 78 geographic areas—one per municipio—and it divides the U.S. Virgin Islands into two geographic areas. The Commission will consider all valid applications for each geographic area and select a winner for each area by applying the same objective scoring criteria for price, network performance, and network resilience and redundancy to each proposal received. The Commission establishes a ten-year support term and make any existing provider of fixed broadband in each Territory, as of June 2018 FCC Form 477 data, eligible to participate in the support mechanism for the respective Territory they serve. Winning applicants will have specific deployment obligations and the Commission adopts two processes for reassessing deployment data to ensure support is spent efficiently. The Commission directs Stage 2 fixed support toward providing quality service throughout the Territories, rather than simply toward restoration of pre-storm networks, to promote efficient deployment of advanced, reliable services to all locations. The Commission also establishes thorough oversight and accountability measures similar to those the Commission has implemented in other recent high-cost proceedings.

5. *Single-Round Competitive Proposal Process.* The Commission adopts a single-round competitive proposal process in which it will consider all applications simultaneously and select applicants based on the lowest score for a series of weighted objective criteria. The Commission establishes performance tiers that applicants must meet, and it gives greater preference to proposals based on how much they exceed the minimum thresholds. The Commission finds several clear benefits to a competitive proposals approach, and it believes this approach is better-suited to Puerto Rico and the U.S. Virgin Islands than alternative mechanisms such as an auction, a multi-round competitive proposal process, or a negotiated approach. The competitive proposal process the Commission adopts is preferable to an auction under the circumstances because of the relatively small pool of possible applicants. At the same time, the Commission finds the single-round

proposal process retains many of the competitive benefits of an auction but can facilitate more prompt funding and deployment as compared with a multi-round proposal or negotiated approach process. Finally, the approach the Commission adopts relies on objective criteria that are preferable to a more subjective competitive proposal process or negotiated approach because it better implements its policy goals of promoting efficiency, certainty, transparency, and impartiality, and allows the Commission to compare applications using different network technologies and offering differing performance. The Commission's competitive process is comparable to the Connect America Fund (CAF) II auction in that the Commission will award support competitively based on application of objective criteria. The Commission adapts the CAF II auction framework to the particular circumstances of the Territories by adding resiliency and redundancy as criteria to account for the risks the Territories face and by employing a single-round proposal process rather than a multi-round auction in light of the smaller geographic scale and number of participants. Based on the foregoing analysis, the Commission declines to adopt the multi-round or negotiated competitive proposal processes favored by several commenters. The Commission recognizes that it is forgoing the opportunity to negotiate or influence supplementary-round proposals. Nevertheless, this approach will encourage parties to put forward their best commitments in the first instance and promote competition for support. It also will avoid significant delay and limit subjectivity.

6. *Selection Criteria.* Consistent with the Commission's policy goals for Stage 2 fixed support, it will consider applications based on both cost and proposed performance capabilities. Evaluating cost is an essential part of the Commission's determination. As with all USF decisions, the Commission seeks to promote access to quality services in the most cost-effective and efficient manner possible. The Commission must be responsible stewards of the Fund to fulfill its commitment to fiscal responsibility and to ensure that funds are targeted efficiently. For example, in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, the Commission proposed to design a competitive bidding mechanism for price cap areas where the incumbent Eligible Telecommunications Carrier (ETC) declined to make a state-level commitment, so as to distribute support in a way that ''maximizes the extent of robust, scalable broadband service subject to the budget.'' This competitive bidding mechanism resulted in important efficiency gains. The eligible locations awarded in the resulting CAF II auction had an initial reserve price of $5 billion over the next decade; the final price tag to cover these locations, however, is now only $1.488 billion—saving the Fund over $3.5 billion. While the competitive process the Commission adopts in the Order differs from the CAF II auction, it expects that allowing multiple providers—including those that have not traditionally received high-cost support—to compete for funding will increase the efficiencies of bringing advanced services to consumers in Puerto Rico and the U.S. Virgin Islands.

7. Accordingly, the Commission will weigh three factors in selecting winning applicants: (1) Price per location; (2) network performance, including speed, latency, and usage allowance; and (3) network resilience and redundancy. Although commenters differ on how to weigh these factors relative to each other and some suggest additional factors, several commenters support the inclusion of these three key factors. The Commission finds it appropriate to give price per location the greatest weight. While the Commission's goal in this process is to award funding to the carrier that can provide the highest performing and most resilient network possible, the Commission must do so in a fiscally responsible manner. As stewards of the Fund, responsible spending must be the Commission's primary concern. Although the destruction from the hurricanes contributed to the challenge of accurately determining location counts, the processes the Commission establishes herein provides opportunities to remedy any inaccuracies, and the Commission must make every effort to ensure cost-effective spending. At the same time, the Commission must carefully account for the other important criteria it has identified. Therefore, while the Commission allocates price the greatest individual weight, combined weights for network performance and resilience/redundancy can outweigh price, to encourage applicants to deploy high-performing, storm-hardened networks. The Commission notes that in contrast to the CAF II auction, where it considered speed, usage allowance, and latency but no other network-specific factors, here the Commission will award points based on resilience and redundancy to account for the unique challenges the Territories face due to the risk of disasters and their insularity. The Commission gives network performance the second most points because performance will always matter to customers, while resilience and redundancy benefit users only in the event of a natural disaster or other disruption to the network.

8. *Overall Scoring.* Consistent with the factors the Commission has identified, it adopts a 270-point scale, allocated as follows: 100 points for price per location, 90 points for network performance, and 80 points for network resilience and redundancy. For each geographic area for which it seeks support, an applicant will be assigned a specific point value in each category and the applicant with the lowest combined score will win support in that area. This overall scoring table shows how the points will total across all categories. The Commission also adopts the tables in the following for each subcategory, which show how the points will be assigned within each subcategory.

TABLE 1—OVERALL SCORING

Overall scoring	Points
Price Per Location	100
Network Performance	90
Network Resilience and Redundancy	80
Total	270

9. The Commission declines to use deployment timing or status of restoration as weighted factors in scoring proposals in this process. The Commission agrees with commenters that deployment timing is important—indeed all winning providers must complete buildout and service obligations within six years, with interim deployment milestones after three years. And while faster deployment is in the public interest, the Commission concludes that the benefits of accelerating deployment schedules by 1 or 2 years—which cannot be verified at the time support is awarded—in this case does not warrant being awarded a competitive preference in scoring when weighed against the importance of ensuring cost-effective, high-quality, and resilient networks. In particular, network performance, resilience, and hardening provide long-term benefits, in contrast to the shorter-term benefits of an accelerated schedule. Further, the Commission expects that all carriers are independently motivated to build faster

as it will mean receiving revenue more quickly. The Commission also finds that there is reduced risk of failure in establishing a reasonable schedule that all applicants can commit to meet rather than providing an up-front benefit for a shorter timeline that would require withholding support if the carrier did not adhere to the schedule. The Commission specifically rejects Viya's suggestion that it requires a minimum baseline of 25/3 Mbps deployment to 95 percent of locations in the U.S. Virgin Islands within two years. That timeline deviates sharply from the deployment milestones in CAF II, and Viya has not identified a reason why the Commission should depart from its precedent. Further, that timeline could limit the number of applicants, precluding the U.S. Virgin Islands from receiving the benefits of potential additional competition.

10. Likewise, while the Commission agrees that it is important for carriers to restore their networks quickly following a natural disaster, it finds that assigning preference based on an applicant's commitment to restore within a certain period following a future disaster—or demonstrated history of swift restoration following a disaster—is unhelpful for deciding how to award support in this instance. Past restoration performance does not necessarily predict future restoration performance, particularly when the nature of a provider's network will likely change following this process and given that the Commission cannot control for the size and scope of any future disaster. Evaluating how fast or completely a carrier restored its network would also be extremely challenging and is dependent on factors outside of the Commission's control (*e.g.,* the nature and scope of the disaster, personnel, availability, access, etc.). Having said that, the Commission expects recipients of Stage 2 support, as with all USF support, to be diligent and efficient in restoring their networks following any future natural disaster or outage. To that end, the Commission adopts measures to ensure all applicants have written Disaster Preparation and Response Plans in place to establish processes that can help ensure effective and timely restoration following a disaster.

11. *Price Per Location.* The Commission adopts the scoring for price per location shown in Table 2 as an incentive for participants to achieve the most economical solution possible, without sacrificing quality or resilience. The reserve price is the maximum amount that a proposal may commit to accept, and a commitment to accept the reserve price will receive the most points for price per location. To encourage applicants to provide the best price possible, the Commission starts with a total of 100 points (for a commitment at the reserve price) and subtract one point for each percentage point below the reserve price to which an applicant commits. Because the Commission calculates the reserve price with reference to the cost to serve the geographic area, this weighting system takes into account the relative cost to serve different municipios or islands. Although Hughes suggested a cap at 40% or greater below reserve, the Commission's allocation method encourages applicants to reveal their actual price by rewarding a carrier for each point below the reserve price. As such, the Commission does not adopt a cap or otherwise limit how far below the reserve price an applicant can commit. That being said, in the CAF II auction a significant portion of bidders dropped out of the bidding when faced with prices more than 30% below the reserve price, and the Commission would expect similar final prices here to avoid compromising quality or coverage across the entire geographic area.

TABLE 2—PRICE PER LOCATION SCORING

Price	Assigned points
Reserve Price	100
1% – 100% Below Reserve Price.	–1 point for each percentage below reserve.

12. *Reserve Price.* The Commission adopts, with one slight modification, the three-step process to determine the reserve price that the Commission proposed in the *PR–USVI Fund Notice of Proposed Rulemaking (PR–USVI Fund NPRM),* 83 FR 27528, June 13, 2018, to allocate the budget. First, the Commission will employ the Connect America Model (CAM) to calculate the average cost per location for all locations in a census block. Second, the Commission will apply the full budgets for Puerto Rico and for the U.S. Virgin Islands, thereby creating territory-specific high-cost thresholds to ensure the full amount of the budget available to each territory over the 10-year period is available for disbursement. Third, the Commission will establish a reserve price for each geographic area in proportion to the support amounts calculated for each census block within that area. That is, the Commission will use the CAM to allocate a portion of the budget to each geographic area based on the relative cost of providing service across all eligible areas. Although the Commission proposed using the extremely high-cost threshold to establish a per-location, per-month cap of $198.60, as it has previously done, it will not apply a cap in this context. The total number of locations above the cap is relatively small, the reserve price for each geographic area will cover a larger geography, and the Commission expects competition to lower overall support amounts. The Commission directs the Wireline Competition Bureau (Bureau) to apply the modified three-step process it describes and release the reserve price for each geographic area and number of locations for all eligible areas by Public Notice.

13. The CAM is the best current objective data the Commission has combining cost and locations. The Bureau never formally adopted the CAM as it applies to either Puerto Rico or the U.S. Virgin Islands, but rather excluded those two territories (and Alaska) prior to calculating the offer of CAF II model-based support for price caps based on opposition in the record from the price caps serving those areas. However, the Commission uses the CAM for Stage 2 not to calculate the exact amount of support necessary for each eligible area—the applicants will provide this—but rather as an estimate of relative cost within each geographic area, to be used as an allocator of the budget. In other words, unlike for the offer of model-based support, the Commission will not use the CAM to establish specific final support amounts but to determine the relative costs of each area within the budget and the maximum amount of support available for each eligible geographic area. In the CAF II auction, most applicants were awarded support at less than 80% of the CAM-established reserve price, suggesting that the actual support amounts required to serve were often lower than model-calculated support figures, and the Commission believes it is likely that the same pattern will emerge through the competitive process here.

14. Because the CAM is the best objective mechanism the Commission has available to it and commenters did not suggest a specific alternative for setting reserve prices, the Commission declines to adopt a different approach based on commenters' arguments that the CAM underestimates costs of providing service in Puerto Rico and the U.S. Virgin Islands and does not account for the costs of ''storm hardening'' a network. Given the limited role that the CAM will play as a budget allocator, coupled with the Commission's desire to provide support to the Territories as quickly as possible, it would not be efficient to initiate a

process to update the CAM before the competitive application process; re-running the model to make adjustments to the locations currently within CAM prior to calculating the reserve price would require significant time and resources. Liberty suggested that, to accurately determine how many locations currently exist, it and other carriers undertake a physical walk of the existing locations in a sample of census blocks or geographic areas and then use those numbers to extrapolate the number of locations in similarly situated or adjacent blocks or areas. Reliance on a physical walk, or other new carrier-submitted data, would introduce substantial delays to implementing Stage 2, and invite potentially intractable disputes if carriers disagree regarding the number of locations, contrary to the Commission's goal of facilitating prompt deployment of resilient service throughout the Territories. Further, even a walk of a network could be inaccurate or outdated if buildout is happening concurrently, or if, as suggested, the walkout is only used as a method of projection across similarly situated areas. The Commission finds that its reliance on CAM will provide a reasonably accurate baseline by which to allocate the budget, and that conducting this process expeditiously outweighs any benefits that might result from conducting a time-consuming data collection before beginning the competitive application process. Moreover, given the benefits of a competitive process in allowing each applicant to request support at a level that reflects its understanding of the costs of deployment and in potentially lowering support below the reserve price, the Commission finds it is not necessary to incorporate specific network costs related to storm hardening. The Commission believes the additional support it provides during the 10-year term addresses these concerns and will allow carriers to do the work necessary to increase resilience of their networks.

15. *Network Performance.* To ensure that the Commission spends USF dollars wisely, it must consider both the cost (in terms of price per location) and benefits of each proposal. To evaluate the benefits, the Commission first assigns points based on proposed network performance to ensure that end users will receive quality service. Evaluating network performance is consistent with Commission high-cost support precedent.

16. The Commission establishes three tiers for network speed and usage allowances, and two tiers for network latency, and allocate points for each. The Commission will accept applications at each of the different performance tiers, informed by its experience with the CAF II auction and prior Commission orders setting performance obligations. While the Commission aims to provide funding to all supported locations as cost-effectively as possible within its finite budget, the Commission also values higher speeds over lower speeds, higher usage allowances over lower usage allowances, and lower latency over higher latency. Therefore, for example, the Commission will consider proposals where the costs to serve are higher, if higher-performance services will be available. The Commission sees the value to consumers of having access during the 10-year term of support to service that exceeds its minimum requirements, and the Commission must take steps to ensure that the networks it invests scarce universal service support to build will stand the test of time. For a proposal to qualify for any tier, the applicant must commit to deploying a network that is fully capable of delivering speeds and usage allowances that meet or exceed—and latency that meets or falls below—the relevant standards to all locations within the geographic area. Applicants must also commit to offer this level of service throughout the 10-year term to ensure that all users can take advantage of the network services being funded. The Commission declines to expand the performance criteria to include scoring for customer service as WorldNet suggests. The Commission expects carriers will have adequate business incentives to use the high-quality networks they deploy with Stage 2 support to provide reliable service, and it declines to dictate specific business practices or provisions of customer agreements. Moreover, WorldNet failed to articulate how the Commission could adjust its scoring to accommodate customer service performance, what specific factors it should require, what metric it might use to evaluate those factors, or how it could assign a score based on a collection of individualized customer agreements.

17. The Commission requires support recipients to deploy a network capable of providing service at 25/3 Mbps as its minimum speed requirement. Although the *PR–USVI Fund NPRM* proposed 10/1 Mbps, fixed providers are now generally providing at least 25/3 Mbps and in many cases much faster speeds in both Territories as well as elsewhere in the United States. Additionally, alternative technologies like satellite are increasingly able to offer higher speeds. As commenters note, a 25/3 Mbps minimum speed requirement is consistent with recent Commission action and helps to ensure that customers and service providers in the Territories are not subject to a lesser standard of service than other parts of the country. The Commission therefore declines the suggestion of AT&T and PRTC that it should adopt 10/1 Mbps as the minimum speed requirement. The Commission's recent experience with the CAF II Auction, in which winning bidders committed to making 25 Mbps/3 Mbps or better service to more than 99.7% of the locations in the areas won, affirms its conclusion that a higher standard of service is achievable, and the Commission does not want Puerto Rico and the U.S. Virgin Islands to be left behind. Indeed, the governments of the Territories themselves would prefer to see even higher-speed deployment to the Territories. While the Commission applauds these goals of the Territories, it declines to adopt an even higher speed (*e.g.,* 100 Mbps) as its minimum requirement, as Governor Mapp suggested, as the data do not yet support this speed for all areas.

18. Additionally, the Commission adopts a minimum monthly usage allowance of 200 gigabytes (GB) or a usage allowance that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher. In the *PR–USVI Fund NPRM,* the Commission proposed a 170 GB minimum usage requirement. As with the speed requirement, however, while some commenters suggested lower usage allowances, the Commission believes the current market supports higher usage requirements based on recent usage announced in the Bureau's *2019 Urban Rate Survey PN.*

19. The Commission will reward higher combinations of speed and usage allowances by allocating them fewer points as shown in Table 3. The Commission will assign 50 points to providers that commit to deploy the minimum speed requirement of 25/3 Mbps and a minimum usage allowance of greater or equal to 200 GB or the U.S. Median, whichever is higher. The Commission will assign 25 points to providers that commit to deploy networks offering 100/20 Mbps and a minimum usage allowance of 2TB per month. The Commission recognizes that Puerto Rico has a goal of Gigabit speed throughout 70% of the island by 2020 and U.S. Virgin Islands leadership seeks high-speed last-mile connections. To facilitate deployment of high-speed service in the Territories, the

Commission will assign no points for 1 Gbps/500 Mbps with 2TB or greater monthly usage allowance. In the CAF II auction, the Commission adopted tiers of 100 Mbps/20 Mbps and 1 Gbps/500 Mbps, each with a 2 TB usage allowance, and it sees no reason to deviate from that decision. In addition, the Commission declines the Fiber Broadband Association's proposal to assign 70 points for the deployment of the minimum speed requirement tier because such a change would result in the points available for network performance, in the aggregate, outweighing price per location, contrary to the Commission's determination to prioritize price per location first.

TABLE 3—NETWORK PERFORMANCE SCORING (1 OF 2)—SPEED/USAGE

Speed	Monthly usage allowance	Assigned points
≥25/3 Mbps	≥200 GB or U.S. median, whichever is higher.	50
≥100/20 Mbps	≥2 TB	25
1 Gbps/500 Mbps.	≥2 TB	0

20. *Latency.* The Commission adopts a maximum roundtrip broadband and voice latency of ≤ 750 milliseconds (ms) or less but give preference to applicants with low-latency broadband and voice at or below 100 ms as shown in Table 4 below. Accordingly, high-latency commitments will be assigned 40 points, and low-latency commitments will be assigned no points. While the *PR–USVI Fund NPRM* proposed a roundtrip latency of no greater than 100 ms, the Commission is persuaded that the better approach is to allow providers of higher-latency services to participate, while rewarding providers that commit to low-latency services. Providing flexibility will allow for greater participation, particularly by satellite providers, which is likely to increase competition and lower the cost of serving many geographic areas, while also ensuring that as many areas receive as many applications as possible. Further, satellite has proven to be an important tool in providing service to the Territories, particularly in the wake of natural disasters. The Commission concludes that this standard will ensure that consumers in rural, insular, and high-cost areas will have available an offering that enables them to use their broadband connections in ways reasonably comparable to consumers in urban or lower-cost areas, where fixed broadband services are widely available. The Commission therefore rejects the arguments of several fixed service providers and Puerto Rico Telecommunications Regulatory Board (PRTRB) that it should adopt a requirement of 100 ms maximum latency.

TABLE 4—NETWORK PERFORMANCE SCORING (2 OF 2)—LATENCY

Latency	Requirement	Assigned points
Low	≤ 100 ms	0
High	≤ 750 ms	40

21. *Network Resilience and Redundancy.* Due to the risks particular to Puerto Rico and the U.S. Virgin Islands posed by future natural disasters, the Commission believes it is important to explicitly consider resilience, network hardening, and disaster preparation in its support determinations. Although the Commission has not previously evaluated these factors in the context of allocating high-cost support, the heightened risk of damage due to disasters, as demonstrated by Hurricanes Irma and Maria in the Territories, presents a special case. According to a *New York Times* evaluation of Small Business Administration data, nearly every zip code in Puerto Rico and the U.S. Virgin Islands sustained over $5 million in losses from major natural disasters from 2002–2017. The study did not show similar losses in any state; indeed, although Puerto Rico only accounts for less than 1% percent of the U.S. population, it alone accounted for 5% percent of all losses from natural disasters in the nation during that time period. Further, because the Territories are insular, preparation for and recovery from disasters is particularly difficult and network infrastructure is especially vulnerable due to high shipping costs, topography and weather, and distance from the mainland. The Commission agrees with Liberty that network resilience is a key component of a successful network. Supporting resilient networks is consistent with the Commission's obligation to use the Fund to help provide access to quality services at reasonable rates in Puerto Rico and the U.S. Virgin Islands, in light of the particular risks the Territories face. Further, a hardened network can help guard against future restoration costs. As PRTC illustrated, the storms devastated the progress made with the use of CAF Phase I frozen support. If the Commission is to provide Federal funding to support modern networks in Puerto Rico and the U.S. Virgin Islands, it finds it prudent and in the public interest to account for the heightened possibility of future natural disasters in the Territories. The Commission therefore will factor the resilience and redundancy of any supported network in its fixed support allocation decision.

22. The Commission recognizes that resilience involves many factors, but its evaluation focuses on only a few key, objective criteria, consistent with its preference to avoid subjective processes. The Commission accounts for the more subjective and situationally dependent factors of maintaining a resilient network through its disaster preparation and response plan requirement. The Commission measures network resilience by the ability of network facilities to recover quickly from damage to its components or to any of the external systems on which it depends. Resilience-improving measures do not absolutely prevent damage; rather, they enable network facilities to continue operating despite damage and/or promote a rapid return to normal operations when damage does occur. The scoring the Commission adopts awards a points preference based on the level of resilience an applicant proposes to build into its network and/or the redundancy or diversity it proposes to create in its network.

23. Many service providers reported that burying fiber is their preference for creating resilient networks hardened against disasters. The Commission agrees that burying fiber is ideal because it provides the best protection of the network against the high winds of storms and the atmospheric elements in general. Burying fiber all the way to every location, however, may not be financially or physically feasible in mountainous areas or otherwise challenging topography, or in areas with frequent or high likelihood of flooding. Accordingly, the Commission's scoring creates a preference for burying as much fiber as possible, but also allows for resiliency solutions that rely on a fixed wireless connection to the end user location, microwave backhaul, and/or satellite, which it finds are all less vulnerable than above-ground wireline service because they rely on relatively fewer physical facilities that are easier to restore. Satellite can be quite resilient, as shown by its performance and usage following the 2017 hurricanes, though the Commission expects there is a risk on the receiver end, as with a fixed wireless solution. While the record only identifies that carriers are installing microwave backhaul as a source of redundancy, the Commission includes it in its scoring

framework for the primary transmission path to maximize flexibility and ensure that numerous resilient options are available. It is clear following the storms that aerial transmission lines are not a storm-hardened solution that can provide reliable communications to customers living in the Territories. By all accounts, aerial transmission lines required the most repair and left the network the most vulnerable. The Commission agrees, however, with Viya that aerial wireline networks using high-wind rated composite poles provide more resiliency over traditional poles. Thus, based on the record, the Commission allows proposals based on aerial wireline deployment because it recognizes that it may be the most cost-effective, or even the only, means of providing service to some locations.

24. Accordingly, the Commission will assign 60 points for a solution that relies on aerial wireline deployment. Recognizing that new pole technologies, specifically high-wind rated composite poles, provide increased resiliency over traditional wooden poles, the Commission will assign as few as 40 points for use of high-wind rated composite poles over standard aerial wireline deployment. Similarly, the Commission will assign as few as 40 points for a resiliency solution that relies on fixed wireless connection to the end user, microwave backhaul, or satellite (*e.g.,* an all-satellite solution would receive 40 points). The Commission will assign as few as zero points for a resiliency solution that relies on buried fiber (*e.g.,* an all-buried fiber solution would receive no points).

25. The Commission recognizes that applicants are likely to use a mix of outside plant types, so it awards point reductions for resiliency based on the percentage of the miles an applicant proposes to use for a particular solution (*e.g.,* buried fiber or aerial) within the geographic area for which it is submitting an application. For example, if a provider intends to bury fiber to 70% of the miles of its network in a geographic area, use a fixed wireless end user connection solution for 20% of the miles of its network in a geographic area, and aerial deployment for 10% of its network in geographic area, the Commission will assign 6 points for aerial (10% of 60), assign 8 points for fixed wireless (20% of 40), and assign no points for buried fiber (70% of 0)—for a total of 14 assigned points for resilience. The Commission recognizes that network miles is not an apt measurement for satellite, so it will award points for a network that uses a mix of satellite and terrestrial transmission to the end-user location based on the percentage of locations reached via each transmission medium. For example, if a carrier proposes to reach 50% of its network locations via satellite and 50% via aerial, the Commission will assign a resilience score of 50 ((50% of 40) + (50% of 60)). The Commission declines Viya's proposal to measure resiliency for all services based on end-user connections because network miles is a better measure of the resiliency of the entire network. The Commission declines to adopt the proposals of Viya and PRTC to weigh core network miles more heavily than last mile connections. Applying this weighting would undermine the incentive to harden connections to end users, ultimately making networks less able to successfully withstand disaster. While Viya and PRTC are correct that core network miles serve many more customers than last-mile connections, for this same reason applicants need less incentive from the Commission's weighting system to harden core network miles compared to end-user connections.

26. Finally, as the Commission also value redundancy as a key measure of a storm-hardened network, it will assign up to 20 points depending on whether an applicant proposes a redundancy solution that includes a backup network or path diversity. Specifically, the Commission will assign no points for a proposal that includes either a backup network or path redundancy, and it will assign 20 points to a proposal that includes neither a backup network or path redundancy. In its comments, BBVI explains how both backup network and path diversity are important to developing redundancy in the network. Viya agrees that path diversity is important in building a resilient network. Network diversity means maintaining a separate type of communication network that can provide services should the first type fail. For example, a diverse network system could be one that normally provides services through a fiber network, but which switches over to a satellite network in an emergency situation. The Commission also agrees with Viya that a diverse network system could include the use of a high-speed mobile broadband network in an emergency situation. Path diversity means that there is an alternate route to achieving communications within the network. For example, a network with path diversity could be one that deploys services through fiber, but which maintains a backup fiber ring that could re-route traffic in an emergency where the fiber network is cut, damaged, or otherwise not working. The Commission believes these types of diversity can be achieved regardless of the type of carrier and so maintain its technology neutral objectives. The Commission clarifies, however, that it will not deduct points for satellite providers for redundancy simply based on the availability of a backup satellite path. The risk during storms is to the satellite system's ground-based earth stations, not space stations. Indeed, the points of potential failure for an all-satellite network during a storm may be more concentrated compared to terrestrial networks. Although the Commission agrees with BBVI that both network and path diversity are important, to remain flexible and meet its statutory and policy goals with this support, the Commission scoring will equally reward a carrier for building in either network or path diversity. Nevertheless, the Commission encourages carriers to build both into their network wherever possible as a best practice for building a storm-hardened network. The Commission declines PRTC's proposal to assign up to 40 points for redundancy. The scoring already reflects the relationship between resiliency and redundancy in building a network and the Commission's priorities related to the inherent qualities of each technology. Moreover, increasing the redundancy score would result in an overall change in priorities of the scoring criteria by allowing the same number of points for price per location as for resiliency and redundancy, contrary to the Commission's determination to weight price per location most heavily. Additionally, the Commission declines Viya's proposal that it allow up to a 20 point deduction from the total resiliency and redundancy score for a commitment to provide at least eight hours of backup power at network components and customer locations because backup power, while important, is not a measure of *network* resiliency and because Commission rules already require voice providers to make available twenty-four hours of backup power for customers. Additionally, the Commission requires winning applicants in this process to account for backup power in their Disaster Preparation and Recovery Plans.

27. The Commission adopts the same approach for rewarding redundancy as it does for resilience. For instance, if an applicant proposes building in network or path diversity for 60% of its network miles in a geographic area, the Commission will assign a redundancy

score of 8 (40% of network miles without path diversity or a backup network multiplied by 20). Consistent with the Commission's approach to resilience, it recognizes that network miles is not an apt measurement for satellite, so it will reward a satellite service provider for redundancy based on the percentage of locations that it intends to reach with a backup network. For example, if a satellite provider proposes to reach 80% of its network locations with a backup network, the Commission will assign a redundancy score of 4 (20% of locations without a backup network multiplied by 20). The Commission declines to adopt Hughes' proposal to award points for hardening if, among other things, the diversity that the service provider incorporates into the network covers no less than 70% of the service area. The Commission prefers the flexibility of a sliding scale to a binary system, and it does not see a significant benefit to rewarding coverage of areas without potential end-user locations. The Commission also declines Hughes' proposal to change the amount of resiliency or redundancy points awarded to satellite, as the scoring already accounts for the inherent resiliency of satellite networks.

TABLE 5—NETWORK RESILIENCE AND REDUNDANCY SCORING

Network resilience and redundancy measures	Assigned points
Aerial wireline deployment	60.
Satellite; fixed wireless end user location connection; microwave backhaul; aerial wireline deployment using high-wind rated composite poles.	40–60 sliding scale.
Underground fiber	0–60 sliding scale.
Backup network/path diversity	0–20 sliding scale.

28. *Alternative Distribution Mechanisms.* The Commission views adopting a competitive process as the best and most efficient method for allocating high-cost support for fixed voice and broadband services in the Territories to achieve its goals for Stage 2, consistent with the Commission's proposals in the *PR–USVI Fund NPRM.* The Commission agrees with Liberty that the superior applications will reveal themselves through a competitive process. The Commission therefore declines PRTC's and Viya's suggestions that it either grants the incumbent Local Exchange Carrier (LEC) a right of first refusal or directs Stage 2 support to the incumbent LEC. While PRTC and Viya each contend that its ability to provide cost-effective and comprehensive service across each respective territory justifies allocating support to it without exploring other options, the Commission finds that a fair and open competitive process (with safeguards built in to ensure that winners as a group are capable of providing quality services throughout Puerto Rico and the U.S. Virgin Islands) will ensure that the carrier that is able to commit to the best combination of price per location, network performance, and network resilience and redundancy wins support. PRTC and Viya will each have the opportunity to demonstrate that it is the best choice according to an objective process that is also open for other carriers to compete for support that has been as yet unavailable to them. For these reasons, the Commission finds that the benefits of a process open to competition outweigh any added delay compared to granting a right of first refusal or a right to funding. Further, the Commission does not find Viya's request to deploy a more resilient network capable of delivering faster service in exchange for guaranteed support persuasive. In the absence of a competitive process, the Commission cannot know whether it will obtain a better proposal than Viya's, and unlike the Commission's competitive process, Viya's proposal would not allow for the possibility of reduced cost to the Fund.

29. The Commission expects allowing multiple providers—including those that have not traditionally received high-cost support—to compete for funding will increase the efficiencies of bringing advanced services to consumers in Puerto Rico and the U.S. Virgin Islands, without having to offer another right of first refusal to the incumbent. The CAF II auction demonstrated the clear benefits of injecting competition into the Commission's high-cost support mechanisms. Further, the 2017 hurricane season represents a changed circumstance that justifies revisiting the Commission's prior support decisions regarding Puerto Rico and the U.S. Virgin Islands to select what it now views as the best method of allocating support. Thus, while the Commission previously allowed the incumbent ETCs in the Territories to elect frozen support over model-based support and granted price cap incumbent ETCs the opportunity to receive model-based support in exchange for state-level service commitments, the Commission now departs from those decisions in this specific context. In the *USF/ICC Transformation Order,* the Commission relied on a series of predictive judgments in determining that it would offer a right of first refusal to price cap incumbent LECs prior to the CAF II auction, but the Commission no longer needs to rely on such predictive judgments as the competitive process it adopts will identify the qualified provider best positioned to provide cost-effective, quality, hardened service according to the criteria the Commission establishes. The Commission agrees with commenters like WorldNet, BBVI, VPNet, Momentum Telecom, CRG and Hughes that its selection process should strive to be technology neutral and allow for diversity in the marketplace; granting the incumbent LEC a non-competitive right to support would be contrary to that goal.

30. The competitive process will advance the Commission's goals for prompt and complete deployment in Stage 2, and it agrees with BBVI that additional steps in the process of allocating Stage 2 fixed support will only further delay buildout. Because the Commission views it as introducing unnecessary delay, it declines to adopt AT&T's proposal to split fixed Stage 2 into a second stage focused on restoration and a third stage focused on new construction and network hardening. The proposed process is overly complicated and only further delays support to rebuild, improve, and expand service with little benefit to either the Commission or consumers. The Commission also declines Viya's suggestion to bifurcate fixed Stage 2 Connect USVI Fund support into a $16.4 million per year ''Broadband Maintenance and Improvement Fund'' and a $2.25 million per year ''Broadband Expansion Fund.'' Viya's suggestion would direct the vast majority of support to Viya without the benefit of a competitive process, contrary to the Commission's rejection of that approach, and it would unnecessarily limit the amount of

support available for new, higher-speed, and more storm-hardened deployment.

31. The Commission also declines to subject proposals to public comment. Public comment would add unnecessary delay to this process without having any impact on the Bureau's application of objective scoring criteria. Moreover, placing applications on public notice would be inconsistent with the Commission's restrictions on prohibiting communications among applicants during the application process or with their approach in prior competitive processes for universal service support.

32. *Unified Approach.* In order to ensure the continued deployment of fixed and mobile voice and broadband service in the Territories, the Commission adopts similar Stage 2 frameworks for Puerto Rico and the U.S. Virgin Islands. Puerto Rico and the U.S. Virgin Islands have many similarities—both are insular, suffered greatly from Irma and Maria, are at risk of future disasters, and face lower average income and higher poverty levels than any state. The Commission agrees with PRTC that based on these similarities, it should adopt similar approaches for the Territories. While Viya argues that the Commission should adopt distinct approaches to the two Territories because of differences between Puerto Rico and the U.S. Virgin Islands, it finds that the significant similarities between the two Territories outweigh these differences. In particular, the Territories' similar insularity and risk of future natural disaster justify careful design of a similar approach to address these challenges. Both territories face significant economic hardship, so distinctions in this regard do not warrant different treatment. The Commission accounts for differences in population, density, and number of providers through the budget it sets for each territory and in establishing different geographic areas for Stage 2 fixed support. The Commission also finds that the substantial added complexity of designing two distinct programs would delay the initiation of Stage 2, to the detriment of the Territories.

33. *Submission of Competitive Proposals Public Notice.* Having adopted a competitive proposal approach for distributing Stage 2 support, the Commission directs the Bureau to release an initial Public Notice within 90 days from this publication of the Order that further details the expected timeline and submission process for competitive applications, and that restricts eligible providers from discussing their applications or application strategy with each other during the application process and until awards are announced. The Commission expects that this Public Notice will reiterate the requirements for submission of a competitive proposal as adopted in the Order and provide additional information regarding the process for submitting an application. The Commission directs the Bureau to create any forms required for the submission of a competitive proposal and obtain the necessary approvals to use the form(s). The Commission expects the Public Notice will provide instructions on how to use and submit any forms, the certification of ETC status, the Letter of Credit, and the Disaster Preparation and Response Plan. Such an information collection should include sufficient information in order for the Bureau to score each submission for each geographic area within the application, consistent with the Commission's scoring system adopted in the Order. An applicant must submit only one comprehensive application to the Bureau for all geographic areas for which it is seeking support in a given territory, but it may include proposals within the application for all or only some of the geographic units. The Commission also directs the Bureau to include more detailed information regarding the timing of selection and awarding of support.

34. Following the submission of a competitive proposal, the Commission will permit an applicant the opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications may include correcting typographical errors in the application or supplying non-material information that was inadvertently omitted or was not available at the time the proposal was submitted. The Commission will not allow major modifications to be made after the application deadline. Major modifications may include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the proposal.

35. *Reviewing Competitive Proposals.* The Commission directs the Bureau to evaluate applications and select one winner per geographic area consistent with the methodology adopted in the Order. The Commission agrees with BBVI that it is in the best position to evaluate the competitive proposals and that Bureau review will yield the most efficient use of time and funds. The Commission also agrees with Hughes that it should avoid a ''beauty contest,'' but the Commission does not find it necessary to select a third-party reviewer to do so, as Hughes suggests. The Bureau has substantial experience with similar competitive processes—for example, the rural broadband experiments and the Lifeline Broadband Pilot—and with procurements to obtain numbering administration services. To ensure that winning applicants have the technical and financial qualifications to successfully complete their proposed projects within the required timeframes and in compliance with all statutory and regulatory requirements for the universal service support they seek, the Commission directs the Bureau to collect from each applicant and review and approve a detailed network plan and documents evidencing adequate financing for the project. To ensure a fair and thorough review of all applications the Commission directs the Bureau to score the applications using at least two independent reviewers for each application who will not communicate about the contents or merits of the applications prior to issuing a final score. Each reviewer shall score separately, and the final score for each application will be the average of all the reviewer scores. The Commission declines to direct the Bureau to provide a public comment period on an applicant's proposal prior to scoring, as suggested by Viya because a comment period is inconsistent with and unnecessary based on the objective scoring system the Commission outlines in the Order. Further, even a ''brief'' comment period may introduce months of delay if the Bureau is required to issue individualized written orders addressing arguments raised in comments to an application. While the Commission appreciates the PRTRB's offer to collaborate and encourage continued communication and feedback, it finds that a coordinated effort with another government agency in the way that the PRTRB proposes will not further the goal of efficiency in this process.

36. Once an applicant's proposal has been approved, including its Disaster Preparation and Response Plan, the Bureau will release a public notice announcing that the winning applicant is ready to be authorized. At that time, the winning applicant will be required to submit a letter of credit and any other required information, within a specified number of days, as described in the Order. After those documents are reviewed and approved, the Bureau will release a public notice authorizing the

winning applicant to begin receiving Stage 2 fixed support.

37. *Package Proposals.* The Commission declines to allow package proposals. By adopting relatively large geographic areas for allocating support—municipios in Puerto Rico and two large areas in the U.S. Virgin Islands—as compared to the census blocks used in the CAF II Auction, applicants will be able to leverage economies of scale even in the absence of package bidding. Allowing package proposals would substantially complicate the selection process and undermine the Commission's goals of facilitating a swift selection process and prompt deployment. The Commission finds that comparatively modest benefits of package bidding, in light of the large geographic areas it selects, are outweighed by the potential delays and complications in the application review process. All providers are welcome to submit a proposal for each eligible geographic area, and the Commission will evaluate and score each independently.

38. *Unawarded Areas/Areas Without Applications.* The Commission finds that it is premature to determine the process and amount of support for any unawarded areas until after the initial competitive proposal support is awarded. The Commission's primary focus is to encourage carriers to compete now for all areas of the Territories through the competitive proposal process it sets up. PRTC expressed concern about unawarded areas, noting a potential conflict between the competitive proposal process and the requirement that the incumbent serve any unawarded area with frozen support. However, the Commission expects that each unit will receive at least one sufficient application. The Commission does not want to create a process that potentially interferes with the incentives of the competitive proposal process. Following the awarding of support, the Commission directs the Bureau to develop options and provide to the Commission, within 90 days of authorizing all selected applicants, a recommendation and specific action plan to determine the provider and amount of support for each of the unawarded areas, if any.

39. *Support Term.* The Commission adopts a 10-year term of support, which it expects to begin in 2020, consistent with its proposal in the *PR–USVI Fund NPRM.* The Commission has used a 10-year support term on numerous other occasions. Overwhelmingly, commenters support the 10-year term. The Commission recognizes that, as BBVI states, deploying a fixed network is a time-consuming process. The Commission also agrees with PRTC that the unique challenge of having to rebuild from near complete devastation necessitates a 10-year term. While Liberty generally supports the 10-year term, it suggests frontloading support disbursement in the first five years to encourage network hardening due to the frequency and likelihood of natural disasters in the Territories. To the extent carriers can deploy more quickly while meeting their obligations, the Commission encourages them to do so. However, the Commission declines to accelerate the disbursements. A ten-year term with a six-year buildout obligation is consistent with the Commission's approach in CAF II. Given the complexity of deploying a hardened network, it is unclear to what degree faster disbursement would lead to faster hardened deployment. Accelerating disbursements would increase the contribution factor, which is not warranted when balanced against the uncertain benefits of accelerated disbursement or the Commission's responsibility to manage the Fund. Only Tier 1 opposed the 10-year term as ''perpetuating a monopoly,'' but a competitive process addresses this concern by opening the opportunity to receive support while still providing support recipients the necessary time to recover the costs of deploying and maintaining a network.

40. *Eligible Providers.* The Commission allows all providers that had existing fixed network facilities and made broadband service available in Puerto Rico or in the U.S. Virgin Islands, according to June 2018 FCC Form 477 data, to be eligible to participate in their respective territory's competitive process. The Commission allows participation by fixed providers who rely on any technology, including satellite, that can meet the program's service requirements. The Commission agrees with numerous commenters that allowing inclusion of satellite providers is particularly valuable in the context of Puerto Rico and the U.S. Virgin Islands due to satellite's resilience and availability post-hurricanes. While AeroNet argues that the Commission should exclude satellite due to its high latency, it accounts for services' varying latency in its scoring, as the Commission previously did with weighting performance tiers in the CAF II auction.

41. The Commission finds adjusting the date to June 2018 introduces the possibility of more participation and still allows the Commission to conduct the process efficiently, receive proposals from experienced providers, and minimize the risk that support recipients will default on service obligations. While the *PR–USVI Fund NPRM* proposed to limit participation to those providers that reported service as of June 2017 FCC Form 477 data, after further consideration, the Commission finds June 2018 allows for the inclusion of satellite providers and other providers that served the islands immediately post-hurricane, which promotes competition, but still focuses on participation by those providers with experience operating networks in the Territories. The Commission agrees with several commenters that experienced service providers are more likely to successfully deploy, given the unique challenges of serving the Territories. First, existing facilities-based providers possess experience serving the specific needs of the Territories, such as dealing with difficult terrain, distance from other landmasses, and relatively low subscribership rates, and as such are more likely to meet deployment targets. Additionally, the Commission agrees with PRTC and Viya that existing facilities-based service providers will be better equipped to expand service as quickly as possible, and existing providers with established track records serving these insular Territories will likely present a smaller risk of defaulting on their service obligations. To the extent that some providers would only enter those unique markets based on the availability of new Federal funding, the Commission is skeptical of such entities' ability to serve the specific needs of the Territories; ability to deploy quickly; level of financial risk; and commitment to provide long-term, high-quality service to consumers going forward. Moreover, the Commission finds that the time and resources required to pre-qualify for participation any potential new entrants would delay its implementation of Stage 2 with little benefit to the Fund or consumers. These concerns are all adequately addressed by limiting participation to providers that reported service as of June 2018 FCC Form 477 data.

42. The Commission will allow broadband providers that, according to June 2018 FCC Form 477 data, serve only business locations to participate. The Commission agrees with Neptuno that it ''should cast a wide net with respect to eligible providers to allow for greater competition and participation'' and that ''[e]xcluding business-only providers would be detrimental to the recovery and expansion of services.'' The Commission expects broadband providers with experience serving business customers are likely to possess

the requisite capabilities, experience, and commitment to serving the Territories to warrant allowing them to participate. And business-only service providers are better equipped than those with no presence to expand quickly, possess an existing track record that suggests a reduced risk of default, and possess experience with at least some of the challenges of serving the Territories. The Commission requires any provider that receives support to serve all locations within the specified geographic area, as detailed in the following.

43. The Commission disagrees with Viya's suggestion that it limit participation to entities that previously provided both broadband and voice service. While voice is the supported service, a history of providing voice is not a necessary precursor to participation because the Commission allows providers to become ETCs after selection. And while the Commission agrees with Viya that deploying high-quality, legally compliant voice service entails challenges, it expects that an experienced provider deploying an advanced broadband network should be able to meet those challenges. The Commission therefore finds that the benefits of allowing additional participation, which may lead to superior proposals at reduced costs to the Fund, outweighs any incremental benefit of restricting participation to existing voice service providers.

44. *Eligible Areas.* After consideration of the record, the Commission adopts the proposal that all areas of Puerto Rico and the U.S. Virgin Islands will be eligible for support. The Commission agrees with PRTC, VPNet, and BBVI that making all areas eligible allows support to be used anywhere it is necessary for new service, network upgrades, or storm hardening and resilience. Setting a more ambitious goal than mere restoration—to facilitate high-quality fixed broadband deployment to the full Territories—will enable the Commission to promote provision of quality fixed service to more residents on a faster timetable and make available more backhaul to facilitate ongoing mobile deployment. The Commission recognizes that a consequence of making all areas eligible is that it may fund building in areas where networks currently exist, which departs from its usual approach. However, in the specific context of Puerto Rico and the U.S. Virgin Islands, the Commission finds that making the entirety of the Territories eligible for support at this time is necessary to ensure the deployment of resilient networks that are hardened against future disasters in all parts of these insular Territories, rather than only in areas that are currently unserved. The Commission has already recognized the unique logistical and financial challenges of deploying networks in these insular areas, and the record here illustrates how these challenges are only exacerbated by the risk of experiencing natural disasters. Making all areas eligible allows for a holistic approach to building and hardening the network so that cost efficiencies can be realized wherever possible. Moreover, the Commission expects applicants that already have facilities in an eligible area to have a significant competitive advantage relative to other applicants, ultimately resulting in more efficient use of the budget. By dividing the islands into large geographic areas and requiring service by the winning applicants to all locations within those geographic areas, as discussed in the following, the Commission prevents the ''cream-skimming'' of lower-cost areas that some commenters fear. Ultimately, the Commission expects to receive competitive applications for areas where carriers already have existing network facilities and will rely on the Commission's deployment obligations and reporting to ensure widespread, efficient, and improved coverage.

45. *Geographic Areas.* For Puerto Rico the Commission adopts its proposal of a municipio as the geographic area for awarding support. The Commission agrees with PRTC and AeroNet that using municipios will allow for economies of scale that make serving the historically unserved areas of a municipio more economical. Additionally, municipios are well-defined and known to local populations and authorities. Coordination, planning, and cooperation with municipal authorities is likely to be easier on a municipio level, helping to promote efficient buildout. Finally, administering the competitive process will be easier using larger geographic areas, such as Puerto Rico's 78 municipios, versus its more than 900 barrios.

46. The Commission disagrees with commenters who argue for smaller geographic areas, such as census blocks, census block groups, or barrios or groups of barrios. First, the Commission finds the heightened risk of disaster and insularity of Territories makes them different enough from other areas that it should consider the proper geographic area freshly, and it declines to adopt census blocks or census block groups simply because it mirrors how support has been awarded in other proceedings. Second, because the Commission requires winning applicants to serve all locations within a municipio, using municipios will not allow winning providers to provide service only in dense areas where there is already robust service and ignore unserved areas, as AT&T claims. Third, the Commission is concerned that using more granular geographic areas will create a greater risk of applicants applying only for lower cost areas, leaving higher cost areas without applications, and thus potentially without service. Puerto Rico has 55,156 distinct census blocks and 2,551 census block groups, but only 78 municipios. Liberty argues smaller areas allow providers to better target funding based on the very specific needs of a granular area. However, the Commission agrees with PRTC that permitting applicants to pick and choose among census blocks or census block groups is likely to increase the number of areas without applications and may create an inefficient patchwork of winners across the island. Additionally, adopting the municipios approach provides the efficiencies that package bidding of smaller areas would also allow. Liberty asserts that, with smaller areas, a provider is likely to align its proposal with its intended expansion, which Liberty argues results in more efficient use of support. The Commission is concerned, however, that allowing providers to customize their proposals to match their preexisting expansion plans would not create a sufficient incentive for providers to build to new, unserved areas. Moreover, proposals based on census blocks or census block groups may require a provider to artificially segment its network in each of its applications. Finally, proposals based on thousands of census blocks or census block groups would be extremely burdensome for Commission staff to review, which would frustrate the Commission's goal of conducting an efficient and expeditious process.

47. For the U.S. Virgin Islands, the Commission adopts two geographic areas for awarding fixed support—one that is composed of St. John and St. Thomas islands together and a second of just St. Croix island. Separating the islands into two geographic areas will allow for greater competition during the proposal process and potentially result in more than one funded carrier in the U.S. Virgin Islands. Viya argues that ''the Commission must require participants to bid to serve the entire USVI as a single service area'' because ''[t]he economies of scale in the USVI are too limited for a provider to carve out a viable business serving only a

portion of the USVI.'' Viya does not support this argument beyond pointing to the U.S. Virgin Islands' population and distance from the mainland. And elsewhere, Viya identifies the distance between St. Croix and St. Thomas/St. John as an impediment to service, suggesting that synergies in serving the two areas are limited. In light of this lack of clarity, the Commission will err on the side of greater possible competition and adopt two geographic areas. The Commission does not believe more granular geographic areas in the U.S. Virgin Islands are tenable, however, because of the small size and challenging topography of the territory, and because of St. John's designation as a national forest.

48. *ETC Designation.* Consistent with the Act and the Commission's rules, a provider must be designated as an ETC before receiving high-cost support. The Commission allows fixed providers to obtain ETC designation after winning support, similar to the approach it followed for the CAF II Auction. There was broad support in the record for allowing carriers to become an ETC after winning support, but prior to receiving funds. Although Viya argues that the Commission should require applicants to become ETCs before applying to avoid having the failure of a winner to obtain ETC status adversely affect other applicants, it finds the benefits of an expeditious competitive process and reduced up-front costs for applicants outweigh the risk that Viya raises. The Commission's experience with the CAF II Auction showed that carriers had little difficulty obtaining ETC designation and that the vast majority of applicants were able to obtain ETC designation by the deadline.

49. Accordingly, the Commission adopts a requirement that, as a condition of receiving any awarded support through this competitive proposal process, a carrier must be an ETC. Any carrier that is not already an ETC must certify in its application that it will be designated within 60 days after being announced as a winner. Many of the likely applicants are already ETCs, and the PRTRB and U.S. Virgin Islands Public Services Commission (PSC) were able to designate several applicants within 60 days for Stage 1. Any winning applicant that fails to notify the Bureau that it has obtained ETC designation within the 60-day timeframe will be considered in default and will not be eligible to receive its support. A waiver of this deadline may be appropriate, however, if a winning applicant is able to demonstrate that it has engaged in good faith to obtain ETC designation but has not received approval within the 60-day timeframe. No selected winner will be authorized to receive support prior to receiving its ETC designation.

50. The Commission also declines Viya's suggestion to ensure that applicants are currently compliant with their ETC designations and obligations. Conducting such investigations for each applicant could become highly time-consuming, which is inconsistent with a prompt distribution of support. Further, states and territories are better-positioned than the Commission is to evaluate compliance with the ETC designations they have granted. Finally, the Commission has not imposed this requirement previously in any competitive processes for allocating universal service support, and Viya has not explained why such a requirement is specifically warranted here.

51. *Spectrum.* As suggested by Viya, and as the Commission did in the CAF II Auction, to ensure that applicants seeking to rely on spectrum-based technologies have the capabilities to meet all standards the Commission adopts, it conditions participation on a demonstration of sufficient access to spectrum. Specifically, the Commission requires applicants proposing to use spectrum-based technologies to provide written evidence of authorizations or licenses, if applicable, and access to operate on the spectrum it intends to use, to reach the fixed locations within the areas for which they seek support. Applicants will be required to certify in their applications that they will retain their access to spectrum for the duration of the support term.

52. *Leases.* The Commission declines Viya's suggestion that it requires applicants to provide the Commission with up-front ten-year commitments for leased access to facilities they do not own. While the Commission expects applicants to be able to demonstrate how they will fulfill the commitments in their application, it refrains from dictating the specific business strategies and decisions of an applicant. Further, the Commission is concerned that requiring this lengthy commitment up-front could disproportionately advantage incumbent carriers.

53. *Deployment Obligation.* The Commission requires each winning participant to deploy by the specified deadline to all locations within the municipio(s)/island(s) for which it is the winning applicant. Many commenters supported the Commission's proposal to require a winning applicant to deploy to all locations within a geographic area as a condition of receiving support for funded locations. Requiring deployment to all locations within the geographic area is consistent with the Commission's goal of ensuring resilient service to all parts of the Territories and its decision to make all locations eligible for support.

54. In establishing the specific deployment obligations for each eligible geographic area, the Commission makes three adjustments to safeguard against inaccurate data. First, although the Commission uses the existing CAM's location counts to determine how to allocate the budget to each geographic area, it will use the latest Census Bureau data to determine the actual deployment obligation. Second, the Commission establishes a one-year location adjustment process described in the following. Third, due to the potential of population shifts continuing post-hurricane, the Commission will reassess deployment obligations by the fifth year of Stage 2 and make adjustments to final deployment obligations. The Commission thinks this approach allows for the best balance of ensuring buildout to all existing locations, while permitting some adjustment of location numbers to reflect the possibility of population shifts in the Territories continuing.

55. The Census Bureau releases annual population data and has released several reports regarding population since the 2017 hurricanes. The Commission agrees with AT&T that the most current Census data will help give a better location count at the time of award than the locations identified by the CAM, and the Commission therefore deviates from its proposal in the *PR–USVI Fund NPRM* to rely on the CAM for the purpose of establishing deployment obligations. Accordingly, the Commission directs the Bureau to publish, along with the reserve prices for each area, its determination of the number of locations per geographic area, based on the most recent publicly available Census Bureau data for the Territories.

56. *Deployment Milestones.* As proposed in the *PR–USVI Fund NPRM* and as in the CAF II Auction, the Commission requires winning participants to deploy to at least 40% of locations after the third year of support, at least 60% after the fourth, at least 80% after the fifth, and 100% after the sixth year of support. While BBVI proposes a slightly accelerated timeline, the Commission adopts the default schedule for administrative convenience. Moreover, recipients have other incentives to complete their deployment as quickly as possible—faster than the default schedule—both to begin earning revenues from the new service offerings and to be in a position

where they are no longer required to maintain a letter of credit.

57. *One-Year Location Adjustment Process.* The Commission also establishes a one-year location adjustment process similar to the CAF II auction location adjustment process, in which winning applicants will have the opportunity to resolve location discrepancies. This process will begin upon release of the Public Notice announcing the winning applicants. The Commission expects this process will, in combination with the five-year review, mitigate any remaining issues with location accuracy. The Commission believes this process is necessary to adequately verify the locations in the Territories post-hurricanes, and relying on the Commission's existing ''reasonable request'' standard for rate-of-return carriers in the way that PRTC proposes is insufficient to ensure service to all locations. PRTC argues that simply requiring a winning recipient to provide service upon a consumer's reasonable request alleviates any need to count locations or verify that the obligation to serve all locations is met. The Commission disagrees. Determining the number of locations in each geographic area is important, not only for this proceeding, but also going forward to ensure data accuracy. Creating a process here that determines exact location numbers is compelling, as the degree of the location problem is unknown—due to the high-level of destruction and potential shifts in population, the location numbers could be substantially different. The Commission is requiring carriers to serve all locations, not just some number of locations, and it has lowered the high-cost threshold to allow carriers to do this. The Commission is concerned that allowing carriers to simply make up any difference using the reasonable request standard would only create an incentive for inefficient use of support that it would be unable to audit.

58. AT&T suggests updating the CAM by giving carriers a year to identify and report location discrepancies, and while the Commission declines to do so prior to accepting applications as described in the Order, it agrees with AT&T's suggestion to give carriers the opportunity to adjust location counts. Further, the Commission wants to encourage participation in the competitive process, and even with the five-year review, applicants may still be reluctant to apply for an area due to the high possibility of a discrepancy in locations. Accordingly, as the Commission did with the CAF II Auction, it adopts a one-year notice period during which it will require Stage 2 fixed support recipients to bring to the Commission's attention discrepancies between the number of locations announced by the Bureau and the number of locations actually on the ground in the eligible areas within their winning areas. If a support recipient can sufficiently demonstrate that it is unable to identify actual locations totaling the number determined by Census Bureau data, its obligation will be reduced to the total number of locations it was able to identify in the area and its support will also be reduced on a pro rata basis. The Commission makes the one-year location adjustment process mandatory for support recipients to ensure accuracy and that it is using USF dollars efficiently.

59. Specifically, within one year after release of a public notice announcing the winners, a recipient that cannot identify actual locations must submit evidence of the total number of locations in the eligible areas, including geolocation data (indicating the latitude/longitude and address of each location), in a format to be specified by the Bureau, for all the actual locations it could identify. Relevant stakeholders will have the opportunity to review and comment on the information, after which the Bureau shall issue an order addressing the recipient's showing and any such comments. The evidence submitted by a support recipient will also be subject to potential audit. The Commission previously directed the Bureau to implement this process for the CAF Phase II auction, including establishing procedures and specifications for the submission of this information, such as collecting the data through the Universal Service Administrative Company's (USAC) High Cost Universal Service Broadband (HUBB) online location reporting portal, and the Commission directs the Bureau to use a similar process here. In cases where the Bureau has determined by a preponderance of the evidence that there are no additional locations in the relevant eligible areas, the Commission directs the Bureau to adjust the support recipient's required total location obligation and reduce its support on a *pro rata* basis. The Commission directs the Bureau to issue a public notice or order detailing instructions, deadlines, and requirements for filing valid geolocation data and evidence for both support recipients and commenters, with any adjustments necessary that are unique to the Territories. The Commission declines to adopt PRTC's proposal to apply a *pro rata* reduction only where the final number of locations is less than 90% of the total locations. The Commission expects an applicant's proposal to reflect its due diligence and informed business determinations of the costs and support amount required to satisfy its commitments, and as such, the Fund should not be accountable for the incorrect assumptions in a carrier's proposal. Further, the Commission does not wish to provide support for non-existent locations.

60. *Fifth-Year Reassessment.* Consistent with the Commission's proposal in the *PR–USVI Fund NPRM* to establish a fifth-year reassessment, it establishes a voluntary process to reassess the deployment obligations of the applicants awarded fixed support before the end of the fifth year of support. Conducting a reassessment helps the Commission to ensure that it is spending Fund resources wisely and based on up-to-date information. The Commission agrees with VPNet and BBVI that there are clear benefits to revisiting deployment obligations during the support term to address any intervening events, new data, or other changed circumstances that may impact deployment obligations. While the Commission inquired about whether to tie the reassessment to deployment milestones and trigger the reassessment only if a provider falls short, it declines to so limit this process and instead create a voluntary opportunity for support recipients to request the Commission carefully review its obligations. Specifically, the Commission directs the Bureau to establish a process no later than the beginning of the fifth year to provide recipients an opportunity to request reassessment of their obligations. The Commission expects any request for reassessment will be accompanied by specific information, documents, evidence and data upon which the agency can make an informed decision. This reassessment will allow the Bureau to determine whether to adjust any deployment requirements based on newly-available data or changes in circumstances, such as future disruptive disasters or altered subscribership or revenue due to population shifts. The Commission directs the Bureau to seek public comment on any requested reassessment, including on the documentation, data, and evidence put forward to support the request, and then evaluate the record. If, based on the Bureau's review, an adjustment of deployment obligations or locations is warranted for any winning applicant, the Commission directs the Bureau to

announce those changes in a public notice.

61. *Support for Fixed Providers in Puerto Rico.* The Commission allocates a maximum budget of $504.7 million over 10 years for Stage 2 fixed support for the Uniendo a Puerto Rico Fund. This represents an increase of $60.2 million above the $444.5 million budget proposed in the *PR–USVI Fund NPRM,* and an annual increase of about $14.1 million, or 39%, over the current annual support amount. The Commission agrees with commenters that factors such as Puerto Rico's challenging economy—including median household income of only around $20,000—can contribute to low subscription rates and low average customer revenue. PRTRB also explains that inland areas of the island contain rocky terrain that challenge deployment and that those physical challenges are exacerbated by mudslides and flooding triggered by tropical storms and hurricanes. The Commission is convinced that the proposed budget may not adequately account for these challenges in deploying storm-hardened fixed service to Puerto Rico.

62. The Commission determines this budget by running the CAM with a reduced high-cost funding threshold of $29.00 per location, eliminating the extremely high-cost threshold, and without accounting for reported competitive coverage. In contrast to the Commission's approach to CAF, this method allows for support to relatively lower-cost locations and eliminates any limit on support for extremely high-cost locations. These changes are appropriate so that the Commission can better account for the economic challenges facing providers in Puerto Rico and so it can ensure deployment of storm-hardened networks to all locations in Puerto Rico in a single stage. The Commission views rapid deployment of storm-hardened, quality networks to all locations in Puerto Rico as an important priority. The CAM uses the most relevant and reliable cost data for the Territories and it is the Commission's best and only objective means of projecting cost, even if it does not capture all fixed costs of serving the Territories. Because requiring resilience, redundancy, and maintenance of a Disaster Preparation and Recovery Plan is novel and the Commission does not yet have applicants' proposals, it relies on an approximation through modifications to its application of the CAM. The Commission believes the adjustments it makes yield a budget appropriate to support the additional costs associated with building resilient and redundant networks in Puerto Rico, and therefore declines to impose a significant delay in awarding support that would be necessary to alter the CAM inputs or otherwise develop a different mechanism to calculate the budget. The Commission notes that the competitive process it establishes will allow each applicant to request support at a level that reflects its understanding of the costs of deployment, potentially driving actual support below the reserve price and reducing the need for the Commission to calculate cost with greater precision.

63. The Commission disagrees with PRTC's suggested Stage 2 fixed budget for Puerto Rico of $98 million per year. Its proposed adjustments to the CAM assume that it would be necessary for the Commission to support new construction in all locations in Puerto Rico, which is not a reasonable assumption because most carriers have reported complete or near complete restoration, including PRTC. The Commission notes that PRTC's proposed supplemental calculations to the CAM, which yield the budget it advocates, do not address all of the CAM's limitations in terms of tailoring to this proceeding. The Commission does not intend to adopt a budget that would cover every conceivable cost a carrier may identify. In the Commission's predictive judgment, the budget should be sufficient to conduct a robust competitive process and it declines to decide at this time that it should revisit a larger budget in the near future. Insofar as any component of the Stage 2 budget the Commission adopts here unexpectedly falls short of achieving its goals, it can revisit it at a future date.

64. *Support for Fixed Providers in the U.S. Virgin Islands.* The Commission adopts the budget proposed in the *PR–USVI Fund NPRM* and therefore allocate up to $186.5 million over a 10-year term for fixed broadband in Stage 2 of the Connect USVI Fund. The record reflects support for the Commission's proposal, and it did not receive comments advocating a reduction to the U.S. Virgin Islands fixed budget. The Commission notes that if it applied the same CAM-based approach to calculate the budget for the U.S. Virgin Islands as the Commission does for Puerto Rico, it would reduce the ten-year fixed budget by about $38 million. The Commission finds that the CAM therefore indicates that the U.S. Virgin Islands budget is sufficient, and it finds there is no need to increase the budget at this time. At the same time, the Commission finds it is not prudent to reduce the budget and thereby reduce the likelihood of success of the competitive process it adopts. As with Puerto Rico, the Commission expects the competitive process it adopts to encourage competition to use support in a cost-effective manner, potentially leading to actual disbursement falling below the budgeted amount.

65. *Other Approaches to Allocation.* While some commenters recommend basing the Commission's allocation of fixed or mobile support solely on a single factor, such as on relative population or cost to serve, the Commission finds the approach it adopts in the Order is the most appropriate to address the needs of the Territories. AT&T suggests the allocation between the Territories should be based on the latest Census Bureau figures, but, the Commission does not currently have before it reliable post-storm data that would provide it with a basis to rely solely on population to allocate funding. The Commission also declines the request of Data@ccess that it considers the relative financial struggle of the carriers in support decisions because the Commission's allocating fixed support on a competitive basis and it does not want to reward possible inefficiency.

66. The Commission adopts thorough oversight and accountability measures like those that it has implemented in other recent high-cost support proceedings. Together, these measures fulfill the Commission's obligation to ensure that providers receive support ''only for the provision, maintenance, and upgrading of facilities and service for which the support is intended'' as required by section 254(e) of the Act. The Commission agrees with several commenters that careful oversight is necessary for it to ensure that recipients use support from the Uniendo a Puerto Rico Fund and Connect VI Fund efficiently and for its intended purposes.

67. *Reporting and Certification.* The Commission requires fixed support recipients to satisfy all reporting and certification obligations of providers receiving CAF II auction support, as the Commission proposed in the *PR–USVI Fund NPRM.* Accordingly, each support recipient must, among other things, certify that it is able to function in emergency situations, and submit information regarding anchor institutions served. The Commission aligns annual deployment reporting obligations with those adopted in the *March 2016 Rate-of-Return Order,* 81 FR 24282, April 25, 2016, as the Commission proposed in the *PR–USVI Fund NPRM.* Accordingly, each support recipient must annually submit a certification and data demonstrating locations where it is prepared to offer

voice and broadband service meeting the requisite performance standards. Failure to timely file geolocation data and associated deployment certifications may result in a reduction in support. The Commission also requires awarded providers to measure and report the speed and latency performance of their broadband service in accordance with the requirements previously adopted, consistent with the proposal in the *PR–USVI Fund NPRM.* The Commission requires fixed support recipients to annually certify their progress toward (or, beginning after the sixth year, completion of) deployment in accordance with the resilience and redundancy commitments in their application and in accordance with the detailed network plan they submitted to the Bureau thereafter. In the certification, applicants must quantify their progress toward the resilience and redundancy targets specified in their applications (*e.g.,* number of fiber miles buried and/or deployed aerially, miles of fixed wireless last-mile connections and/or microwave backhaul, miles with a backup network or path diversity for terrestrial networks, locations reached with a backup network or path diversity for satellite). If, after the sixth year, the support recipient falls short of its resilience or redundancy commitment in a manner that would have resulted in a higher point total, such failure will result in the withholding of support equal to a day of support for every mile by which the applicant fell short (or equal to a day of support for every end user location by which the applicant fell short, in the case of satellite). This support reduction is appropriate and reasonably scaled given the commitment an applicant makes to the Commission in its proposal and the opportunities it provides winning applicants to adjust those commitments and seek reassessment during the deployment process. Collectively, these requirements will ensure that the PRTRB, U.S. Virgin Islands PSC, USAC, and the Commission possess sufficient information to fulfill its oversight obligations.

68. The Commission subjects awarded providers to the same compliance standards as other high-cost support recipients with defined obligations, consistent with the Commission's proposal in the *PR–USVI Fund NPRM.* Pursuant to these standards, a provider that fails to meet its milestones may have its support reduced until it can meet its obligations or face recovery actions. Several commenters support this proposal, and the Commission agrees that adopting clearly-defined consequences for non-compliance modeled on other defined obligation high-cost support mechanisms is necessary to ensure compliance.

69. The Commission declines to adopt new recordkeeping requirements regarding expenditures. The Commission finds the general recordkeeping obligation of ETCs is sufficient to facilitate oversight. The Commission's rules already require support recipients to maintain documentation for ten years, sufficient to justify deployment and spending, and recipients are subject to random audits to defend their expenditures. The Commission finds that additional requirements to maintain more detailed recordkeeping would be duplicative and overly burdensome and are, therefore, unnecessary for this process.

70. *Letters of Credit.* The Commission requires winning applicants to obtain a letter of credit, consistent with the requirements applicable to winning bidders in the CAF II Auction and other competitive bidding processes, including the same eligibility criteria for the issuing bank. The Commission agrees with Viya that it should expressly adopt the same letter of credit requirements that the Commission put in place for the CAF II Auction. The Commission finds that requiring an irrevocable letter of credit from a reliable financial institution is necessary to protect the Fund, and is an effective means of securing its financial commitment to provide Connect America support. Letters of credit permit the Commission to protect the integrity of universal service funds that have been disbursed and to reclaim support that has been provided in the event that the recipient is not using those funds in accordance with the Commission's rules and requirements to further the objectives of universal service. Moreover, letters of credit have the added advantage of minimizing the possibility that the support becomes property of a recipient's bankruptcy estate, thereby preventing the funds from being used promptly to accomplish the Commission's goals. Merely requiring a performance bond would not provide the same level of protection and would require the involvement of a third party to adjudicate any disputes that arise, which would complicate the Commission's process and unnecessarily limit the authority of the Commission to allocate funds. Experience shows that a competitive support program can obtain broad participation with a letter of credit requirement in place—the CAF II Auction received applications from 220 qualified applicants and awarded $1.488 billion in support to 103 winning applicants. The Commission therefore rejects arguments that it should allow use of a surety or performance bond in lieu of a letter of credit.

71. As explained in the Order, if an entity fails to meet the terms and conditions after it begins receiving support, including the build-out milestones and performance obligations the Commission adopts in the Order, and fails to cure within the requisite time period, the Bureau will issue a letter evidencing the failure and declaring a default, which letter, when attached by USAC to a letter of credit draw certificate, shall be sufficient for a draw on the letter of credit to recover all support that has been disbursed to the entity.

72. *Letter of Credit Opinion Letter.* Successful applicants must also submit with their letter(s) of credit an opinion letter from legal counsel. That opinion letter must clearly state, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under the Bankruptcy Code, the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the account party's bankruptcy estate, or the bankruptcy estate of any other Stage 2 competitive application process recipient-related entity requesting issuance of the letter of credit under section 541 of the Bankruptcy Code.

73. *Value of Letter of Credit.* When a winning applicant first obtains a letter of credit, it must be at least equal to the amount of the first year of authorized support. Before the winning applicant can receive its next year's support, it must modify, renew, or obtain a new letter of credit to ensure that it is valued at a minimum at the total amount of money that has already been disbursed plus the amount of money that is going to be provided in the next year. As in CAF II, the Commission concludes that requiring recipients to obtain a letter of credit on at least an annual basis will help minimize administrative costs for USAC and the recipient rather than having to negotiate a new letter of credit for each monthly disbursement.

74. Recognizing that the risk of a default will lessen as a recipient makes progress towards building its network, as in CAF II the Commission finds that it is appropriate to modestly reduce the value of the letter of credit in an effort to reduce the cost of maintaining a letter of credit as the recipient meets certain service milestones. Specifically, once an entity meets the 60 percent service milestone that entity may obtain a new letter of credit or renew its existing letter of credit so that it is valued at 90

percent of the total support amount already disbursed plus the amount that will be disbursed the next year. Once the entity meets the 80 percent service milestone that entity may obtain a new letter of credit valued at 80 percent of the total support amount already disbursed plus the amount that will be disbursed the next year. As in CAF II, the Commission concludes that the benefit to recipients of potentially decreasing the cost of the letter of credit as it becomes less likely that a recipient will default outweighs the potential risk that if a recipient does default and is unable to cure, the Commission will be unable to recover a modest amount of support. The letter of credit must remain open until the recipient has certified it has deployed broadband and voice service meeting the Commission's requirements to 100% of the required number of locations, and USAC has verified that the entity has fully deployed.

75. *Defaults.* Consistent with the CAF II Auction, the Commission concludes that any entity that files an application to participate in the Stage 2 competitive process will be subject to a forfeiture in the event of a default before it is authorized to begin receiving support. The Commission will propose a forfeiture in lieu of a default payment. In the CAF II Auction, the Commission adopted a base forfeiture of $3,000 per census block group for any entity that failed to meet the document submission deadlines or was found ineligible or unqualified to receive support by the Bureaus on delegated authority, or otherwise defaulted on its bid or was disqualified for any reason prior to the authorization. The Commission adopts here the same base forfeiture of $3,000 per census block group within the geographic area at issue, subject to adjustment based on the criteria set forth in the Commission's forfeiture guidelines, for a default by an applicant before it is authorized to begin receiving support. Applying the same base forfeiture that the Commission adopted in the CAF II Auction is warranted here because, in both proceedings, the party's failure risks undermining the competitive process that the Commission has established.

76. An entity will be considered in default and will be subject to forfeiture if it fails to meet the document submission deadlines for competitive proposals or is found ineligible or unqualified to receive Stage 2 support by the Bureau on delegated authority, or otherwise defaults on its winning proposal or is disqualified for any reason prior to the authorization of support. A winning applicant will be subject to the base forfeiture for each separate violation of the Commission's rules. For purposes of the Stage 2 competitive process, the Commission defines a violation as any form of default with respect to the geographic area eligible for proposals. In other words, there shall be separate violations for each geographic area subject to a proposal, with the base forfeiture determined by the number of census block groups within the geographic area at issue. That will ensure that each violation has a relationship to the number of consumers affected by the default and is not unduly punitive. Such an approach will also ensure that the total forfeiture for a default is generally proportionate to the overall scope of the winning applicant's proposal. Consistent with past Commission proceedings, to ensure that the amount of the base forfeiture is not disproportionate to the amount of an applicant's proposal, the Commission also limits the total base forfeiture to five percent of the total support amount contained in the applicant's proposal for the term.

77. The Commission finds that by adopting such a forfeiture, it impresses upon recipients the importance of being prepared to meet all of the Commission's requirements for the post-selection review process and emphasize the requirement that they conduct a due diligence review to ensure that they are qualified to participate in the Stage 2 competitive proposal process and meet its terms and conditions.

78. The Commission directs the Bureau to establish a process to enable the selection of next-in-line applicants for fixed Stage 2 support in the event any of the provisionally winning applicants defaults. Doing so will enable Bureau staff to quickly identify otherwise qualified applicants in the event any of the initially selected applicants defaults prior to authorization. As the Commission does not contemplate a future competitive process for these areas and instead require Stage 2 support recipients to deploy to all locations in the Territories, expediting selection of a next-in-line applicant is especially important in this context. Based on the next-in-line process the Commission establishes, along with other safeguards it put in place in the Order, the Commission rejects Viya's arguments against a competitive approach predicated on the risk that the new awardee may fail to perform.

79. *Audits and Oversight.* The Commission subjects awarded providers to ongoing oversight by them and USAC to ensure program integrity and prevent waste, fraud, and abuse. The Commission reminds providers that high-cost support recipients ''are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.'' The Commission directs USAC to review and revise its audit procedures to take into account the changes adopted in the Order and to initiate audits of Stage 2 fixed disbursements throughout Stage 2 fixed support years. The Commission agrees with Liberty that random application of this long-standing, continually updated audit program is essential to ensuring program integrity. Because the Commission sees no reason to vary from its overall approach to auditing high-cost support recipients, it declines to adopt Free Press's suggestion that it requires USAC to audit every Stage 2 support recipient. To address Free Press's concern about possible ''double-dipping'' from insurance and USF support, in addition to requiring random audits, the Commission directs USAC to audit any Stage 2 support recipient for which it has substantial evidence of noncompliance. The Commission finds it preferable to allow USAC flexibility to deploy its auditing resources for maximum efficiency. Adopting Free Press's suggestion to audit all support recipients could lead to wastefully expensive audits relative to the amount of support at issue. Moreover, the deployed locations that recipients report will also be subject to verification, as USAC currently does for all HUBB filers. Recipients must retain sufficient evidence to demonstrate that they have built out to all of their reported locations and be prepared to produce that evidence to USAC in the course of a compliance review.

80. As with all recipients of Federal high-cost universal service support, the Commission may initiate an inquiry on its own motion to examine any ETC's records and documentation to ensure that the universal service support the ETC receives is being used ''only for the provision, maintenance, and upgrading of facilities and services'' in the areas in which it is designated as an ETC. ETCs must provide such records and documentation to the Commission and USAC upon request. The Commission also may assess forfeitures for violations of Commission rules and orders.

81. The Fund currently directs approximately $36.3 million in frozen support each year to fixed services in Puerto Rico and $16 million in frozen support each year to fixed services in the U.S. Virgin Islands. None of this support is tied to specific build-out targets for which the support recipients must be accountable, however. As

proposed in the *PR–USVI Fund NPRM,* as the Commission ramps up the competitive process it adopts, it will phase down frozen support, which will no longer be necessary. For the first 12 months following authorization of a winning applicant, the carrier will receive ⅔ of its frozen support; in the second 12-month period, the carriers will receive ⅓ of its frozen support; thereafter, the carrier will only receive whatever, if anything, has been awarded through the competitive application process. The Commission recognizes that winning applicants for different geographic areas may be authorized at different times, so for each geographic area for which a winning applicant is authorized, the phase-down will begin the month following the authorization of the winning applicant for that geographic unit. In order to allocate frozen support to each geographic unit across the Territories during the phase-down process, the Commission will base phased down support on the percentage of fixed Stage 2 support the model allocates to that unit. The Commission adopts this method because it ties remaining frozen support to an estimate of the relative cost of serving different geographic areas. In the event either price cap carrier is awarded support in an eligible area in its respective territory, however, the new support would completely replace legacy support upon authorization with no transition. Given the carrier's explicit endorsement of the support amount in its application, the Commission sees no need for additional support to ease the transition.

82. The Commission finds that eliminating frozen support will allow for greater competition and transparency and promote more cost-effective use of the Fund. A phase-down will ensure there is a reasonable transition from current support amounts, consistent with Commission's overall USF goals and preference to avoid flash cuts in support, and will allow PRTC and Viya to plan accordingly. Consistent with the Commission's decision not to grant incumbent LECs either a right of first refusal or an absolute right to support, it declines PRTC's and Viya's requests to maintain frozen support indefinitely. Contrary to PRTC's claim, elimination of frozen support is not punishment for being hit by a hurricane—rather, the hurricanes present changed circumstances that warrant reevaluation of the Commission's approach to funding service in Puerto Rico and the U.S. Virgin Islands. By shifting to a competitive approach that accounts for cost, quality, and resilience, the Commission reduces the likelihood that broadband deployment supported by the Fund will be lost due to a future disaster compared to simply maintaining frozen support. The Commission also expects the competitive process it designs, with defined deadlines along with quality and resilience obligations, will lead to faster, higher-quality deployment to all parts of the Territories compared to maintaining frozen support. Further, the Commission accounts for the unique challenges of insular carriers in the Territories in numerous ways in Stage 2, including by accounting for disaster preparation, resilience, and redundancy; limiting participation to those with experience serving the Territories; and increasing available support relative to the prior frozen support amount.

83. The Commission also rejects PRTC's and Viya's argument that their claimed reliance interests in frozen support justify maintaining such support on an ongoing basis. First, the Commission does not believe either company had a reasonable expectation of ongoing frozen support. Through its work on the Connect America Fund, the Commission has demonstrated a preference for competition and defined obligations. While the Commission in 2014 indicated that it would adopt tailored service obligations for non-contiguous carriers that elect frozen support, it has not done so, which would indicate to a reasonable carrier that the Commission does not view as-is frozen support as a long-term solution. The 2017 hurricanes represent a changed circumstance that, by largely eliminating deployment gains from CAF funding in Puerto Rico and leading to extensive destruction of Viya's network in the U.S. Virgin Islands, should have put PRTC and Viya on notice that the Commission would be likely to revisit its policies. And the *PR–USVI Fund NPRM* proposed to adopt a competitive mechanism to replace frozen support. Putting all of this together, PRTC and Viya should have been on notice that they were unlikely to be able to rely on ongoing frozen support. Second, even if PRTC and Viya had reasonable reliance interests, the Commission finds the public policy benefits of shifting to a competitive approach outweigh any private reliance interests. The Commission has devised Stage 2 fixed support to select the carriers able to commit to the best mix of cost-effective, quality, and storm hardened service. In contrast, PRTC and Viya do not have any defined service obligations in exchange for frozen support, and adopting defined obligations for frozen support at this point would be superfluous to the Stage 2 fixed obligations the Commission adopts. Therefore, maintaining frozen support on top of Stage 2 support, beyond a necessary phase-down period, would be wasteful and fail to serve the limited purposes for universal service support set forth in section 254.

84. Because the Commission has increased the budget for fixed Stage 2 relative to previous support for the territories and expect to award support for all locations in the Territories through the competitive process it adopts, the Commission rejects Viya's argument that eliminating its frozen support is a threat to universal, affordable service in the U.S. Virgin Islands. By its own account, Viya is in a strong position to make use of support to efficiently expand and improve service, and the Commission draws confidence from these assertions that whether the winning applicant in each of the two U.S. Virgin Islands geographic areas is Viya or another provider that is able to make an even better proposal, the U.S. Virgin Islands will receive high-quality service. The Commission notes further that Viya remains subject to section 214 discontinuance approval obligations and to carrier of last resort requirements, which collectively guard against an abrupt loss of service, and it expects Viya to comply with its legal obligations and to continue to work to maximize its return from its network. Moreover, the support the Commission has already provided and the phasedown it adopts should reduce the risk of disruption if a new recipient is awarded support. The Commission does not find it prudent to assume it is necessary to adopt an extended period of overlapping support for the incumbent and the winning applicant in response to a hypothetical risk of disruption.

85. Similarly, while PRTC quotes the conclusion in the *PR–USVI Fund Order,* 83 FR 27515, June 13, 2018, that ''disrupting the existing flow of frozen support is likely to harm restoration efforts, especially in more rural areas where those receiving historical support are more likely to serve,'' circumstances have since changed in two important ways, warranting a new approach. First, carriers have made much more progress toward successful restoration of fixed networks. Second, the Commission has devised a new, long-term Stage 2 that appropriately shifts the focus of its support from restoration of the pre-hurricane status quo to high-quality,

resilient deployment to all locations in the Territories.

86. Commenters presented several other suggestions as potential solutions to creating resilient networks in the territories. Although the Commission appreciates the forward-thinking and creative suggestions, it is limited by its legal authority and by the Commission's desire to create a technology neutral competitive process for establishing high-cost support to the Territories going forward. The Commission also does not want to use conditions on support as a vehicle to achieve policy goals beyond those it has set forth for Stage 2 support. Accordingly, the Commission declines to condition support on building out last-mile connections to the federally funded high-speed open access middle mile in the U.S. Virgin Islands. Likewise, the Commission declines to condition support on adopting a reciprocal access requirement for entities outside of the Commission's jurisdiction. Indeed, the former Governor of the U.S. Virgin Islands opposed this suggestion, noting that imposing such a requirement would be outside of the Commission's authority. The Commission does not think it would be appropriate to leverage Stage 2 funding for the express purpose of reaching beyond its jurisdiction, and it does not believe it would have sufficient notice to adopt such a requirement.

87. The Commission encourages Puerto Rico and the U.S. Virgin Islands to consider approving one-time territory-wide permits for Stage 2 support recipients to bury fiber. The Commission believes such an approach may facilitate efficient deployment in the Territories. At the same time, the Commission does not want to intrude upon Territory decision-making and defer to local authorities on this topic. The Commission strongly encourages cooperation between carriers and local authorities to facilitate the restoration, improvement, and expansion of telecommunication networks for the benefit of all consumers in Puerto Rico and the U.S. Virgin Islands.

88. The Commission declines Tier 1's suggestion that it negotiates directly with Tier 1, Level 3/CenturyLink, viNGN and the Bureau of Information Technology (BIT) to adopt their combined solution for U.S. Virgin Islands. The Commission applauds Tier 1 and its business partners for working toward a creative solution together and encourage continued open inter-industry communication on how to best provide critical and advanced communications service in the U.S. Virgin Islands. The competitive process the Commission adopts in the Order will give all qualified applicants the opportunity to present their solutions to be selected in a more neutral way than negotiating only with a few carriers. And these carriers will have the same opportunity as all other participants to demonstrate the objective qualifications of their proposals.

89. The Commission declines to adopt the CPR Community anchor model because the Act mandates access to telecommunications and information services for all consumers in all regions of the United States, not to a limited number of facilities, even for altruistic purposes. The Commission does not see a ready means to incorporate the CPR Community anchor model into an approach that would lead to deployment to all locations in the Territories, and CPR did not explain how its proposal would lead to such deployment.

90. The Commission agrees with AT&T that the budget it adopts for Stage 2, as well as its prior Stage 1 and advance support, adequately address the needs identified in the emergency requests for support that the Commission received closely following the hurricanes. The Commission finds that many of the requests for relief sought in these petitions were adequately addressed by the Commission's quick response following the hurricanes to advance support, by its subsequent decision not to offset that support against future support, and by the disbursement of Stage 1 support. It was reasonable and more efficient for the Commission to act comprehensively determine the appropriate budget, timing, and scope of support for the Uniendo a Puerto Rico Fund and the Connect USVI Fund, rather than acting piecemeal on a range of requests. It is the Commission's expectation that the budgets it establishes, based on the current state of networks in the Territories, are sufficient to promote access to quality telecommunications and information services in Puerto Rico and the U.S. Virgin Islands. Additionally, the Commission notes that it is now well past the time in which granting emergency or immediate short-term post-hurricane relief would make sense. Therefore, the Commission declines to adopt any additional emergency, advanced, or other short-term support for Puerto Rico or the U.S. Virgin Islands, and they dismiss the emergency petitions filed by PRTC, Viya, Vitelcom, and PRWireless, which seek additional support beyond the adopted overall budget. As to the PRWireless Petition, which is framed as a request for a waiver, the Commission further concludes that granting a waiver at this point in time would not serve the public interest because, two years after the hurricanes, it is unlikely that PRWireless faces the same immediate post-storm challenges that it set forth as the basis for granting a waiver in its petition, which it filed only weeks after the storms.

91. Last, the Commission rejects various arguments from Tri-County Telephone Association (TCT) that the Commission lacks the authority to create, and should not create, the Uniendo a Puerto Rico Fund and the Connect USVI Fund. Stage 2 support addresses the principle that ''[a]ccess to advanced telecommunications and information services should be provided in all regions of the Nation.'' Further, the principle in section 254(b)(1) requiring the Commission to develop policies that make available ''quality'' services permits it to support hardening of facilities in storm prone areas. Stage 2 support will ''advance[]'' universal service in the Territories by ensuring that more Americans have access to quality services that are reasonably comparable to services provided in urban areas, for instance with respect to network reliability. And the Commission's obligation to ''preserv[e]'' universal service permits it to fund network hardening, as well as any remaining restoration in the context of Stage 2 mobile support.

92. While TCT argues that the introduction of the RESTORED Act shows that Congress thinks the Commission currently lacks authority to fund service restoration, that bill only had one sponsor and never proceeded past introduction and reference to the relevant House committee and subcommittee, so the Commission cannot infer from this bill a sense of Congress's view as a whole. The Commission finds the more reasonable view is that it possesses the requisite authority to adopt Stage 2 support as set forth herein, and it rejects TCT's argument that the bill's introduction weighs against that conclusion.

93. The Commission also disagrees with TCT's contention that because ''the high-cost program is based upon § 254(b)(3),'' the Commission must offer ''evidence that consumers in Puerto Rico and the USVI have experienced higher rates for service than other parts of the country as a result of Hurricanes Maria and Irma'' to act. This argument would incorrectly lead the Commission to ignore all of section 254 other than the ''reasonably comparable rates'' clause of section 254(b)(3), contrary to the Commission's duty to account for all statutory direction and contrary to

longstanding Commission precedent. In the *USF/ICC Transformation Order,* the Commission ''address[ed] [its] statutory authority to implement Congress's goal of promoting ubiquitous deployment of, and consumer access to, both traditional voice calling capabilities and modern broadband services over fixed and mobile networks,'' and in doing so specifically cited and relied on sections 254(b), (c), and (e). As set forth in the Order, the Commission has ample authority under section 254 to adopt Stage 2, and it rejects TCT's unduly constricted view.

94. The Commission also rejects TCT's various policy-based objections to Stage 2. TCT's argument that ''[w]ere the Commission to dip into USF programs each time communications networks were damaged by a natural disaster, it would cripple the USF'' relies on speculation about unknown future events, and is belied by the Commission's consistent efforts to manage the Fund responsibly, including its efforts to prioritize cost effectiveness in the Order. While TCT contends that other sources of funding (such as the Department of Homeland Security, Federal Emergency Management Agency (FEMA) or philanthropy) would be more apt for recovery efforts than USF, the Fund is directed specifically at deployment of communications networks, and the Commission is the expert agency on communications and have been charged by Congress with ''mak[ing] available, so far as possible, to all the people of the United States . . . a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges.'' The Commission welcomes and encourages other support efforts, but it has a role to play here consistent with its expertise and statutory responsibilities. Finally, the Commission rejects TCT's argument that it should not proceed because ''the Commission's willingness to act as an effective insurer of last resort sends a strong signal to carriers . . . that they can skimp on private insurance coverage.'' The impact of Hurricane Maria and Irma on the Territories have presented extraordinary circumstances, and carriers should not assume that the Commission would provide support under different circumstances—the Commission is not and will not be an insurer of last resort.

95. The Commission is committed to ensuring that Americans in Puerto Rico and the U.S. Virgin Islands have access to advanced mobile telecommunications networks that provide the same high-speed broadband services that residents of the mainland United States enjoy, including high-speed 4G LTE and, increasingly, next generation wireless services known as 5G. The Commission recognizes that carriers seeking to deploy advanced mobile services in Puerto Rico and the U.S. Virgin Islands face similar Territory-specific challenges as fixed service providers from economic conditions, insularity, and risk of natural disaster. To facilitate the deployment of modern, high-speed, and storm-hardened advanced telecommunications mobile networks, the Commission adopts a three-year funding period for Stage 2 mobile support that allows facilities-based mobile providers a one-time election of support based on their number of subscribers.

96. For that three-year term, the Commission allocates budgets of $254.4 million to the Uniendo a Puerto Rico Fund and $4.4 million to the Connect USVI Fund. More specifically, providers will make concurrent elections for two parts of the budgeted support. First, providers may elect receive up to 75% of the support for which they are eligible in exchange for a commitment to restore, harden, and expand networks using 4G LTE or better technology capable of providing services at speeds of at least 10/1 Mbps. Second, given the power of 5G network capabilities to unleash a new wave of entrepreneurship, innovation, and economic opportunity for communities across the country, providers may also elect to receive up to 25% of the support for which they are eligible in exchange for a commitment to specifically deploy 5G mobile network technology, capable of delivering speeds of at least 35/3 Mbps. By the conclusion of Stage 2, the Commission expects to establish and adopt a competitive funding mechanism for the long-term expansion of advanced telecommunications access and next generation wireless services for the Territories that builds on its experience from its provision of Stage 2 mobile support, the competitive mechanism the Commission adopts here for fixed service, and other competitive mechanisms adopted by them.

97. The Commission adopts its proposal in the *PR–USVI Fund NPRM* to make available and allocate Stage 2 mobile support to facilities-based mobile providers that provided services in Puerto Rico or the U.S. Virgin Islands prior to the hurricanes. For eligible mobile providers that elect to participate in Stage 2, the Commission will allocate Stage 2 mobile support in each territory based on the number of mobile subscribers according to their June 2017 FCC Form 477 data, consistent with its approach to Stage 1.

98. Any eligible facilities-based mobile provider may elect to participate in this opportunity for support over the three-year period the Commission adopts for Stage 2. Providers that are eligible for Stage 2 mobile support under either the Uniendo a Puerto Rico Fund or the Connect USVI Fund will have a one-time opportunity to elect to participate in Stage 2 support. Each provider will make two simultaneous elections. First, it may elect to receive up to 75% of the support for which it is eligible in exchange for a commitment to restore, harden, and expand networks capable of providing 4G LTE or better services. Second, it may elect to receive 25% or more of the support for which it is eligible in exchange for a commitment to specifically spend that support toward deployment of networks capable of providing 5G mobile network technology based-services.

99. Eligible mobile providers may elect to receive Stage 2 support from their respective fund through an election process similar to that used in Stage 1. To participate, a facilities-based mobile provider must, within 30 days of the publication of the Order in the **Federal Register**, either (1) renew the certification it provided to the Commission as part of Stage 1 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund specifying the number of subscribers (voice or broadband internet access service) it served in the Territory as of June 30, 2017 (before the hurricanes); or (2) for any mobile provider that did not submit an election to receive Stage 1 support, submit to the Commission a certification specifying the number of subscribers (voice or broadband internet access service) it served in the Territory as of June 30, 2017 (before the hurricanes), along with accompanying evidence. Providers also must file a copy of the certification and accompanying evidence (if applicable) through the Commission's Electronic Comment Filing System (ECFS) as well as email a copy to *ConnectAmerica@fcc.gov.* The Commission will then verify eligibility using various data sources, including FCC Form 477 data. The Commission directs the Bureau to then allocate these amounts among qualifying providers of each territory according to the number of subscribers (voice or broadband internet access service) each served as of June 30, 2017. The Bureau shall make public these allocations via a Public Notice as soon as practicable.

100. Nearly all commenters support Stage 2 support for facilities-based mobile providers that provided service to Puerto Rico and the U.S. Virgin Islands prior to the hurricanes based on

their June 2017 FCC Form 477 subscriber data. The Commission agrees with commenters that the allocation of Stage 2 mobile support for the restoration, hardening, and expansion of mobile network infrastructure will be best accomplished by relying on subscriber data on the 2017 FCC Form 477. By making pre-hurricane facilities-based mobile providers eligible for Stage 2 support, the Commission will be able to quickly restore, harden, and expand service. This necessary and targeted high-cost mobile support will help rebuild damaged networks, harden against future natural disasters, and improve and expand mobile services through the installation of 4G LTE or better technology in Puerto Rico and the U.S. Virgin Islands in a timely and cost-effective manner.

101. Although the Commission uses 2018 FCC Form 477 data for fixed support, it uses pre-hurricane subscriber data from 2017 FCC Form 477 to allocate mobile support as a means to account for its goals to restore and harden mobile networks damaged by the hurricanes. In this regard, pre-hurricane subscriber data, as reflected in the June 2017 FCC Form 477 data, provides an objective measure of available data to approximate relative networks to achieve the Commission's goals. The Commission further notes that its review and analysis of the record does not reflect the entrance of new mobile service providers in Puerto Rico and the U.S. Virgin Islands, so the Commission does not need to deviate from the use of 2017 FCC Form 477 subscriber data to allocate mobile support. The Commission concludes that limiting provider eligibility to facilities-based providers that provided mobile services prior to the hurricanes best facilitates its goals for the full restoration and hardening mobile service networks that were devastated by the hurricanes, and more readily facilitates the rapid, efficient deployment of 4G LTE and 5G networks in the Territories.

102. The Commission declines to adopt Viya's proposal to allocate mobile support based on the geographic area of a provider's network. Specifically, Viya proposed that ''Stage 2 mobile funding should be awarded pro rata to each eligible mobile carrier based on the relative number of square miles that the carrier served prior to the hurricanes, as shown in the June 2017 Form 477 shapefiles filed by the carriers.'' However, providers in Puerto Rico and the U.S. Virgin Islands do not currently employ an industry-wide standard methodology to calculate and report network coverage as part of their Form 477 filings. Consequently, the Commission does not have consistent, reliable, and precise geographic data needed to allocate mobile support to providers in the Territories. Rather than using network area reporting that varies among providers, the Commission concludes that allocating mobile support using subscriber data allows it to reach as many consumers as possible and as quickly as possible in the Territories with its limited budget and thus serves the best interest of the residents of Puerto Rico and the U.S. Virgin Islands in Stage 2.

103. *Support Amounts.* Each eligible mobile provider that elects to participate in Stage 2 of the Uniendo a Puerto Rico Fund or the USVI Connect Fund will receive monthly installments of its pro rata share of mobile support amortized over the three-year support period adopted in the Order. Each recipient's pro rata share will be adjusted according to its election to receive or decline support for 4G LTE and/or 5G deployment.

104. Because the Commission adopts Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund for mobile providers as comprehensive substitute mechanisms for mobile high-cost support, providing certainty and stability in those areas for the next three years, carriers that elect not to participate in Stage 2 will receive only transitional legacy mobile support. The Commission sets transitional support amounts only for existing recipients of high-cost support that do not elect to participate in Stage 2. Any such providers will receive one-half of their legacy mobile support, excluding prior emergency and Stage 1 support to mobile providers, amortized for the first 12-month period following the public notice announcing the start of the Stage 2, and no legacy support for mobile services thereafter. The Commission believes that an expeditious phase-down of legacy support is warranted since it is not conducting a competitive process for mobile high-cost support, and all carriers will have the opportunity to participate in this substitute mechanism. Moreover, this phase-down will give a predictable glidepath as the Commission transitions from one support mechanism to another while preserving its finite universal service funds to begin funding mobile service under the terms of Stage 2.

105. The Commission adopts the proposed total budget over a three-year period of $258.8 million in mobile support for the Uniendo a Puerto Rico Fund and the Connect U.S. Virgin Islands Fund in light of the unique challenges mobile providers face following Irma and Maria and to provide access to advanced telecommunication services, including 5G wireless services. Given that two years have passed since Maria and Irma and based on the progress carriers have made in restoring their networks, the Commission makes clear that Stage 2 mobile support is not simply to restore mobile network coverage to prior service levels. The Commission intends for Stage 2 to foster greater access to advanced telecommunications for the Territories, including access to both 4G LTE and 5G technologies.

106. Current high-cost support directs approximately $78.9 million each year to mobile services in Puerto Rico and over $67,000 each year to mobile services in the U.S. Virgin Islands. The Commission's budget increases the amount of support to the Territories by $7 million per year over three years to ensure that providers have sufficient funds to restore, harden, and expand voice and broadband-capable networks. The Commission therefore establishes Stage 2 of the Uniendo a Puerto Rico Fund for mobile networks at up to $254.4 million over a three-year period and establish the Connect USVI Fund Stage 2 budget for mobile networks at up to $4.4 million over a three-year period. This budget reflects an increase of approximately $17.7 million over three years in Puerto Rico and approximately $4.2 million over three years in the U.S. Virgin Islands compared to pre-existing frozen support.

107. The Commission declines requests for additional mobile support beyond the budget. In reaching the Commission's decision in the Order, it believes that the Stage 2 mobile support they allocate—in addition to the $71.74 million in extra mobile support previously provided—will be sufficient to allow facilities-based mobile service providers to restore any lingering damaged or destroyed network facilities and make meaningful progress to harden their networks and expand the availability of voice services and modern, high-speed broadband services. In several instances, carriers have reported complete or near-complete restoration of their mobile networks following the hurricanes, suggesting that directing Stage 2 support only to restoration would be too limited a goal. For instance, PRTC informed the Commission that it has fully restored prior service levels and, in fact, added to its mobile network facilities. Additionally, AT&T reports that despite significant challenges, it has restored much of its network. The support amount the Commission dedicates thus reflects its priorities to complete any

remaining rebuilding and promote the deployment and hardening of modern, high-speed mobile networks in a fiscally responsible manner over a three-year term.

108. Based on the record and the restoration that mobile providers have achieved following Hurricanes Irma and Maria, the Commission directs that 75% of Stage 2 mobile support be allocated for the restoration, hardening, and expansion of 4G LTE or better mobile networks, and it directs that the remaining 25% of Stage 2 mobile support be allocated specifically for the deployment of 5G technology in the Territories. Commenters broadly support the deployment of 4G LTE, and the Commission finds that requiring 4G LTE as its minimum standard for the majority of support for funded deployments ensures that finite universal service funds are used efficiently to provide consumers access to robust mobile broadband service in the near and long term that is comparable to 4G LTE network-based service being offered in urban areas. The Commission further specifically direct a portion of Stage 2 mobile support to the deployment of 5G to ensure that Puerto Rico and the U.S. Virgin Islands are not left behind as carriers increasingly invest in deploying 5G mobile network technology. By supporting the deployment of 5G networks, the Commission encourages the deployment of the types of facilities that will best achieve the principles set forth in section 254(b) of the Act, including the availability of quality services, the deployment of advanced services, and access by consumers in insular areas and low-income consumers to reasonably comparable services. In addition to furthering the universal service principles of 254(b), the Commission believes that encouraging the transition towards 5G infrastructure deployment will help unleash entrepreneurship, innovation, and economic opportunity for the Territories.

109. Consistent with the Commission's prior round of support in Stage 1, it retains the pre-existing mobile support allocations and allocate about 80% of the proposed additional support for mobile services to Puerto Rico and about 20% to the U.S. Virgin Islands in light of the changed circumstances resulting from the destruction to networks caused by the 2017 hurricane season. Several commenters support this decision. The Commission expects that the amount of support available will enable eligible mobile carriers to restore, harden, and expand mobile networks over the next three years, to at least pre-hurricane network performance levels if not better, at which point it will revisit the amount of support necessary to further expand and/or harden mobile service available in the Territories.

110. In reaching this conclusion, the Commission finds its allocation between fixed and mobile services to be appropriate. Except for the Commission's increase in fixed support to Puerto Rico, this relative allocation is the same that it used in Stage 1, and the allocation similarly reflects the greater costs of deploying fixed services and its expectation that improvements to fixed network backhaul will facilitate improved mobile services. The Commission notes that the budget it adopts increases annual mobile support to the U.S. Virgin Islands by almost twenty-two times the prior level—this large relative increase reflects its view that the existing, very modest level of mobile support for the U.S. Virgin Islands would be insufficient to support meaningful progress toward restoration, hardening, and expansion of 4G LTE and 5G mobile technology-based services during Stage 2 in light of the challenges of serving the Territory.

111. *Term of Support.* Consistent with the *PR–USVI Fund NPRM,* the Commission concludes that a three-year period is appropriate for Stage 2 support. The Commission first notes that providers did not submit specific comments proposing a different time period for Stage 2 mobile support, and only BBVI explicitly supported the proposed three-year period. The Commission expects the three-year period to benefit it by allowing time for it to develop further procedures and standards for mobile voice and broadband service that may be applied to a future long-term Stage 3 process to allocate support for mobile services in the Territories. The Commission anticipates issuing a further notice of proposed rulemaking to seek input on when and how to implement a long-term Stage 3 mobile support process. The Commission's ultimate goal for mobile support is to adopt a Stage 3 mobile support mechanism to facilitate the deployment and maintenance of high-speed mobile broadband networks throughout Puerto Rico and the U.S. Virgin Islands. Although the Commission shifts to a competitive mechanism now for fixed Stage 2 support, the Commission believes it would be premature to adopt a long-term process for mobile support for several reasons. In developing a Stage 3 mobile support mechanism, the Commission will benefit from evaluating competitive models, including the fixed Stage 2 competitive allocation mechanism in this proceeding, as possible models upon which to build. The Commission will also benefit from evaluating initial progress in deployment of high-speed 5G and 4G LTE networks in the Territories during Stage 2, and it will benefit from evaluating ongoing development of the 5G standard. While the Commission seeks to avoid delay, these factors—which do not apply to fixed support—warrant a more incremental approach to mobile at this time. The Commission therefore agrees with AT&T that in the context of mobile support, it should divide Stage 2 of the Uniendo a Puerto Rico Fund and Connect USVI Fund into two stages.

112. *Eligible Areas.* The Commission concludes that all areas of Puerto Rico and the U.S. Virgin Islands will be eligible for mobile high-cost support. Consistent with section 254(e) of the Act and the Commission's rules, the Commission believes making all areas eligible allows support to be used anywhere it is necessary for any remaining restoration efforts as well as new deployments, network upgrades, and storm hardening and resilience, thereby supporting the return of service and competition in each territory. Some mobile carriers in the Territories continue to work toward full restoration, and all face challenges in expanding and hardening their communication networks. For example, AT&T states that during the proposed Stage 2 period, it will continue ''backhaul restoration efforts includ[ing] maximizing the population served by buried infrastructure, hardening above-surface infrastructure where possible, diversifying key fiber routes, and expanding backup microwave backhaul capabilities.'' Viya states that Stage 2 mobile ''funding is vital both to complete the restoration of wireless telecommunications networks in the USVI and for the hardening of mobile networks against damage caused by the annual hurricane seasons in future years.'' Likewise, PRTC states that support ''will be critical to . . . make [its network] more resilient to future natural disasters.'' Facilitating network hardening is also appropriate in light of the heightened risk of damage due to disasters faced by and insular nature of the Territories, and the Commission thus finds it prudent and in the public interest to account for the heightened possibility of damaging future natural disasters in the Territories. In addition, the heightened economic challenges faced by the Territories, which were amplified by Irma and Maria, justify

ongoing support with respect to expanding deployment of high-speed mobile networks, since availability of quality, affordable mobile services promotes economic development. The Commission therefore gives support recipients certain flexibility in their businesses to determine where hardening and/or expansion will be most impactful, including by taking into account post-hurricane population shifts, subject to the limitation that support must be used for high-speed 4G LTE or 5G networks, as specified. After the three-year Stage 2 period, the Commission expects to reevaluate whether conditions in the Territories have recovered such that it can focus support in areas where market forces alone cannot support the provision of mobile services.

113. *Remaining Restoration.* The Commission directs Stage 2 support principally toward new and improved deployment of hardened and high-speed mobile networks, and many commenters state that their network coverage restoration to prior service levels exceeds the restoration benchmarks it adopts in the Order. Nevertheless, the Commission recognizes that some restoration of network coverage area to pre-hurricane levels may still be necessary. Therefore, at a minimum, the Commission requires Stage 2 support recipients to commit to a full restoration of their pre-hurricane network coverage areas as reported on their June 2017 FCC Form 477 and at reasonably comparable levels to those services and rates available in urban areas. The Commission agrees with commenters that it should require recipients to fully restore service to the pre-hurricane coverage area levels because of the critical role telecommunications networks play in the recovery and economic growth and prosperity of Puerto Rico and the U.S. Virgin Islands. In geographic areas where continued restoration is needed, the Commission requires recipients to restore the network coverage area using 4G LTE or better technologies that meet the minimum service requirements in the Order. In cases where a Stage 2 support recipient has completed the restoration of its network to its pre-hurricane coverage area prior to the receipt of Stage 2 support, the Commission requires support to be used solely for hardening, upgrading, or expanding 4G LTE and 5G networks that meet the minimum service standards specified in the Order.

114. The Commission concludes the full restoration of mobile networks is integral to rebuilding communities, serving the public safety needs of the islands, and providing access to telecommunication and information services to consumers available prior to the hurricanes. Moreover, the Commission notes that the full restoration of network service coverage pre-hurricane serves is an essential baseline for determining unserved areas of Puerto Rico and the U.S. Virgin Islands as the Commission moves forward and make voice and broadband service universally available to all consumers. The Commission will use the mobile network coverage area to determine how best to structure a future stage to allocate long-term mobile support in a tailored and cost-effective manner.

115. *Appropriate Use of Support.* The Commission reaffirms that universal service support should be targeted towards 4G LTE and better technologies in order to provide the Territories with high-quality mobile service. The Commission has observed that consumers increasingly rely on greater performing mobile networks, including 4G LTE, in order to take advantage of the significantly better performance characteristics of these networks, including faster data transfer speeds while using the web or web-based applications. And, as noted in the Order, carriers are rapidly investing in 5G deployment across the country. Directing support in Stage 2 towards 4G LTE and 5G technologies will ensure that consumers in Puerto Rico and the U.S. Virgin Islands are not relegated to substandard mobile service in the near and long-terms. To help achieve the Commission's goal to advance 4G LTE and 5G technologies, it emphasizes that Stage 2 mobile support may not be used towards restoration, hardening, and expansion of 3G or lower mobile technologies. The Commission thus concludes the use of Stage 2 mobile support for 4G LTE and 5G technologies will serve the public interest to ensure universal service for all residents of Puerto Rico and the U.S. Virgin Islands. To promote the efficient use of support and encourage high-speed deployment, the Commission directs that carriers use authorized support to deploy, harden, or expand networks consistent with the 4G LTE and 5G parameters in the Order.

116. *Minimum Service Requirements for 4G LTE Support.* For the portion of support directed to restore, harden, or expand networks capable of providing 4G LTE or better service (*i.e.,* the allocation of up to 75% of the provider's eligible support amount), the Commission adopts minimum service requirements that define the baseline 4G LTE performance standard for Stage 2 mobile support recipients in Puerto Rico and the U.S. Virgin Islands. The Commission agrees with Viya that it should adopt minimum service requirements for speed, latency, and usage consistent with its advancement of 4G LTE technology or better. The Commission therefore requires support recipients to meet minimum baseline performance requirements for data speeds, data latency, and data allowances for at least one plan that carriers offer where carriers have deployed 4G LTE, or will deploy or upgrade to 4G LTE networks or better using Stage 2 support as critically important to benefit the Territories' recovery. The data speed of the network for areas in which the recipient used Stage 2 support must be at least 10 Mbps download speed or greater and 1 Mbps upload speed or greater by the end of the three-year support term. For latency, the required measurement must have a data latency of 100 milliseconds or less round trip by the end of the three-year support term. In addition, support recipients must offer at least one service plan that includes a data allowance of at least 5 GB. A support recipient's service plan with the required data allowance must be offered to consumers at a rate that is reasonably comparable to similar service plans offered by mobile wireless providers in urban areas.

117. In adopting minimum performance standards, the Commission declines to adopt AT&T's proposal to implement 4G LTE service without minimum speed and latency requirements or, at most, requiring minimum speed and latency only for a small portion of the network in each territory. First, the record reflects that certain carriers currently operate 4G LTE mobile wireless networks that cover large geographic areas. Moreover, targeting support to measurable performance requirements will ensure that the Commission does not relegate the Territories to substandard service that is not comparable to advanced mobile services. The Commission therefore concludes that requiring minimum performance standards for the use of Stage 2 support for new or upgraded 4G LTE facilities or better will best serve the goals of universal service for consumers living outside urban areas of Puerto Rico and the U.S. Virgin Islands.

118. *Minimum Service Requirements for 5G Support.* Consistent with the Commission's approach in the Order, for the portion of support directed to the deployment of 5G networks (*i.e.,* the allocation of up to 25% of the provider's eligible support amount), it adopts minimum service requirements that

define the baseline 5G performance standard for Stage 2 mobile support recipients in Puerto Rico and the U.S. Virgin Islands. Specifically, as the Commission stated in the Order, it establishes as a minimum the 5G–NR technology standards specified by Release 15 and require providers to meet these specifications as part of the optional deployment of 5G technology. This is consistent with the Commission's approach in the *Digital Opportunity Data Collection,* 84 FR 43705, August 22, 2019. In addition, deployments of 5G technologies made with Stage 2 support must provide a data speed of at least 35/3 Mbps. The Commission finds it reasonable to require at least 35 Mbps as a downlink speed because the minimum performance requirements of 5G technology, using a typical 10 MHz channel bandwidth, including other system efficiencies such as Multiple Input Multiple Output (MIMO) should permit service providers to meet this speed requirement. Further, the provider must offer a plan with rates that must be reasonably comparable to similar service plans offered by mobile wireless providers in urban areas. The Commission declines to adopt further specifications at this time because it recognizes that 5G is a new and developing technology.

119. *Return of Support.* The Commission will hold mobile providers to their specific deployment commitments in exchange for their election and receipt of all Stage 2 mobile support. A mobile provider that fails to use Stage 2 high-cost support towards its commitment for networks capable of providing 4G LTE or better services as specified herein and/or towards its specific deployment of 5G mobile network technology-based services as specified herein shall return the unused support to the Administrator within 30 days following the end of the three-year support period. The amount of support that must be returned shall be an amount equal to the difference between the amount spent on eligible expenses towards its commitment and the full amount of its elected commitment of up to 75% or 25%. For example, a mobile provider that fails to meet its commitment to use 25% of the Stage 2 mobile support for which it is eligible for 5G deployment shall return that amount or the difference between the amount spent on 5G deployment and 25% of the Stage 2 mobile support for which it is eligible. In addition, a mobile provider that elects to receive 75% of its eligible support in exchange for its commitment to provide networks capable of providing 4G LTE or better services and fails to use the support towards eligible expenses to meet its commitment must return any unspent amount of support to the Administrator.

120. The Commission adopts annual reporting requirements that will enable it and USAC to ensure compliance with section 254 of the Act and to monitor the ongoing progress and performance of the Uniendo a Puerto Rico Fund and Connect USVI Fund recipients by interpreting §§ 54.313 and 54.320 of the Commission's rules to apply to Stage 2 mobile support.

121. Consistent with the Commission's approach in other proceedings, it adopts reporting of an interim and final benchmarks for the full restoration of mobile network coverage and service requirements detailed in the Order, which will enable the Commission and USAC to monitor the ongoing progress and performance of all mobile support recipients. Specifically, to monitor the progress of restoration, the Commission declines to adopt the *PR–USVI Fund NPRM's* proposal for submission of biannual coverage maps and instead will require submission and certification from support recipients of one annual network coverage map at the conclusion of the second and third year of the support period. The Commission requires that each recipient demonstrate and certify to at least 66% of its pre-hurricane network coverage by the end of year two of the Stage 2 support period, and at least 100% of its pre-hurricane coverage, if not more, by the end of the three-year support period.

122. The Commission will determine the restoration of a provider's network coverage area based on FCC Form 477 network coverage data reported by mobile providers. The Commission believes that Form 477 network coverage data, including each support recipient's shape files, will provide the best comparison for determining whether mobile providers have met their network coverage area milestones. The Commission expects each support recipient to determine its network coverage data using the same methodology it used for the June 2017 FCC Form 477 so the Commission will be able to conduct an ''apples to apples'' comparison when analyzing whether the provider has in fact met its Stage 2 milestones. The Commission also requires recipients to submit evidence of network coverage areas, including electronic shapefiles site coverage plots illustrating the area reached by mobile services; a list of census blocks reached by mobile services; and results of the provider's drive, drone, and/or scattered site tests. The Commission directs the Bureau to define more precisely the content and format of the information required to be submitted by recipients.

123. The Commission also adopts a reporting requirement to monitor the ongoing progress for network hardening by providers. Specifically, the Commission adopts AT&T's suggestion that it should require recipients of Stage 2 mobile support to identify on a map where they have undertaken hardening activities in the past year. To facilitate the Commission's evaluation of the information that the map contains, it also requires each support recipient to provide, along with the map, a detailed narrative description of the network hardening activities identified and of how it made use of the support to facilitate those network hardening activities.

124. Like other high-cost recipients that are required to meet milestones, the Commission will require each recipient of Stage 2 mobile support through the Uniendo a Puerto Rico Fund and the Connect USVI Fund to file certifications that it has met its milestones, including a certification of the minimum service requirements as provided in the Order at the end of the third year of the support period. As provided in the Order, a provider may demonstrate the target network coverage based on current FCC Form 477 standards; however, the Commission will require that network coverage reporting requirements conform to any other generally applicable mobile wireless mapping standards that it subsequently adopts. The Commission also requires each provider to submit test results verifying coverage along with their certification. The Commission will require that the certification of the minimum service requirements and the test results in verifying coverage, obtained via a methodology selected by the carrier and approved by the Bureau, demonstrate network speed and latency that meet or exceed the minimum service requirements the Commission adopts. The Commission directs the Bureau to define more precisely the content and format of the information required to be submitted by recipients, and it directs USAC to verify the representations in the submissions.

125. The Commission further requires an annual certification for mobile providers that elect to receive up to 25% of their available support for the deployment of 5G technology. Each participant must specifically certify its use of Stage 2 support related to the deployment of 5G technology to ensure compliance with its commitment. As part of its certification, the Commission

requires each provider, no later than 30 days after the end of each 12-month period of Stage 2 support, to (1) report the total costs incurred and total amount of Stage 2 support spent related to the deployment of 5G technology during the preceding 12-month period; and (2) describe in detail how it used the support for deployment of 5G technology.

126. Finally, as with all ETCs, high-cost recipients of Stage 2 mobile support from the Uniendo a Puerto Rico Fund and the Connect USVI Fund will be subject to ongoing oversight to ensure program integrity and to deter and detect waste, fraud, and abuse. All ETCs that receive high-cost support are further subject to compliance audits and other investigations to ensure compliance with program rules and orders. The Commission concludes that all mobile support recipients will be subject generally to the same audit requirements as recipients of Connect America Fund Phase II support, fixed Stage 2 support in this proceeding, and all other high-cost support. Moreover, the Commission's decision in the Order does not limit its ability to recover funds or take other steps in the event of waste, fraud, abuse, or misrepresentations.

127. In addition to the criteria the Commission adopts in the Order, it also adopts the following requirements for any winning applicants seeking Stage 2 fixed support for voice and broadband service and mobile providers electing to receive Stage 2 support. The Disaster Preparation and Response Plan and Disaster Information Reporting System (DIRS) requirements set forth in the Order apply to all Stage 2 fixed and mobile support recipients.

128. *Disaster Preparation and Response Plan.* Helping to protect fixed and mobile networks in Puerto Rico and the U.S. Virgin Islands against future hurricanes and other disasters is of vital importance, and the Commission cannot account for all forms of disaster preparation via objective scoring criteria in its fixed competitive proposals process (nor do the Commission employ such a process for Stage 2 mobile support). To ensure that Stage 2 support recipients have a holistic plan to prepare for and respond to possible disasters, the Commission will require each recipient of Stage 2 fixed and mobile support to create, maintain, and submit to the Bureau for its review a detailed written plan (a ''Disaster Preparation and Response Plan'') that describes and commits to the methods and procedures that it will use, during the period in which it receives Stage 2 support, to prepare for and respond to disasters in Puerto Rico and/or the U.S. Virgin Islands. The Commission specifically requires applicants to describe in the Disaster Preparation and Response Plan in detail how they will meet five criteria: (1) Strengthening Infrastructure; (2) Ensuring Network Diversity; (3) Ensuring Backup Power; (4) Network Monitoring; and (5) Emergency Preparedness. The Commission explains these criteria in detail in the Order. The Commission requires applicants to document in detail in the Disaster Preparation and Response Plan their methods and processes for achieving each of these goals, identify personnel responsible for compliance, and conform their actions to their written documentation.

129. A Stage 2 fixed support applicant must submit its Disaster Preparation and Response Plan to the Bureau for review and approval along with the provider's application, and a mobile provider electing Stage 2 support must submit its Disaster Preparation and Response Plan for review and approval along with its election of support. The Commission directs the Bureau to approve the documentation if it is complete and thoroughly addresses how the carrier will meet each of the criteria it identifies. If the Bureau identifies deficiencies in the Disaster Preparation and Response Plan, the Commission directs the Bureau to provide detailed written notification of the deficiencies to the carrier and withhold authorization to receive support until the support recipient has cured the deficiencies. The Commission emphasizes that support recipients may choose to develop their Disaster Preparation and Response Plans in a number of ways to meet the flexible criteria established here. Recipients shall materially comply with the representations in the Disaster Preparation and Response Plan, once approved.

130. All Stage 2 support recipients must update their Disaster Preparation and Response Plan when they make material changes to internal processes or responsible staff and share the updated Disaster Preparation and Response Plan with the Bureau within 10 business days. The Commission also will require support recipients to certify annually to USAC that they have recently reviewed the Disaster Preparation and Response Plan and considered whether any changes or revisions were necessary. The Commission directs the Bureau to provide additional guidance to applicants regarding the timing, submission, and format of the required Disaster Preparation and Response Plan.

131. The Commission finds it is appropriate to require and evaluate Disaster Preparation and Response Plans for Stage 2 support applicants because, as the Commission has noted, infrastructure in the Territories is particularly vulnerable to catastrophic failure (*e.g.,* due to isolation and topography). The Commission allows carriers flexibility to describe how they address the criteria it specify, rather than adopt specific mandates, because the Commission recognizes that disaster preparation and recovery challenges are often unique to each carrier. Should a disaster similar to Maria and Irma occur, improvements to disaster preparation and recovery practices could mitigate at least a portion of the billions of dollars of damage to communications networks that the Territories experienced as a result of that disaster. The Commission acknowledges that there are costs associated with hardening efforts and with obtaining the Bureau's approval. However, even if those costs are substantial, the benefits of the requirements the Commission adopts in terms of potential saved lives and avoided economic devastation are even greater in light of the heightened risks faced by the Territories and the potential for devastation. The Commission also believes that the specific measures it will evaluate are warranted. For instance, the Commission previously found that after the 2017 hurricane season, ''unlike other affected areas, Puerto Rico and the U.S. Virgin Islands have struggled to restore electrical power'' and that there was a ''continued lack of commercial power and long-term reliance on backup generators''—showing the importance of ensuring backup power. Similarly, monitoring network performance and preparing for emergencies with the intent of maintaining continuity of operations are both common-sense steps to help ensure that networks will be more likely to withstand harm or be restored quickly after disasters. Finally, the flexibility the Commission allows will mitigate the costs of this requirement compared to a more rigid and prescriptive approach.

132. *Mandatory Participation in the DIRS.* The Commission also conditions Stage 2 funding on recipients' agreement to perform mandatory DIRS reporting. DIRS is an efficient, web-based system that communications companies, including wireless, wireline, broadcast, and cable providers, can use to report communications infrastructure status and situational awareness information during times of crisis. While DIRS reporting has been

voluntary, in practice there is strong industry participation. The Commission determines whether to activate DIRS in conjunction with FEMA and announce the areas that will be covered to participating providers via public notice and email. DIRS is and will be a valuable resource for providing situational awareness of outages to industry and Federal, state, and local agencies.

133. Following normal Commission protocol, the Commission will continue to activate DIRS and notify providers of its reporting schedule, typically in advance of an expected impending disaster event. Also pursuant to normal Commission protocol, DIRS reporting obligations will typically begin prior to onset of a disaster event, with reports due each time a provider's restoration status changes. The only difference from ordinary Commission protocol is that DIRS reporting will be mandatory for Stage 2 support recipients for the duration of the support. Note, however, that the Commission will not impose a penalty or sanctions if reporting deadline(s) cannot be met for reasons reasonably beyond a participant's control. In that case, the Commission requires instead that providers begin and/or resume DIRS reporting according to the reporting schedule as soon as they are reasonably able to do so. This approach ensures that participants can dedicate their resources to addressing network outages and basic communications needs when it would be unreasonable for them to divert these resources to DIRS reporting. Stage 2 funding recipients that fail to meet this mandatory DIRS reporting obligation may be subject to penalties and sanctions through the withholding of Stage 2 funds and/or disqualification from participating in future Stage 3 mobile support.

134. Mandatory DIRS reporting for Stage 2 funding recipients will increase carriers' accountability by allowing the Commission to track their recovery efforts, which it expects will lead to improved hardening efforts. Moreover, DIRS reporting during prior natural disasters has assisted not only this agency, but also the Commission's Federal, state, and local partners, including during Hurricanes Irma and Maria, aiding in recovery efforts. While the Commission has not made DIRS reporting mandatory elsewhere, it believes mandatory reporting for Stage 2 funding recipients is justified by the Territories' heightened risk of natural disaster, insularity, and specific challenges with disaster preparation and recovery. It also is warranted because ''during Hurricane Maria, the major incumbent local exchange carrier and cable providers in Puerto Rico and the USVI did not provide detailed information in DIRS,'' hindering effectiveness. The Commission does not require daily reporting via DIRS, and instead it requires only updates on changes in restoration status when they occur. This approach alleviates concerns some commenters raised related to administrative burden. Moreover, imposing no penalty or sanction for a provider's reasonable failure to report, as outlined in this document, addresses concerns about the infeasibility of reporting. The Commission finds that the public benefit of mandatory DIRS reporting for Stage 2 funding recipients overwhelmingly outweighs any concerns carriers have about the potential burdens of reporting during post-disaster recovery efforts.

135. *Cooperation Regarding Centralized Coordination.* In addition to complying with any local legal mandates regarding information sharing, the Commission also expects Stage 2 funding recipients to make every effort to cooperate with local authorities (*e.g.,* PRTRB and the U.S. Virgin Islands' PSC) in sharing information about proposed and actual construction projects, both during Stage 2-funded deployment and during any future post-disaster recovery efforts. Cooperation will allow other entities an opportunity to request joint access and cooperate on joint construction thus facilitating efficient use of the Commission's Stage 2 support and expediting restoration.

136. *Wireless Resiliency Cooperative Framework.* Although the Wireless Resiliency Cooperative Framework is not mandatory, the Commission strongly encourages Stage 2 support recipients to continue to comply voluntarily. The Commission expects that compliance with the Framework would carry many benefits and commenters were in consensus that the flexibility of the Framework allowed wireless carriers to quickly and effectively tailor response efforts to individual communities without undue administrative delays. As the Commission considers longer-term Stage 3 support for mobile providers, it expects the Commission will evaluate again whether to require support recipients to commit to compliance with the Framework.

137. *Reasonably Comparable Rates.* Stage 2 recipients must meet the same reasonably comparable rates standard for recipients as the Commission requires of all high-cost recipients, consistent with its proposal in the *PR–USVI Fund NPRM.* The Commission considers rates reasonably comparable if they are ''at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau.'' Although PRTC and Viya argue that additional funds are needed to cover their costs to rebuild, neither carrier provided evidence that rates in Puerto Rico and the U.S. Virgin Islands are substantially higher than in the contiguous United States. TCT states that there is little if any evidence of higher rates in the Territories. The evidence the Commission has from the Urban Rate Survey suggests that urban voice rates in Puerto Rico may be lower than the mainland urban average and that the urban broadband rates in Puerto Rico may be higher than on the mainland, but still within the comparability benchmarks. Accordingly, the Commission finds no reason to deviate from the typical rates standard.

138. *No Double Recovery.* The Commission adopts the same protections against double recovery as it did with Stage 1 support. The Commission agrees with Free Press that support recipients should not be entitled to support for the same losses reimbursed by insurance funds. Therefore, to protect against duplicative recovery and guard against waste, fraud, and abuse, Stage 2 support recipients may not use their support for costs that are (or will be) reimbursed by other sources, including Federal or local government aid or insurance reimbursements. Further, carriers are prohibited from using Stage 2 support for other purposes, such as the retirement of company debt unrelated to eligible expenditures, or other expenses not directly related to fulfilling the obligations for support recipients set forth in the Order.

139. *Other Disaster Preparation and Response Requirements.* At this time, the Commission declines to adopt additional specific obligations as a condition of receiving Stage 2 support, such as requiring compliance with TIA–222–H standards or any other industry standards or best practices promulgated by the FCC's Communications Security, Reliability and Interoperability Council. The Commission does not want to be unduly prescriptive in how carriers manage their networks or operations. The Commission also declines to adopt proposals outside the scope of the Commission's authority and expertise, such as a Commission-created local building or manufacturing industry in Puerto Rico or a comprehensive island-wide disaster recovery and contingency plan to be supervised by the Commission. While the Commission

appreciates the role of first-responders and emergency services, hospitals, and local organizations, particularly in the aftermath of a natural disaster, it declines to require specified entities to receive priority access to communications networks in the context of this proceeding. The Commission can more uniformly and effectively address any such issues in proceedings regarding priority communications nationwide.

III. Order on Reconsideration

140. The Commission also takes this opportunity to dispose of two petitions related to Uniendo a Puerto Rico Fund and Connect USVI Fund advance support and Stage 1 support.

141. The Commission denies WorldNet's request to obtain support equal to the amount of advance support it declined. The Commission recognizes that WorldNet acted with incomplete information, because it declined the advance support at a time when the Commission had stated that the advance support would be offset by future support, but the Commission later decided to treat the advance support as a one-time payment that would not be offset. The Commission must be responsible stewards of the Fund, however, and will not award funding meant for immediate post-hurricane relief after the immediate period has ended.

142. *Discussion.* The Commission denies WorldNet's petition. First, to the extent WorldNet seeks clarification of the *2018 PR–USVI Fund Order,* 83 FR 27515, June 13, 2018, the Commission notes that the Order stated that WorldNet would continue to receive its monthly frozen support and did not make any other specific mention of WorldNet, so it is clear the Commission did not confer any additional benefit on WorldNet.

143. As to WorldNet's reconsideration request, the Commission's statutory obligation is to act as responsible stewards of the Fund. Therefore, the Commission must provide support only for specific and statutorily permissible purposes. In the *2017 Hurricane Funding Order,* the Commission provided advance support for the express purpose of injecting additional resources into immediate restoration after the hurricanes. The Commission measured this period of immediate need as seven months, ending with the April 2018 payments. Payment to WorldNet following the conclusion of that immediate need period would not serve the time-sensitive purpose of the support. It was WorldNet's own determination not to accept the accelerated financial assistance for large repairs and immediate restoration of its essential communications. WorldNet does not dispute that its petition was filed in June 2018, following the immediate need period and only after the Commission had decided not to offset the support. Further, in that petition, WorldNet made no showing that it was still in the process of restoring its network other than to aver that the lack of support is an ''undue disadvantage'' to WorldNet and its customers. WorldNet now provides information that it claims supports its entitlement to the advanced funding, specifically that it has not recovered all of its costs to restore and repair its network and that it anticipates significant additional costs to further harden its network against future disasters. While the Commission understands the financial hardship that continued restoration and hardening presents for WorldNet, those challenges are shared by other carriers in the Territories, and the fact that work still remains does not justify the provision of time-restricted support after that period has passed. Moreover, WorldNet received over $1.3 million in Stage 1 support for restoration of its network in August 2018. Therefore, the Commission finds that WorldNet was aware of its options for obtaining high-cost support after the hurricanes and, while it may not have covered all costs, received significant support for restoring its facilities and service.

144. Last, despite its argument, WorldNet is not being distinguished or disqualified from receiving any benefit offered to the providers in Puerto Rico by the *2017 Hurricane Funding Order.* WorldNet had the same opportunity as every other eligible carrier to elect support; it simply elected not to receive the advance funds within the timeframe identified in the *2017 Hurricane Funding Order.* The Commission determined that the pace of restoring critical communications networks would have only been further delayed by offsetting advance support. The Commission's decision to change course and decline to offset the support against future disbursements is entirely within its authority, and such decisions do not result in any obligation by the Commission to retroactively cure the consequences of its decision. When WorldNet declined to take advance funds, that support was repurposed by the Fund, and is no longer available for disbursement. Although the Commission understands WorldNet lost out on an opportunity for additional restoration support, it fails to articulate compelling grounds for reconsideration, and its responsibility to use the Fund efficiently outweighs the fairness-based justification that WorldNet sets forth.

145. The Commission denies the petition for reconsideration of Tri-County Telephone Association, Inc. (TCT) requesting the Commission revisit several of its decisions in the *2018 PR–USVI Fund Order.* The Commission finds the petition fails on the merits, and the Commission affirms its decision to issue Stage 1 support immediately.

146. *Discussion.* The Commission finds it was not required to undertake notice and comment for Stage 1 support and provided acceptable justification for doing so. Specifically, the *2018 PR–USVI Fund Order* stated that using notice and comment procedures for the interim and one-time relief would delay its effectiveness, would be impracticable and contrary to the public interest. It further reasoned that due to the emergency situation and the devastation to communications networks caused by the hurricanes, the sooner providers received additional funds, the sooner service could be restored to the people of Puerto Rico and the U.S. Virgin Islands. Accordingly, it invoked the good cause exception of the Administrative Procedure Act (APA), which ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' TCT uses the *Sorenson* case to support its argument that the Commission was required to undergo notice and comment; however, that case is clearly distinguishable. In that case, the court rejected ''the threat of impending fiscal peril'' to a Commission program as an emergency within the meaning of the APA. Here, the Commission was responding to two back-to-back natural disasters that already occurred and created widespread damage that posed an acute and ongoing threat to public safety and the economy, compounded by the fact that the 2018 hurricane season was impending. Therefore, unlike in *Sorenson,* evidence of an emergency sufficient to forego notice and comment is clear rather than merely speculative. Indeed, many commenters later noted the benefits of receiving Stage 1 support quickly to their recovery efforts.

147. The Commission also finds it adequately sized support for Stage 1. TCT argues the amount is ''pulled out of thin air'' and that the Commission made no attempt to explain how the figures were determined. But that is not true. As TCT itself concedes, the amount of high-cost support provided in Stage 1 was about equal to the amount provided in advance funds to the

carriers in the Territories. The Commission based the amount of advanced funds previously provided on what the carriers already received under the high-cost program, although the Commission was careful to explain how the allocation in Stage 1 differed from that of frozen support. The Commission provided advance funds for a period of about seven months. Likewise, the Commission provided that Stage 1 support was for short-term expenditures through June 30, 2019, about seven to ten months from the time of disbursement. The Commission stated that it provided Stage 1 funds based on the determination that restoration was still incomplete. The Commission finds it was clear in how it determined the size and allocation of Stage 1 support. The Commission also finds it was reasonable for it to establish another stage of support, roughly equal to the previous disbursement in both amount and timeframe, to support similar restoration activities. The Commission notes that TCT has not provided any evidence or data to support its argument that the amount of Stage 1 funding was inappropriate.

148. TCT also argues that the Commission's reasoning behind the allocation of Stage 1 support between Puerto Rico and USVI is unexplained. The Commission's allocation between territories was based on ''differences in landmass, geography, topography, and population,'' as TCT concedes. The Commission also stated that the difference was based on ''the significant financial and operational challenges faced by carriers in both areas, and the past and current availability of high-cost support to carriers.'' The Commission finds this justification to be sufficient and again note that TCT fails to offer an alternative or any data to show why the Commission's approach was improper. Further, even if the Commission were to accept TCT's contribution-based standing argument, it is unclear how the specific allocation of funds between Puerto Rico and the U.S. Virgin Islands (as opposed to the overall amount of funds) could have caused it any injury.

149. Additionally, TCT argues the Commission should have outlined the acceptable uses for Stage 1 and that the Commission did not provide USAC enough direction on how to audit recipients. The Commission disagrees. Even TCT acknowledges that the Commission specified limited purposes for Stage 1 support. The Commission went further, however, stating that the support was to be used ''to help restore and improve coverage and service quality to pre-hurricane levels and to help safeguard their equipment against future natural disasters.'' The Commission specifically identified appropriate uses for support, including ''repairing, removing, reinforcing or relocating network elements damaged during the hurricanes; repairing or restoring customer premise equipment; replacing, rebuilding, and reinforcing the physical outside plant (poles, fiber, nodes, coaxial cables, and the like); hardening networks against future disasters; and increasing network resilience to power outages or other potential service interruptions due to natural disasters.'' The Commission also articulated purposes for which the support may not be used. Moreover, all recipients of Stage 1 were required to be or become ETCs to receive support, and all ETCs have specific high-cost record-keeping and reporting obligations, which can be used for auditing. The Commission directed USAC specifically to audit Stage 1 recipients based on all of this direction. USAC has a great deal of experience and effective procedures in place for auditing recipients of the Fund for compliance with the Act and the Commission's rules, so contrary to TCT's argument, the Commission finds that USAC has more than sufficient information to complete the directed audits.

150. The Commission also finds that it did not unlawfully expand the scope of the high-cost fund in contravention of congressional intent by establishing Stage 1 support. Congress recognized that universal service is ever evolving and requires the Commission to consider a variety of factors in determining what services are supported by the Fund, including public health and safety. The Commission found that Stage 1 support was necessary as an immediate, one-time distribution of funds to existing carriers to continue the repair and restoration required to allow existing consumers to use the essential communications networks of the Territories in the aftermath of enormous destruction from multiple natural disasters. In the *2017 Hurricane Funding Order,* the Commission determined that, based on the circumstances and lack of access to services comparable to urban areas on the mainland, the entirety of Puerto Rico and USVI were presumptively high-cost. Further, the Commission had already provided many recipients of Stage 1 support significant amounts of USF support for years to deploy and maintain those networks, and if a provider was not already an ETC, it was required to become one in order to receive Stage 1 support. To become an ETC, a provider must satisfy several Commission requirements. Just as the Commission previously found it may condition receipt of high-cost support on offering minimum levels of broadband service, it affirms that it can provide support for maintenance of ETC networks in the Territories, thereby facilitating the ability of the ETCs receiving support to provide access to advanced telecommunications and information services for all consumers.

IV. Procedural Matters

A. Paperwork Reduction Act

151. This document contains new information collection requirements subject to the PRA. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, the Commission previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the Report and Order, the Commission adopts new rules relating to the Uniendo a Puerto Rico Fund and the Connect USVI Fund. The Commission has assessed the effects of the new rules on small business concerns. The Commission finds that the rules and procedures adopted here will minimize the information collection burden on affected entities, including small businesses.

B. Congressional Review Act

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

153. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,''

''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration.

154. The Order adopts annual support to rebuild, improve, and expand fixed and mobile services in Puerto Rico and the U.S. Virgin Islands. The Order makes support available to any eligible fixed or mobile provider that obtains an ETC designation, using a competitive and subscriber-based process, respectively. Fifteen fixed and mobile carriers in Puerto Rico and the U.S. Virgin Islands currently receive high-cost support.

155. Although impossible to predict, even assuming other carriers will obtain an ETC designation to receive the additional support provided in the Order, the Commission does not anticipate the proposed rule to affect more than 25 providers out of the 737 providers currently receiving high-cost support. Accordingly, the Commission anticipates that the Order will not affect a substantial number of carriers, and so the Commission does not anticipate that it will affect a substantial number of small entities.

156. Therefore, the Commission certifies that the requirements of the Order will not have a significant economic impact on a substantial number of small entities.

V. Ordering Clauses

157. Accordingly, *it is ordered*, pursuant to the authority contained in sections 1, 2, 4(i), 214, 254, 303(r), 403, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 214, 254, 303(r), 403, and 405, §§ 1.1, 1.3, 1.425 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.3, 1.425 and 1.429, that the Report and Order on Reconsideration *is adopted*. The Report and Order and Order on Reconsideration *shall be effective* 30 days after publication in the **Federal Register**, except for portions containing information collection requirements in §§ 54.313, 54.316, 54.1503, 54.1505, 54.1508, and 54.1513 through 54.1515 that have not been approved by OMB. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date of these provisions.

158. *It is further ordered* that part 54 of the Commission's rules *is amended* as set forth in the Order, and that any such rule amendments that contain new or modified information collection requirements that require approval by the OMB under the Paperwork Reduction Act *shall be effective* after announcement in the **Federal Register** of OMB approval of the rules, and on the effective date announced therein.

159. *It is further ordered* that, pursuant to the authority contained in sections 1, 2, 4(i), 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 254, 303(r), §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, that the Petition for Reconsideration filed by Tri-County Telephone Association, Inc. on July 13, 2018 is *denied*.

160. *It is further ordered* that, pursuant to the authority contained in in sections 1, 2, 4(i), 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 254, 303(r), §§ 1.1 and 1.425 of the Commission's rules, 47 CFR 1.1, 1.425, that the Petition for Clarification Or, In The Alternative, Reconsideration filed by WorldNet Telecommunications, Inc. on June 28, 2018 is *denied*.

161. *It is further ordered* that, pursuant to the authority contained in 1, 2, 4(i), 254, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 254, 303(r), §§ 1.1, 1.3, and 1.425 of the Commission's rules, 47 CFR 1.1, 1.3, 1.425, that the Petition of Puerto Rico Telephone Company, Inc. for the Creation of an Emergency Universal Service Fund filed on Jan. 19, 2018, the Emergency Petition of Virgin Islands Telephone Corp. dba Viya for Wireline Hurricane Restoration Support filed on Dec. 6, 2017, the Vitelcom Cellular, Inc. Emergency Petition filed on Oct. 5, 2017, and the PRWireless, Inc. dba Open Mobile Emergency Petition for Waiver and Other Relief filed on Oct. 4, 2017 are *dismissed*.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302, unless otherwise noted.

Subpart D—Universal Service Support for High Cost Areas

■ 2. Amend § 54.313 by revising paragraphs (e) introductory text and (e)(2) introductory text and adding paragraphs (n) and (o) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(e) In addition to the information and certifications in paragraph (a) of this section, the requirements in paragraphs (e)(1) and (2) of this section apply to recipients of Phase II, Remote Areas Fund, Uniendo a Puerto Rico Fund Stage 2 fixed support, and Connect USVI Fund Stage 2 fixed support:

* * * * *

(2) Any recipient of Phase II, Remote Areas Fund, Uniendo a Puerto Rico Fund Stage 2 fixed, or Connect USVI Fund Stage 2 fixed support awarded through a competitive bidding or application process shall provide:

* * * * *

(n) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and mobile support and Connect USVI Fund Stage 2 fixed and mobile support shall certify that such support was not used for costs that are (or will be) reimbursed by other sources of support, including Federal or local government aid or insurance reimbursements; and that support was not used for other purposes, such as the retirement of company debt unrelated to eligible expenditures, or other expenses not directly related to network restoration, hardening, and expansion consistent with the framework of the Uniendo a Puerto Rico Fund or Connect USVI Fund, respectively. Recipients of fixed and mobile support from Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund shall certify that they have conducted an annual review of the documentation required by § 54.1515(a) through (c) to determine the need for and to implement changes or revisions to disaster preparation and recovery documentation.

(o) Recipients of Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 mobile support shall certify that they are in compliance with all requirements in this part for receipt of such support to continue receiving Stage 2 mobile disbursements.

■ 3. Amend § 54.316 by adding paragraphs (a)(7) and (b)(7) to read as follows:

§ 54.316 Broadband deployment reporting and certification requirements for high-cost recipients.

(a) * * *

(7) Recipients subject to the requirements of § 54.1506 shall report the number of locations for Puerto Rico and the U.S. Virgin Islands and locational information, including geocodes, where they are offering service at the requisite speeds. Recipients shall also report the technologies they use to serve those locations.

(b) * * *

(7) Recipients of Uniendo a Puerto Rico Fund Stage 2 fixed and Connect USVI Fund fixed Stage 2 fixed support shall provide: On an annual basis by the last business day of the second calendar month following each service milestone in § 54.1506, a certification that by the end of the prior support year, it was offering broadband meeting the requisite public interest obligations specified in § 54.1507 to the required percentage of its supported locations in Puerto Rico and the U.S. Virgin Islands as set forth in § 54.5406. The annual certification shall quantify the carrier's progress toward or, as applicable, completion of deployment in accordance with the resilience and redundancy commitments in its application and in accordance with the detailed network plan it submitted to the Wireline Competition Bureau.

■ 4. Add subpart O to read as follows:

Subpart O—Uniendo a Puerto Rico Fund and Connect USVI Fund

Sec.

54.1501 Uniendo a Puerto Rico Fund and Connect USVI Fund—Stage 2 for service to fixed locations.
54.1502 Geographic areas eligible for Stage 2 fixed support.
54.1503 Geographic area and locations to be served by Stage 2 fixed support recipients.
54.1504 Term of Stage 2 fixed support and phase-down of legacy fixed support.
54.1505 Stage 2 fixed support application process.
54.1506 Stage 2 fixed support deployment milestones.
54.1507 Stage 2 public interest obligations for service to fixed locations.
54.1508 Letter of credit for Stage 2 fixed support recipients.
54.1509 Uniendo a Puerto Rico Fund and the Connect USVI Fund—Stage 2 for mobile service.
54.1510 Stage 2 mobile carrier eligibility.
54.1511 Appropriate uses of Stage 2 mobile support.
54.1512 Geographic area eligible for Stage 2 mobile support.
54.1513 Provision of Stage 2 mobile support.
54.1514 Stage 2 mobile additional annual reporting.
54.1515 Disaster preparation and response measures.

§ 54.1501 Uniendo a Puerto Rico Fund and Connect USVI Fund—Stage 2 for service to fixed locations.

The Commission will use a competitive application process to determine the recipients of high-cost universal service support for offering voice and broadband service to fixed locations, and the amount of support that they may receive from Stage 2 of the fixed Uniendo a Puerto Rico Fund and of the fixed Connect USVI Fund for specific geographic areas in Puerto Rico and the U.S. Virgin Islands, respectively, subject to applicable procedures following the selection of competitive applications.

§ 54.1502 Geographic areas eligible for Stage 2 fixed support.

High-cost universal service support may be made available for Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund for all areas of Puerto Rico and the U.S. Virgin Islands, respectively, as announced by public notice.

§ 54.1503 Geographic area and locations to be served by Stage 2 fixed support recipients.

(a) For Stage 2 of the fixed Uniendo a Puerto Rico Fund, proposals will be accepted for each municipio in Puerto Rico.

(b) For Stage 2 of the fixed Connect USVI Fund, proposals will be accepted for one geographic area composed of St. John and St. Thomas islands together, and a second geographic area of St. Croix island.

(c) For both Funds, all locations must be served within each defined geographic area by the deployment milestone as defined in § 54.1506. The number of supported locations will be identified for each geographic area in the territories by public notice.

§ 54.1504 Term of Stage 2 fixed support and phase-down of legacy fixed support.

(a) *Term of support.* Support awarded through Stage 2 of the fixed Uniendo a Puerto Rico Fund and of the fixed Connect USVI Fund shall be provided for ten years.

(b) *Phase-down of legacy support.* Stage 2 of the fixed Uniendo a Puerto Rico and of the fixed Connect USVI Fund shall replace the legacy frozen high-cost support for the Territories. Beginning on a date determined by the Wireline Competition Bureau and announced by public notice following authorization of a winning application, frozen support recipient carriers will receive ⅔ frozen fixed support amortized for the first 12 months following the date announced by public notice; ⅓ frozen fixed support amortized over the second 12-month period; and zero frozen support thereafter.

§ 54.1505 Stage 2 fixed support application process.

(a) *Provider eligibility.* A provider shall be eligible to submit an application for support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or of the fixed Connect USVI Fund if it had its own fixed network and provided broadband service in Puerto Rico or the U.S. Virgin Islands, respectively, according to its June 2018 FCC Form 477 data. A provider must obtain eligible telecommunications carrier designation no later than sixty (60) days after public notice of selection to receive fixed support. Any entity that is awarded support but fails to obtain ETC designation within sixty (60) days shall be considered in default and will not be eligible to receive high-cost funding.

(b) *Application processing.* No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(c) *Application format.* All applications must be substantially in the format as specified and announced by the Wireline Competition Bureau.

(1) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(2) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(3) Applications to which major modifications are made after the deadline for submitting proposals shall be denied. Major modifications may include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of

the applicant, or the certifications required in the application.

(d) *Application contents.* In addition to providing information required by the Wireline Competition Bureau, any applicant for support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or of the fixed Connect USVI Fund shall:

(1) Include ownership information as set forth in § 1.2112(a) of this chapter;

(2) Submit a detailed network plan and documents evidencing adequate financing for the project;

(3) Disclose its status as an eligible telecommunications carrier to the extent applicable and certify that it acknowledges that it must be designated as an eligible telecommunications carrier for the area in which it will receive support prior to being authorized to receive support;

(4) Describe the technology or technologies that will be used to provide service for each application; and

(5) To the extent that an applicant plans to use spectrum to offer its voice and broadband services, demonstrate it has the proper authorizations, if applicable, and access to operate on the spectrum it intends to use, and that the spectrum resources will be sufficient to cover peak network usage and deliver the minimum performance requirements to serve all of the fixed locations in eligible areas, and certify that it will retain its access to the spectrum for the term of support; and

(6) Provide a letter from a bank meeting the eligibility requirements outlined in § 54.1508 committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit.

(e) *Identification of winning applicant.* After receipt and review of the proposals, a public notice shall identify each winning applicant that may be authorized to receive support from Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund support after the winning applicant submits a letter of credit and an accompanying opinion letter, as described in this section, in a form acceptable to the Commission. Each such winning applicant shall submit a letter of credit and accompanying opinion letter in a form acceptable to the Commission no later than the number of days provided by public notice.

(f) *Authorization to receive support.* After receipt of all necessary information, a public notice will identify each winning applicant that is authorized to receive Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support.

§ 54.1506 Stage 2 fixed support deployment milestones.

Recipients of support from Stage 2 of the fixed Uniendo a Puerto Rico Fund and the fixed Connect USVI Fund must complete deployment to at least 40 percent of supported locations at the end of the third year of support, at least 60 percent at the end of the fourth year, at least 80 percent at the end of the fifth year, and 100 percent by the end of the sixth year. Compliance with the percentage of completion shall be determined based on the total number of supported locations in each geographic area. Recipients will be subject to the notification and default rules in § 54.320(d).

§ 54.1507 Stage 2 public interest obligations for service to fixed locations.

(a) Recipients of Stage 2 Uniendo a Puerto Rico and the Connect USVI Fund fixed support are required to offer broadband service with latency suitable for real-time applications, including Voice over internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas, at rates that are reasonably comparable to rates for comparable offerings in urban areas.

(1) For purposes of determining reasonable comparable usage capacity, recipients are presumed to meet this requirement if they meet or exceed the usage level announced by public notice issued by the Wireline Competition Bureau.

(2) For purposes of determining reasonable comparability of rates, recipients are presumed to meet this requirement if they offer rates at or below the applicable benchmark to be announced annually by public notice issued by the Wireline Competition Bureau, or at or below the non-promotional prices charged for a comparable fixed wireline service in urban areas in the state or U.S. Territory where the eligible telecommunications carrier receives support.

(b) Support recipients are required to offer broadband service meeting the performance standards as proposed in their selected applications, as follows:

(1) Actual speeds of at least 25 Mbps downstream and 3 Mbps upstream, and a minimum usage allowance of 200 GB per month or an amount that reflects the average usage of a majority of fixed broadband customers, using Measuring Broadband America data or a similar data source, whichever is higher, and announced annually by public notice issued by the Wireline Competition Bureau over the 10-year term.

(2) Actual speeds of at least 100 Mbps downstream and 20 Mbps upstream and at least 2 terabytes of monthly usage.

(3) Actual speeds of at least 1 Gigabit per second downstream and 500 Mbps upstream and at least 2 terabytes of monthly usage.

(c) For each of the tiers in paragraphs (b)(1) through (3) of this section, support recipients are required to meet one of two latency performance levels:

(1) Low latency recipients will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 100 milliseconds; and

(2) High latency recipients will be required to meet 95 percent or more of all peak period measurements of network round trip latency at or below 750 ms and, with respect to voice performance, and to demonstrate a score of four or higher using the Mean Opinion Score (MOS).

§ 54.1508 Letter of credit for stage 2 fixed support recipients.

(a) *Letter of credit.* Before being authorized to receive support from Stage 2 of the fixed Uniendo a Puerto Rico Fund or the fixed Connect USVI Fund, a winning applicant shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. No later than the number of days provided by public notice, the applicant shall submit a letter from a bank meeting the eligibility requirements outlined in this section committing to issue an irrevocable stand-by letter of credit, in the required form, to the winning applicant. The letter shall at a minimum provide the dollar amount of the letter of credit and the issuing bank's agreement to follow the terms and conditions of the Commission's model letter of credit. The letter of credit must remain open until the recipient has certified it has deployed broadband and voice service meeting the requirements in this subpart to 100% of the required number of locations, and Universal Service Administrative Company (USAC) has verified that the entity has fully deployed.

(b) *Value.* Each recipient authorized to receive the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support shall maintain the standby letter of credit or multiple standby letters of credit in an amount equal to at a minimum the amount of fixed support that has been disbursed and that will be disbursed in the coming

year, until the USAC has verified that the recipient met the final service milestone.

(1) Once the recipient has met its 60 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 90 percent of the total support amount already disbursed plus the amount that will be disbursed in the coming year.

(2) Once the recipient has met its 80 percent service milestone, it may obtain a new letter of credit or renew its existing letter of credit so that it is valued at a minimum at 80 percent of the total support that has been disbursed plus the amount that will be disbursed in the coming year.

(c) *Acceptable bank issuing letter of credit.* The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is:

(1) Any United States bank:

(i) That is insured by the Federal Deposit Insurance Corporation; and

(ii) That has a bank safety rating issued by Weiss of B- or better; or

(2) CoBank, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(3) The National Rural Utilities Cooperative Finance Corporation, so long as it maintains assets that place it among the 100 largest United States Banks, determined on basis of total assets as of the calendar year immediately preceding the issuance of the letter of credit and it has a long-term unsecured credit rating issued by Standard & Poor's of BBB- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(4) Any non-United States bank:

(i) That is among the 100 largest non-U.S. banks in the world, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date);

(ii) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission;

(iii) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to a BBB- or better rating by Standard & Poor's; and

(iv) Issues the letter of credit payable in United States dollars

(d) *Bankruptcy opinion letter.* A winning applicant of the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support shall provide with its letter of credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the ''Bankruptcy Code''), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(e) *Authorization for Stage 2 support.* Authorization to receive the Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support is conditioned upon full and timely performance of all of the requirements set forth in this section, and any additional terms and conditions upon which the support was granted.

(1) Failure by a Uniendo a Puerto Rico Fund and the Connect USVI Fund Stage 2 fixed support recipient to meet its service milestones as required by § 54.1506 will trigger reporting obligations and the withholding of support as described in § 54.320(c). Failure to come into full compliance within 12 months will trigger a recovery action by the USAC. If the Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 fixed support recipient does not repay the requisite amount of support within six months, the USAC will be entitled to draw the entire amount of the letter of credit and may disqualify the Uniendo a Puerto Rico Fund or Connect USVI Fund Stage 2 fixed support recipient from the receipt of any or all universal service support.

(2) A default will be evidenced by a letter issued by the Chief of the Wireline Competition Bureau, or the Chief's designee, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1509 Uniendo a Puerto Rico Fund and the Connect USVI Fund—Stage 2 for mobile service.

(a) *Term of support.* Uniendo a Puerto Rico Fund or the Connect USVI Fund Stage 2 mobile support shall be provided to eligible mobile carriers that elect to make a commitment to its eligible service area for a three-year term to begin on a date determined by the Wireline Competition Bureau.

(b) *Election of support.* Eligible mobile carriers as provided in § 54.1510 shall have a one-time option to elect to participate in Stage 2 of the mobile Uniendo a Puerto Rico Fund and the mobile Connect USVI Fund for the eligible service area. An eligible mobile carrier may elect to receive all or a subset of the Stage 2 support for which it is eligible. FCC will publish the order adopting Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund in the **Federal Register**. To participate, an eligible provider must submit an election to participate within 30 days following that publication. Each provider must provide to the Commission through the Commission's Electronic Comment Filing System as well as by emailing a copy to *ConnectAmerica@fcc.gov* either a renewal of its Stage 1 certification specifying the number of subscribers (voice or broadband internet access service) it served in the territory as of June 30, 2017; or a new certification specifying the number of subscribers (voice or broadband internet access service) it served in the territory as of June 30, 2017, along with accompanying evidence. Each provider will make two simultaneous elections. First, each provider may elect to receive Stage 2 support for which it is eligible to restore, harden, and expand networks capable of providing 4G LTE or better services. Second, each provider may elect to receive Stage 2 support for which it is eligible to deploy networks capable of providing 5G service.

(c) *Support amounts.* A carrier exercising the election of support specified in paragraph (b) of this section shall receive a pro rata share of the available mobile support based on the number of subscribers reported in its June 2017 FCC Form 477. Each carrier may receive up to 75% of its eligible pro rata support amount to restore, harden, and expand networks capable of provider 4G LTE or better services meeting the minimum service requirements provided in § 54.1514(b). Each carrier may also elect to receive up to 25% of its eligible pro rata support amount to deploy networks capable of providing 5G service.

(d) *Support payments.* Each eligible mobile provider that elects to participate in Stage 2 of the Uniendo a Puerto Rico Fund or the USVI Connect Fund will receive monthly installments of its pro rata share of mobile support amortized over the three-year support period provided in paragraph (a) of this section. Each recipient's pro rata share will be adjusted according to its election to receive or decline support for 4G LTE or 5G deployment. A mobile provider

that fails to meet its commitment to use its eligible support for 4G LTE or 5G deployment shall return an amount equal the unused amount of Stage 2 support to the Administrator within 30 days following the end of the three-year support period.

(e) *Phase-down of legacy support.* An eligible mobile carrier may elect or decline to participate in Stage 2 of the mobile Uniendo a Puerto Rico and/or the mobile Connect USVI Fund. Beginning on a date to be determined by the Bureau and announced by public notice, an eligible mobile carrier that declines to participate in Stage 2 will receive one-half of its prior frozen fixed support amortized for a 12-month period and zero fixed support thereafter.

§ 54.1510 Stage 2 mobile carrier eligibility.

Facilities-based mobile carriers that provided mobile wireless services to consumers in the Territories as reported by their June 2017 FCC Form 477 shall be eligible to participate in Stage 2 of the mobile Uniendo a Puerto Rico Fund and the mobile Connect USVI Fund, respectively.

§ 54.1511 Appropriate uses of Stage 2 mobile support.

Recipients of Uniendo a Puerto Rico and Connect USVI Stage 2 mobile support shall use the support solely for:

(a) Deployment, replacement, and upgrade at 4G LTE or better technological network level, as specified in this part; and

(b) Hardening of 4G LTE or better network facilities to help prevent future damage from natural disasters.

§ 54.1512 Geographic area eligible for Stage 2 mobile support.

Uniendo a Puerto Rico Fund and Connect USVI Fund Stage 2 mobile support may be used for all geographic areas of Puerto Rico or of the U.S. Virgin Islands within a recipient's designated eligible telecommunications carrier service area consistent with the parameters of Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund.

§ 54.1513 Provision of Stage 2 mobile support.

(a) A recipient of Stage 2 mobile support shall commit to, at a minimum, the full restoration of its pre-hurricane network coverage area, as determined by FCC Form 477 reporting standards, at a level of service that meets or exceeds pre-hurricane network levels and at reasonably comparable levels to those services and rates available in urban areas.

(b) Each recipient of Stage 2 mobile support shall demonstrate mobile network coverage that is equal to or greater than 66 percent of its pre-hurricane coverage by the end of year two of the Stage 2 term of support, and that is equal to or greater than 100 percent of its pre-hurricane coverage by the end of year three of the Stage 2 term of support.

§ 54.1514 Stage 2 mobile additional annual reporting.

(a) Each recipient of Stage 2 mobile support shall submit no later than 30 days following the end of the calendar year reports demonstrating and certifying to the fact that its mobile network coverage is equal to or greater than 66 percent of its pre-hurricane coverage by the end of year two of the Stage 2 term of support and 100 percent of its pre-hurricane coverage by the end of year three of the Stage 2 term of support.

(1) A recipient of Stage 2 mobile support shall submit with the report required by this section the documentation in paragraphs (a)(1)(i) through (iii) of this section in support of its milestone obligations:

(i) Electronic shapefiles site coverage plots illustrating the area reached by mobile services;

(ii) A list of all census blocks in the Territories reached by mobile services; and

(iii) Data received or used from drive, drone, and/or scattered site tests, analyzing network coverage for mobile services.

(2) [Reserved]

(b) Each recipient of Stage 2 mobile support shall report and certify, no later than thirty (30) days following the end of the third year of the Stage 2 term of support for all eligible areas where a provider used Stage 2 support, mobile transmissions supporting voice and data to and from the network meeting or exceeding the following:

(1) For 4G LTE service, outdoor data transmission rates of at least 10 Mbps download/1 Mbps upload, at least one service plan that includes a data allowance of at least 5 GB that is offered to consumers at a rate that is reasonable comparable to similar service plans offered by mobile wireless providers in urban areas, and latency of 100 milliseconds or less round trip; and

(2) For 5G service, outdoor data transmission rates of at least 35 Mbps download/3 Mbps upload and a plan offered to consumers at a rate that is reasonably comparable to similar service plans offered by mobile wireless providers in urban areas.

(c) Each recipient of Stage 2 mobile support shall submit no later than thirty (30) days after the end of the third year of the Stage 2 term of support a certification that it has met the requisite public interest obligations in paragraphs (a) and (b) of this section.

(d) Each recipient of Stage 2 mobile support shall submit no later than thirty (30) days following the end of the calendar year an annual map reporting the network hardening activities undertaken during the prior calendar year. The recipient must submit, along with the map, a detailed narrative description of the network hardening activities identified and of how it made use of the support to facilitate those network hardening activities.

(e) Each recipient that elects to receive Stage 2 mobile support for the deployment of 5G technological networks shall submit an annual certification no later than thirty (30) days after the end of each 12-month period the use of Stage 2 support for the deployment of 5G technology to ensure compliance with its commitment. Each recipient must report the total cost incurred and total amount of Stage 2 support spent related to the deployment of 5G technology during the preceding 12-month period. Each recipient must describe in detail how it used the support for deployment of 5G technology.

(f) Each report shall be submitted to the Office of the Secretary of the Commission, clearly referencing the appropriate docket for the Uniendo a Puerto Rico Fund and the Connect USVI Fund; the Administrator; and the authority in the U.S. Territory, or Tribal governments, as appropriate.

(g) Recipients of Stage 2 mobile support have a continuing obligation to maintain the accuracy and completeness of the information provided in their milestone reports. All recipients of Stage 2 mobile support shall provide information about any substantial change that may be of decisional significance regarding their eligibility for Stage 2 support and compliance with Uniendo a Puerto Rico Fund and the Connect USVI Fund requirements in this section as an update to their milestone report submitted to the entities listed in paragraph (f) of this section. Such notification of a substantial change, including any reduction in the network coverage area being served or any failure to comply with any of the Stage 2 requirements in this part, shall be submitted within ten (10) business days after the reportable event occurs.

(h) In order for a recipient of Stage 2 mobile support to continue to receive mobile support for the following calendar year, it must submit the milestone reports required by this

section by the deadlines set forth in paragraphs (a) through (g) of this section.

§ 54.1515 Disaster preparation and response measures.

(a) Each recipient of fixed and mobile support from Stage 2 of the Uniendo a Puerto Rico Fund and the Connect USVI Fund shall create, maintain, and submit to the Wireline Competition Bureau for its review and approval a detailed Disaster Preparation and Response Plan document that describes and commits to the methods and procedures that it will use, during the period in which it receives Stage 2 support, to prepare for and respond to disasters in the Territories, including detailed descriptions of methods and processes to strengthen infrastructure; to ensure network diversity; to ensure backup power; to monitor its network; and to prepare for emergencies.

(b) Each Stage 2 support recipient shall submit the Disaster Preparation and Response Plan to the Bureau for its review and approval prior to receiving Stage 2 support. The Bureau shall approve submitted Disaster Preparation and Response Plans that are complete and thoroughly address the criteria enumerated in paragraph (a) of this section. The Bureau shall notify the support recipient of deficiencies identified in the Disaster Preparation and Response Plan and withhold authorization to receive funding until the support recipient has cured the deficiencies. Recipients shall materially comply with the representations in the document, once approved.

(c) Recipients shall amend their Disaster Preparation and Response Plan following any material change(s) to internal processes and responsibilities and provide the updated Disaster Preparation and Response Plan to the Bureau within 10 business days following the material change(s).

(d) Stage 2 support recipients shall use the Disaster Information Reporting System for mandatory reporting. (See *www.fcc.gov/general/disaster-information-reporting-system-dirs-0* for more information.)

[FR Doc. 2019–22842 Filed 11–6–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 180713633–9174–02]

RIN 0648–XY052

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod total allowable catch (TAC) from trawl catcher vessels and vessels using jig gear to catcher/processors using pot gear and catcher vessels less than 60 feet (18.3 meters) length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2019 TAC of Pacific cod to be harvested.

DATES: Effective November 6, 2019, through 2400 hours, Alaska local time (A.l.t.), December 31, 2019.

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

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

The 2019 Pacific cod TAC specified for catcher vessels using trawl gear in the BSAI is 34,660 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019), and two reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019).

The 2019 Pacific cod TAC specified for vessels using jig gear in the BSAI is 559 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019), and two reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019).

The 2019 Pacific cod TAC specified for catcher/processors using pot gear in the BSAI is 2,410 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019).

The 2019 Pacific cod TAC allocated to catcher vessels less than 60 feet (18.3 meters(m)) length overall (LOA) using hook-and-line or pot gear in the BSAI is 6,235 mt as established by the final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and two reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019).

The Administrator, Alaska Region, NMFS, (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 2,500 mt of the 2019 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*) and jig vessels will not be able to harvest 400 mt of the 2019 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*1*).

Therefore, in accordance with § 679.20(a)(7)(iii), NMFS reallocates 2,500 mt from the trawl catcher vessel apportionment to the annual amount specified for catcher/processors using pot gear and catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Also, in accordance with § 679.20(a)(7)(iv)(C), NMFS reallocates 400 mt of Pacific cod from the jig gear apportionment to the annual amount specified for catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

The harvest specifications for Pacific cod included in final 2019 and 2020 harvest specifications for groundfish in the BSAI (84 FR 9000, March 13, 2019) and two reallocations (84 FR 2068, February 6, 2019, 84 FR 43727, August 21, 2019) are revised as follows: 32,160 mt to catcher vessels using trawl gear, 159 mt to vessels using jig gear, 2,745 mt to catcher/processors using pot gear, and 8,800 mt to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries

data in a timely fashion and would delay the reallocations of Pacific cod to catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notification providing time for public comment because the most recent, relevant data only became available as of October 21, 2019.

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

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

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

Dated: October 31, 2019.

Ngagne Jafnar Gueye,

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

[FR Doc. 2019–24183 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 216
Thursday, November 7, 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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 45

[Docket No. OCC–2019–0023]

RIN 1557–AE69

FEDERAL RESERVE SYSTEM

12 CFR Part 237

[Docket No. R–1682]

RIN 7100–AF62

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 349

RIN 3064–AF08

FARM CREDIT ADMINISTRATION

12 CFR Part 624

RIN 3052–AD38

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1221

RIN 2590–AB03

Margin and Capital Requirements for Covered Swap Entities

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Farm Credit Administration (FCA); and the Federal Housing Finance Agency (FHFA).

ACTION: Proposed rule and request for comment.

SUMMARY: The OCC, Board, FDIC, FCA, and FHFA (each, an agency, and collectively, the agencies) request comment on a proposed rule that would amend the agencies' regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule). The Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the dealers covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Such swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. The proposed rule would permit swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, repeal the inter-affiliate initial margin provisions, introduce an additional compliance date for initial margin requirements, clarify the point in time at which trading documentation must be in place, permit legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and make technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules, as defined in the Supplementary Information section.

DATES: Comments should be received on or before December 9, 2019.

ADDRESSES: Interested parties are encouraged to submit written comments jointly to all of the agencies. Commenters are encouraged to use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of comments among the agencies.

OCC: You may submit comments to the OCC by any of the methods set forth below. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Margin and Capital Requirements for Covered Swap Entities'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*, including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or click on the document title and click the ''Comment'' box on the top-left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com*.

- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2019–0023'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this

rulemaking action by any of the following methods:

• *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2019–0023'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* classic homepage. Enter ''Docket ID OCC–2019–0023'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting Materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. For assistance with the *Regulations.gov* Beta site please call (877)-378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email to *regulations@erulemakinghelpdesk.com*.

The docket may be viewed after the close of the comment period in the same manner as during the comment period.

• *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

Board: You may submit comments, identified by Docket No. R–1682 and RIN No. 7100–AF62, 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 the docket number and RIN number in the subject line of the message.

• *Fax:* (202) 452–3819.

• *Mail:* Address to 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–AF08, by any of the following methods:

• *Agency Website: https://www.FDIC.gov/regulations/laws/federal*.

• *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

• *Hand Delivered/Courier:* 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.

• *Email: Comments@FDIC.gov*. Comments submitted must include ''FDIC'' and ''RIN 3064–AF08—Margin Amendments'': Margin and Capital Requirements for Covered Swap Entities.'' Comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal,* including any personal information provided.

FCA: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's website. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comments multiple times via different methods. You may submit comments by any of the following methods:

• *Email:* Send us an email at *reg-comm@fca.gov*.

• *FCA Website: http://www.fca.gov*. Click inside the ''I want to . . .'' field near the top of the page; select ''comment on a pending regulation'' from the dropdown menu; and click ''Go.'' This takes you to an electronic public comment form.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of all comments we receive at our office in McLean, Virginia or on our website at *http://www.fca.gov*. Once you are on the website, click inside the ''I want to . . .'' field near the top of the page; select ''find comments on a pending regulation'' from the dropdown menu; and click ''Go.'' This will take you to the Comment Letters page where you can select the regulation for which you would like to read the public comments. We will show your comments as submitted, including any supporting data provided, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce internet spam.

FHFA: You may submit your written comments on the proposed rulemaking, identified by regulatory information number: (RIN) 2590–AB03, by any one of the following methods:

• *Agency Website: www.fhfa.gov/open-for-comment-or-input*.

• *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Please include ''RIN 2590–AB03'' in the subject line of the message.

• *Hand Delivery/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219. Deliver the package to the Seventh Street entrance Guard Desk, First Floor, on business days between 9:00 a.m. and 5:00 p.m.

• *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AB03, Federal Housing Finance Agency, Constitution Center (OGC Eighth Floor), 400 7th St. SW, Washington, DC 20219.

Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks.

All comments received by the deadline will be posted for public inspection without change, including any personal information you provide, such as your name, address, email address and telephone number on the FHFA website at *http://www.fhfa.gov*. In addition, copies of all comments received will be available for examination by the public through the electronic rulemaking docket for this proposed rule also located on the FHFA website.

FOR FURTHER INFORMATION CONTACT:

OCC: Chris McBride, Director for Market Risk, Treasury and Market Risk Policy, (202) 649–6402, or Allison Hester-Haddad, Counsel, Chief Counsel's Office, (202) 649–5490, for persons who are deaf or hearing impaired, TTY (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

Board: Constance Horsley, Deputy Associate Director, (202) 452–5239, Lesley Chao, Lead Financial Institution Policy Analyst, (202) 974–7063, or John Feid, Principal Economist, (202) 452–2385, Division of Supervision and Regulation; Patricia Yeh, Senior Counsel, (202) 452–3089, Jason Shafer, Senior Counsel, (202) 728–5811, or Justyna Bolter, Senior Attorney, (202) 452–2686, Legal Division; for users of Telecommunication Devices for the Deaf (TDD) only, contact 202–263–4869; Board of Governors of the Federal Reserve System, 20th and C Streets NW, Washington, DC 20551.

FDIC: Irina Leonova, Senior Policy Analyst, *ileonova@fdic.gov,* Capital Markets Branch, Division of Risk Management Supervision, (202) 898–3843; Thomas F. Hearn, Counsel, *thohearn@fdic.gov,* Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

FCA: Jeremy R. Edelstein, Associate Director, Finance & Capital Market Team, Timothy T. Nerdahl, Senior Policy Analyst, Clayton D. Milburn, Senior Financial Analyst, Office of Regulatory Policy, (703) 883–4414, TTY (703) 883–4056, or Richard A. Katz, Senior Counsel, Office of General Counsel, (703) 883–4020, TTY (703) 883–4056, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

FHFA: Christopher Vincent, Senior Financial Analyst, Office of Financial Analysis, Modeling & Simulations, (202) 649–3685, *Christopher.Vincent@fhfa.gov,* or James P. Jordan, Associate General Counsel, Office of General Counsel, (202) 649–3075, *James.Jordan@fhfa.gov,* Federal Housing Finance Agency, Constitution Center, 400 7th St. SW, Washington, DC 20219. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background on the Swap Margin Rule

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the OCC, Board, FDIC, FCA, and FHFA (each, an agency, and collectively, the agencies) to jointly adopt rules that establish capital and margin requirements for swap entities that are prudentially regulated by one of the agencies (covered swap entities).[1] These capital and margin requirements apply to swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).[2] For the remainder of this preamble, the term ''non-cleared swaps'' refers to non-cleared swaps and non-cleared security-based swaps unless the context requires otherwise.

The Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO) established an international framework for margin requirements on non-cleared derivatives in September 2013 (BCBS/IOSCO framework).[3] Following the establishment of the BCBS/IOSCO framework, on November 30, 2015, the agencies published regulations that require swap dealers and security-based swap dealers under the agencies' respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule or Rule), which includes many of the principles and other aspects of the BCBS/IOSCO framework.[4] In particular, the Swap Margin Rule adopted the implementation schedule set forth in the BCBS/IOSCO framework, including the revised implementation schedule adopted on March 18, 2015.[5]

The Swap Margin Rule established an effective date of April 1, 2016, with a phased-in compliance schedule for the initial and variation margin requirements.[6] On or after March 1, 2017, all covered swap entities were required to comply with the variation margin requirements for transactions with other swap entities and financial end user counterparties. The Swap Margin Rule presently requires all covered swap entities to comply with the initial margin requirements for non-cleared swaps with all financial end users with a material swaps exposure and with all swap entities by September 1, 2020.

The Swap Margin Rule's requirements generally apply only to a non-cleared swap entered into on or after the applicable compliance date.[7] A non-cleared swap entered into prior to an entity's applicable compliance date is essentially ''grandfathered'' by this regulatory provision, in that the non-cleared swap is generally not subject to the margin requirements in the Swap Margin Rule (legacy swap). However, the agencies explained in the preamble of the Swap Margin Rule that a legacy swap that is later amended or novated on or after the applicable compliance

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). *See* 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). Section 1a(39) of the Commodity Exchange Act of 1936, as amended, defines the term ''prudential regulator'' for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. *See* 7 U.S.C. 1a(39).

[2] A ''swap'' is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap, and a security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. *See* 7 U.S.C. 1a(47); 15 U.S.C. 78c(a)(68).

[3] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf.*

[4] 80 FR 74840 (November 30, 2015).

[5] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (March 2015), available at *https://www.bis.org/bcbs/publ/d317.pdf.*

[6] The applicable compliance date for a covered swap entity is based on the average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April, and May of that year. The applicable compliance dates for initial margin requirements that are currently in place, and the corresponding average daily aggregate notional amount thresholds, are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all swap entities and counterparties. *See* § __.1(e) of the Swap Margin Rule. In this proposed rule, the agencies are also proposing to add one additional year to this schedule for certain counterparties.

[7] *See* § __.1(e) of the Swap Margin Rule.

date should be subject to the requirements of the Swap Margin Rule, in the interests of preventing evasion of the Rule's margin requirements.[8]

The Swap Margin Rule has recently been amended to (1) provide relief to legacy swaps that are amended to achieve compliance with final rules that established restrictions on and requirements for certain non-cleared swaps and certain other qualified financial contracts of U.S. global systemically important banking organizations and their subsidiaries and the U.S. operations of foreign global systemically important banking organizations (QFC Rules)[9] and (2) subject to certain conditions, provide relief for entities located in the United Kingdom to transfer their existing swap portfolios that face counterparties located in the European Union to an affiliate or other related establishment located within the European Union or the United States while maintaining legacy status for such portfolios.[10] This notice of proposed rulemaking would make the following changes to the Swap Margin Rule:

First, the proposal would provide relief by allowing legacy swaps to be amended to replace existing interest rate provisions based on certain interbank offered rates (IBORs) and other interest rates that are reasonably expected to be discontinued or are reasonably determined to have lost their relevance as a reliable benchmark due to a significant impairment, without such swaps losing their legacy status.

Second, the proposal would amend the Swap Margin Rule's requirements for inter-affiliate swaps. The proposal would repeal the requirement for a covered swap entity to collect initial margin from its affiliates, but would retain the requirement that variation margin be exchanged for affiliate transactions.

Third, the proposal would add an additional initial margin compliance period for certain smaller counterparties, and clarify the existing trading documentation requirements in § __.10 of the Rule.

Fourth, the proposal would amend the Swap Margin Rule to permit amendments caused by conducting certain routine life-cycle activities that covered swap entities may conduct for legacy swaps, such as reduction of notional amounts and portfolio compression exercises, without triggering margin requirements.

These aspects of the proposal are each discussed in greater detail below.

II. Interbank Offered Rates

A. Background on IBORs

The proposed rule would amend the Swap Margin Rule to permit a covered swap entity to amend a legacy swap in order to replace an IBOR with an alternative reference rate or rates, without triggering margin requirements.

An IBOR is a benchmark interest rate that is intended to represent banks' cost of unsecured wholesale borrowing. IBORs[11] have been used as the benchmark interest rate for a large volume and broad range of existing financial products and contracts, including for an estimated $190 trillion US Dollar LIBOR (USD LIBOR) exposure, of which $145 trillion represents over-the-counter derivatives exposure (as of year-end 2016).[12] However, the discovery of, and numerous regulatory actions to seek redress of, market manipulation and false reporting of the many IBORs, together with the post-crisis decline in liquidity in interbank unsecured funding markets, have undermined confidence in the reliability and robustness of IBORs.

As a result, the Financial Stability Board (FSB) and the U.S. Financial Stability Oversight Council (FSOC) requested that government and industry stakeholders undertake implementation of new designs and methodologies for IBORs, and the identification of viable alternative near risk-free rates in their respective currencies (U.S. dollar in the case of the United States) with a focus on the feasibility of new rate methodologies, including identification of suitable administrators and any necessary infrastructure to support these rates.[13]

The Federal Reserve Board and Federal Reserve Bank of New York convened the Alternative Reference Rates Committee (ARRC)[14] in 2014 to identify an alternative reference rate for USD LIBOR and create an implementation plan to promote the use of the selected alternative on a voluntary basis. In 2017, the ARRC selected the Secured Overnight Funding Rate (SOFR), which is designed to be representative of general funding conditions in the overnight Treasury repo market. The ARRC has noted that use of SOFR is voluntary and that other benchmarks can also be considered as potential alternatives for USD LIBOR. For example, the American Financial Exchange is offering Ameribor as a potential USD LIBOR replacement rate.[15] In addition, benchmarks such as an Overnight Bank Funding Rate were suggested by some market participants as a potential alternative.

In July 2017, the U.K. Financial Conduct Authority (UKFCA), which regulates ICE Benchmark Administration, the administrator of LIBOR, announced that it has sought commitments from LIBOR panel banks to continue to contribute to LIBOR through the end of 2021, but that the UKFCA will not use its powers to compel or persuade contributions beyond that date. The UKFCA has also warned that it may judge LIBOR to no longer be representative of its underlying market should it persist past this date. Thus, it is possible that LIBOR will cease to be published at the end of 2021. Consequently, it is likely that derivatives contracts that reference LIBOR will need to be amended to replace LIBOR.

In consideration of this uncertainty, the International Swaps and Derivatives Association, Inc. (ISDA), which produces standard documentation used by parties to derivatives contracts, indicated that it plans to amend its documentation to ''include fallbacks that would apply upon the permanent discontinuation of certain key

[8] 80 FR 74850–51.

[9] 83 FR 50805 (October 10, 2018). The QFC Rules are codified as follows: 12 CFR part 47 (OCC's QFC Rule); 12 CFR part 252, subpart I (Board's QFC Rule); 12 CFR part 382 (FDIC's QFC Rule).

[10] 84 FR 9940 (March 19, 2019).

[11] IBORs include the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR).

[12] ''Second Report of the Alternative Reference Rates Committee'' published in March 2018, available at *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report*.

[13] ''Reforming Major Interest Rate Benchmarks'' published by the Financial Stability Board on July 22, 2014, available at *http://www.fsb.org/wp-content/uploads/r_140722.pdf*. Several central banks responded to this request and convened working groups of market participants and official sector representatives, including the United Kingdom, Japan, Switzerland, and the Eurozone. The work has also been coordinated at the international level by the FSB's Official Sector Steering Group (OSSG).

[14] The voting members of the 2014 ARRC were Bank of America, Barclays, BNP Paribas, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JP Morgan Chase & Co., Morgan Stanley, Nomura, RBS, Société Générale, UBS, and Wells Fargo; the non-voting members were Bank of New York Mellon, CME, DTCC, ISDA and LCH.Clearnet; the ex officio members were Board of Governors of the Federal Reserve System, Federal Reserve Bank of New York, U.S. Commodity Futures Trading Commission, U.S. Treasury Department and Office of Financial Research. The ARRC's membership has changed over time. For a list of the latest members, *see https://www.newyorkfed.org/arrc*.

[15] *See https://ameribor.net/*.

IBORs.'' [16] For new non-cleared swaps, market participants will have an option to amend their documentation via an ISDA benchmark supplement. For non-cleared swaps that are already in place, market participants will have the option to utilize an ISDA protocol that will specify amended definitions, triggers, and other adjustments.[17]

Due to the potential discontinuation of LIBOR at the end of 2021, covered swap entities face uncertainty about the way their swap contracts based on LIBOR and other IBORs will operate after the permanent discontinuation date without a reliable benchmark rate. A benchmark rate is a critical term for calculating payments under a swap contract. In many instances, these firms may decide to amend existing swap contracts to replace an IBOR before the IBOR becomes discontinued. Such amendments may also trigger follow-on amendments [18] that the counterparties determine are necessary to maintain the economics of the contract. Absent the proposed revisions to the Swap Margin Rule, one or more of these amendments could affect the legacy status of a non-cleared swap and make it subject to the requirements of the Rule. In order to enable covered swap entities and their counterparties to avoid the risk of future financial instability, the agencies believe it is appropriate to permit covered swap entities to amend the reference rates in a legacy swap contract and to adopt necessary follow-on amendments without converting the legacy swap into a swap subject to the Swap Margin Rule. The conditions of eligibility for the amendments are described in the next section of this **SUPPLEMENTARY INFORMATION**.

B. Proposed Rule on IBORs

In recognition of the ongoing efforts to transition away from key IBORs due to their potential discontinuation, the agencies are proposing to amend the Swap Margin Rule to remove impediments that would limit the ability of covered swap entities to replace certain rates in their legacy non-cleared swaps. Specifically, the agencies propose to amend § __.1(h) to preserve the legacy status of a non-cleared swap after a covered swap entity replaces certain reference rates. Proposed § __.1(h) recognizes that these replacements could be carried out using a variety of legal mechanisms by permitting amendments accomplished by the parties': Adherence to a protocol; contractual amendment of an agreement or confirmation; or execution of a new contract in replacement of and immediately upon termination of an existing contract (*i.e.,* tear-up), subject to the limitations discussed below.

The proposed rule is intended to be flexible with respect to the method of amendment. The proposal would permit amendments to be executed with respect to an individual non-cleared swap or on a netting set level, as long as the other proposed criteria are met.

The proposed rule describes the type of rate that can be replaced and the accompanying changes that would be permitted. Proposed section § __ .1(h)(3)(i) would permit amendments that are made solely to accommodate the replacement of an IBOR or a replacement of any other non-IBOR interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment with an alternate reference rate.[19] For example, if a benchmark administrator materially changes the inputs in the benchmark calculation because an input is no longer available, a covered swap entity may determine that the benchmark has lost its relevance as a reliable benchmark due to a significant impairment.

The proposed rule lists the IBORs that could be replaced, including LIBOR, TIBOR, BBSW, SIBOR, CDOR, EURIBOR, and HIBOR. Although the current uncertainty surrounding reference rates is tied to IBORs, the agencies are also proposing a second, more qualitative standard that would be applicable to other categories of reference rates, should the need arise in the future. This forward-looking standard is designed to encourage covered swap entities to resolve critical uncertainties before an interest rate benchmark is discontinued, or loses its market relevance, in order to minimize disturbance to the markets.

The agencies also anticipate that a reference rate may need to be replaced more than one time. For example, an IBOR may first be replaced with fallback provisions at a time when a permanent alternative rate is not yet available or amendment documentation has not yet been developed. Subsequently, fallback provisions may be replaced with permanent alternative rates. If the original rate that is being replaced is an IBOR or any other non-IBOR interest rate benchmark that otherwise meets the requirements of the proposed rule that a covered swap entity reasonably expects it to be discontinued or reasonably determines that it has lost its relevance as a reliable benchmark due to a significant impairment, the non-cleared swap may be amended more than once to accommodate ongoing developments toward a permanent replacement rate. There is no limit to the number of amendments that can take place, as long as the rate that was originally present in the non-cleared swap met the criteria in either § __ .1(h)(3)(i)(A) or § __.1(h)(3)(i)(B). The proposed approach of permitting subsequent amendments takes into account that any subsequent changes to the reference rate will be the subject of negotiations among counterparties that are incentivized to agree to a reasonable rate. The proposed rule would not permit subsequent amendments that change rates or other terms of the non-cleared swap for any purpose other than for those purposes explicitly set out in § __.1(h), without triggering application of the margin requirements.

To benefit from the treatment of this new legacy swap provision, a covered swap entity must make the amendments to the non-cleared swap solely to accommodate the replacement of a rate described in the proposed rule. The proposed rule is flexible as to the incoming replacement rate by leaving it up to the counterparties to select a mutually agreeable replacement rate. The agencies expect that any replacement rate, including any subsequent replacement rate, would be agreed upon by the parties after assessing its complexity, safety and soundness, and taking into

[16] ISDA Consultation on Pre-Cessation Issues for LIBOR and Certain Other Interbank Offered Rates (IBORs), May 16, 2019, available at *https://www.isda.org/a/md6ME/FINAL-Pre-cessation-issues-Consultation.pdf.*

[17] ISDA Supplemental Consultation on Spread and Term Adjustments for Fallbacks in Derivatives Referencing USD LIBOR, CDOR and HIBOR and Certain Aspects of Fallbacks for Derivatives Referencing SOR, May 16, 2019, available at *https://www.isda.org/a/n6tME/Supplemental-Consultation-on-USD-LIBOR-CDOR-HIBOR-and-SOR.pdf.*

[18] Follow-on amendments may include a variety of spread adjustments resulting from the move from a term rate to an overnight rate, from unsecured to secured, or could result from a change in tenor, among others.

[19] Under the EU Benchmark Regulation (Regulation (EU) 2016/1011 (June 8, 2016)), a benchmark administrator is expected to regularly assess whether a critical benchmark measures the underlying market or economic reality. In certain circumstances, a regulatory authority of a benchmark administrator may complete its own assessment of a benchmark's representativeness as well. Covered swap entities may refer to such assessments or other public statements by benchmark administrators or regulatory authorities in order to inform their expectations about whether a benchmark will be discontinued or continues to be reliable. In addition, covered swap entities may consult the IOSCO Principles for Financial Benchmarks (July 2013), to assist in determining whether a benchmark has lost its relevance as a reliable benchmark, available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

consideration associated risk management practices.[20]

The agencies also acknowledge that replacing a reference rate could require other contractual changes to maintain the economics of the non-cleared swap and to preserve the relative values to the parties after incorporating changes in the reference rate. The proposed rule would permit changes that incorporate spreads and other adjustments that accompany and implement the replacement rate amendment. The rule would also permit other, more administrative and technical changes necessary to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates. These types of administrative changes may be necessary to adjust computations and operational provisions to reflect the differences between an IBOR and the replacement rate or rates.

The agencies envision that a number of contractual changes could be necessary to maintain the economics of the non-cleared swap, and for this reason, have drafted the proposed rule so it permits these changes. For example, legacy swaps that contain USD LIBOR may be referencing 1-day LIBOR, 1-week LIBOR, 1-month LIBOR, 2-month LIBOR, 3-month LIBOR, 6-month LIBOR or 12-month LIBOR. In these cases, a replacement rate that could be overnight and could be based, for example, on a fully secured funding rate (*e.g.,* SOFR) may need to incorporate a market risk (term structure) spread to substitute for the market risk component of LIBOR that is of a longer maturity than overnight. Similarly, because LIBOR is unsecured and therefore includes an element of bank credit risk, it is likely that a replacement rate that could be overnight and could be based, for example, on a fully secured funding rate (*e.g.,* SOFR) would need a credit spread to adjust the new reference rate to a comparable legacy LIBOR rate. This may also be the case for non-USD IBORs that could be replaced by overnight funding rates.

The proposed rule would also permit administrative and technical changes necessary for operational purposes. For example, for an overnight rate, interest on financial instruments that pay periodically (*e.g.,* quarterly) may be set in arrears by compounding or averaging the daily observations over the relevant period. To offer flexibility in the transition to a new reference rate, the proposed rule would permit the replacement of an IBOR or other discontinued reference rate in the floating leg of a fixed-floating rate swap, and would also permit the interest rate in the fixed leg to be modified in order to maintain the economics of the non-cleared swap.

However, the agencies do not believe that the relief being provided for rate replacement purposes should be expansively applied to encompass all changes to a legacy swap. Accordingly, the proposed rule text clarifies that the proposed safe harbor for legacy swaps would be unavailable if the amendments extend the maturity or increase the total effective notional amount of the non-cleared swap. For example, a one time, lump-sum compensatory payment in lieu of a spread adjustment would not increase the total effective notional amount and would be permitted. On the other hand, extending the maturity date to allow for additional payments to be made under the non-cleared swap would be a change outside the scope of the proposed rule.

The agencies envision that covered swap entities may carry out certain amendments, including those executed by method of termination and replacement, for the purpose of implementing changes that might qualify for more than one exemption provided under § __.1(h). When a legacy swap is replaced with a new contract that reflects more than one exemption, each of the provisions in the replacement contract that differs from the terminated contract must be permitted under the respective subsection of § __.1(h). For example, a covered swap entity and its counterparty may decide to replace an IBOR with a different reference rate and, at the same time, make changes to comply with the QFC Rules. The IBOR-related changes must comply with § __.1(h)(3) and the QFC Rules changes must comply with § __.1(h)(1) for the replacement contract to meet the ''solely to comply'' standard and, in the case of § __.1(h)(3), the ''solely to accommodate'' standard.

III. Non-Cleared Swaps Between CSEs and an Affiliate

The proposal would amend the treatment of affiliate transactions in the Swap Margin Rule by creating an exemption from the initial margin requirements for non-cleared swaps between affiliates.[21] The proposal would, however, retain the requirement that affiliates exchange variation margin.

Currently, § __.11 of the Swap Margin Rule establishes special rules for transactions between a covered swap entity and an ''affiliate,'' generally defined in the Swap Margin Rule as an entity that is consolidated with the dealer on an accounting basis, or consolidated on a common basis by another entity.[22] The rules applicable to transactions with affiliates differ from the rules applicable to transactions with non-affiliates. For example, a covered swap entity is not required to post initial margin to an affiliate or use an independent custodian for most forms of initial margin collected from an affiliate. In addition, the covered swap entity does not need to apply a $50 million initial margin threshold amount to the covered swap entity's affiliates on an aggregate basis, and the covered swap entity is not required to use the ten-day holding period for calculating initial margin using an initial margin model under § __.8(d)(1).[23] Consistent with the requirements for non-cleared swaps between non-affiliated counterparties, current § __.11 requires the exchange of variation margin for affiliate transactions. As discussed in the preamble to the final Swap Margin Rule, the initial and variation margin requirements applicable to affiliate transactions were intended to advance the mandate under the Dodd-Frank Act to ''offset the greater risk to swap entities from the use of swaps that are not cleared and help ensure the safety and soundness of the covered swap entity and are appropriate for the risk associated with the non-cleared swap entity.'' [24] The agencies noted that the requirement to collect initial margin from, but not post initial margin to, affiliates ''should help to protect the safety and soundness of covered swap entities in the event of an affiliated counterparty default.'' [25] Furthermore, by requiring that inter-affiliate swaps be margined, the requirement was intended

[20] The replacement rate is also expected to be consistent with international standards, such as the IOSCO Principles for Financial Benchmarks. *See https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdf.*

[21] Under the BCBS/IOSCO framework, no common standard was set for inter-affiliate transactions, in recognition of the existing and varied approaches to the topic across jurisdictions.

[22] Section __.2 provides that two companies are ''affiliates'' if either company consolidates the other on financial statements prepared in accordance with U.S. Generally Accepted Accounting Principles, the International Financial Reporting Standards, or other similar standards, or if both companies are consolidated with a third company.

[23] For a description of the application of this set of exemptions, *see* the preamble to the final rule, 80 FR at 74887.

[24] 80 FR at 74889.

[25] *Id.*

to prevent unmargined swaps from posing a risk to systemic stability.[26]

Since the Swap Margin Rule was implemented, supervisory experience has shown that inter-affiliate swaps are used by covered swap entities for internal risk management purposes whereby a banking organization transfers risk to a centralized risk management function, which is considered to be a prudent risk management practice. As more covered swap entities have come into scope, the amount of inter-affiliate initial margin collected by covered swap entities has increased. This has led the affected banking organizations to borrow increasing amounts of cash in the debt markets to fund eligible collateral, placing additional demands on their asset-liability management structure and increasing their liability exposure to depositors and other creditors in the market. The removal of the inter-affiliate initial margin requirement would provide these banking organizations with additional flexibility for internal allocation of collateral. The agencies believe that such risk management practices often improve the safety and soundness of a covered swap entity, and therefore, to encourage such prudent risk management, propose to exempt inter-affiliate swaps from the Rule's initial margin requirements. The proposal does not remove the requirement that covered swap entities must collect and post initial margin with other non-affiliate covered swap entities.

The agencies also note that because other jurisdictions (as well as the U.S. market regulators) do not consistently apply swap margin rules to inter-affiliate swaps, the Rule's imposition of initial margin requirements for inter-affiliate swaps may have provided limited systemic risk benefits and put U.S. banking firms at a competitive disadvantage. For example, many covered swap entities subject to the Swap Margin Rule are banking organizations that are typically internationally active with operations in many jurisdictions that may exempt or not impose initial margin requirements on inter-affiliate transactions.[27] In addition, the imposition of initial margin requirements may depend on the banking organization's home country, presence in the United States, corporate organization, or business strategy. For example, internationally active banking organizations that have a cross-border organizational structure that relies on separate legal entities must currently use inter-affiliate swaps to centralize risk management of the overall banking organization's outward-facing derivatives exposures, whereas other internationally active banks that operate cross-border through branching structures do not have a comparable risk management need for such inter-affiliate swaps. The agencies do not believe this difference in corporate organization justifies different initial margin requirements under the Swap Margin Rule.

The agencies are not proposing to alter the Rule's uniform requirements for covered swap entities to exchange variation margin with their affiliates. The agencies note it has become routine in recent years for covered swap entities to exchange variation margin on non-cleared swaps with their affiliates. As a best practice for risk management, the exchange of variation margin serves to reflect ongoing economic transfers of current exposure for assets and liabilities between the various parts of the banking organization over the life of each non-cleared swap. This in turn contributes to the safety and soundness of the covered swap entity, and the larger banking organization as a whole. The exchange of variation margin will remain a requirement under the general rules of § __.4 and will continue to be applicable to inter-affiliate swaps.

The proposal would also supplement the definition of ''affiliate'' for purposes of § __.11 to include not only the definition of ''affiliate'' found in § __.2 of the Swap Margin Rule, focusing on consolidation under applicable accounting rules, but also the established ''catch-all'' legal standard for affiliation in banking focusing on the direct or indirect exercise of controlling influence over the management or policies of the controlled company. Absent this change, the Swap Margin Rule would, by its general provisions, require covered swap entities to post initial margin to, and collect initial margin from, unconsolidated entities that are treated as affiliates of the covered swap entity for other legal or regulatory purposes.

Finally, the agencies note that certain affiliate transactions are subject to the requirements of sections 23A and 23B of the Federal Reserve Act as implemented by the Federal Reserve's Regulation W, as these requirements continue to apply to affiliate transactions with an insured depository institution.[28] Currently, almost all U.S. covered swap entities are insured depository institutions that would be subject to Sections 23A, 23B, and Regulation W. These provisions are specifically tailored to address risks arising from transactions, including non-cleared swaps, between affiliates. As such, the agencies believe that they are the more effective tools to address risks arising from transactions between affiliates. The Board continues to consider how inter-affiliate non-cleared swaps can be addressed under Regulation W.

IV. Additional Compliance Date for Initial Margin Requirements

The agencies are proposing to give covered swap entities an additional year to implement initial margin requirements for certain smaller counterparties. The implementation of both initial and variation margin requirements started on September 1, 2016. With respect to initial margin requirements, the requirements in the Swap Margin Rule are implemented in five phases from September 1, 2016, through September 1, 2020, depending on the size of the covered swap entity's portfolio of non-cleared swaps and the counterparty's portfolio of non-cleared swaps. Variation margin requirements for all covered swap entities and counterparties were completely phased in by March 1, 2017. This schedule was consistent with BCBS/IOSCO framework when the Swap Margin Rule was adopted in 2015.

The phase-in schedule for initial margin is based on the average daily aggregate notional amount (AANA) of non-cleared swaps held in each party's market-wide portfolio, measured separately from the standpoint of the covered swap entity and the standpoint of the counterparty.[29] With the recent

[26] 80 FR at 74889.

[27] Under the BCBS/IOSCO framework, no common standard was set for inter-affiliate swap transactions, in recognition of these existing and varied approaches to the topic of inter-affiliate transactions generally. 79 FR at 57353; Article 6 of the BCBS and IOSCO ''Margin Requirements for Non-Centrally Cleared Derivatives'' (September 2013), available at *https://www.bis.org/publ/bcbs261.pdf*.

[28] 12 U.S.C. 371c and 371c–1; 12 CFR part 223. In adopting the Swap Margin Rule, the agencies noted that transactions between banks and their affiliates have long been subject to their own special set of regulatory restrictions, particularly in the case of U.S. banks pursuant to sections 23A and 23B of the Federal Reserve Act. *See* 80 FR at 74889 (noting the obligation of banks that are covered swap entities to comply with additional regulatory restrictions on inter-affiliate swap transactions, such as those required by sections 23A and 23B).

[29] As noted above, the AANA is determined based on the non-cleared swaps, foreign exchange forwards and foreign exchange swaps of each of the covered swap entity and its counterparty (accounting for their respective affiliates) for each business day in March, April and May of that year. The corresponding average daily notional thresholds for each compliance date currently are: September 1, 2016, $3 trillion; September 1, 2017, $2.25 trillion; September 1, 2018, $1.5 trillion; September 1, 2019, $0.75 trillion; and September 1, 2020, all covered swap entities and their counterparties. *See* § __.1(e) of the Swap Margin Rule.

occurrence of the fourth phase of initial margin compliance obligations on September 1, 2019—for covered swap entities and counterparties with an AANA of $750 billion to $1.5 trillion—the group currently scheduled for the fifth phase of compliance in the upcoming year includes all remaining entities within the scope of the initial margin requirements, spanning AANAs from $8 billion up to $750 billion.[30]

The industry's implementation work to execute new trading documentation to meet variation margin compliance obligations by 2017 largely excluded any rule-compliant documentation for initial margin, due to the greater operational complexity associated with ''T+1'' portfolio reconciliation of internally-modeled initial margin amounts and third-party segregation of initial margin collateral. The industry has raised significant concerns about the operational and other difficulties associated with beginning to exchange initial margin with the large number of relatively small counterparties encompassed in the Swap Margin Rule's fifth phase. In recognition of these difficulties, the BCBS/IOSCO framework was recently revised to permit an additional phase for smaller counterparties, and the agencies believe it is appropriate to amend the Swap Margin Rule in a similar manner. [31] Accordingly, the agencies are proposing to amend the compliance schedule to add a sixth phase of compliance for certain smaller entities that are currently subject to the ''phase five'' compliance deadline. The proposed amendments would require compliance by September 1, 2020, for counterparties with an AANA ranging from $50 billion up to $750 billion, while the compliance date for all other counterparties (with an AANA ranging from a ''material swaps exposure'' of $8 billion up to $50 billion) would be extended to September 1, 2021.

V. Documentation Requirements

Complying with initial margin requirements creates regulatory obligations for covered swap entities and implications for their counterparties.[32] Covered swap entities must calculate initial margin to be collected and posted to determine if and when collection or posting of initial margin is required. Under § __.3, a covered swap entity must collect or post initial margin when it calculates an initial margin amount that, after subtracting the initial margin threshold amount (not including any portion of the initial margin threshold amount already applied by the covered swap entity or its affiliates to other non-cleared swaps or non-cleared security-based swaps with the counterparty or its affiliates), exceeds zero. It is only at the time at which the covered swap entity is required to collect or post initial margin pursuant to § __.3 that it is required to have completed the initial margin trading documentation required by § __.10. For the avoidance of doubt, the agencies are proposing to amend § __.10 to expressly state that a covered swap entity is not required to execute initial margin trading documentation with a counterparty prior to the time that it is required to collect or post initial margin pursuant to § __.3.[33]

As discussed in the Swap Margin Rule, a covered swap entity must execute trading documentation with each counterparty that falls within the scope of the Rule's definition of a swap entity or a financial end user regarding credit support arrangements unless the swap entity or financial end user is explicitly exempt from the Rule pursuant to § __.1(d).[34] The documentation must provide the covered swap entity the contractual rights and obligations to collect and post initial and variation margin in such amounts, in such form, and under such circumstances as are required by the Rule. The documentation must also specify the methods, procedures, rules, and inputs for determining the value of each non-cleared swap for purposes of calculating variation margin and the procedures by which any disputes concerning the valuation of non-cleared swaps or the valuation of assets collected or posted as initial margin or variation margin may be resolved. Finally, the documentation must also describe the methods, procedures, rules, and inputs used to calculate initial margin for non-cleared swaps entered into between the covered swap entity and the counterparty.[35]

The custody agreement requirements in § __.7 of the Swap Margin Rule require such agreements to be in place only after initial margin is required to be collected or posted pursuant to § __.3, or when initial margin is posted by a covered swap entity beyond an amount required by the Rule. The agencies expect that covered swap entities will closely monitor their exposures and take appropriate steps to ensure that trading documentation is in place at such time as initial margin is required to be exchanged pursuant to § __.3. The agencies note that this view is consistent with statements of the BCBS and IOSCO with respect to internationally agreed standards for margin requirements for non-centrally cleared derivatives.[36]

VI. Portfolio Compression Exercises and Other Amendments

The Swap Margin Rule applies to non-cleared swaps entered into on or after the applicable compliance date. As discussed above, the agencies have also expressed concerns about amendments to a swap that was entered into before the applicable compliance date if the amendments would have the effect of allowing covered swap entities and their counterparties to evade or otherwise artificially delay implementation of margin requirements. In particular, the agencies have been concerned whether market participants would amend legacy swaps, rather than entering into new ones and exchanging margin pursuant to the Rule once the legacy swaps expire according to their original terms. The industry has raised concerns whether certain amendments, particularly non-material amendments to non-economic terms, as well as amendments that are made to reduce operational or counterparty risk, such as notional reductions and portfolio

[30] The Swap Margin Rule does not require initial margin to be exchanged with any counterparty whose AANA is less than $8 billion as of the previous June, July, and August. *See* § __.3 and the definition of ''material swaps exposure'' in § __.1.

[31] *See* BCBS and IOSCO ''Margin requirements for non-centrally cleared derivatives,'' (July 2019), available at *https://www.bis.org/bcbs/publ/d475.pdf.*

[32] *See* § __.1(f) (providing that once a covered swap entity must comply with the margin requirements for non-cleared swaps and non-cleared security-based swaps with respect to a particular counterparty, the covered swap entity remains subject to the requirements of the Swap Margin Rule with respect to that counterparty).

[33] Section __.10 has parallel requirements for covered swap entities to execute trading documentation providing the covered swap entity with the contractual right to collect and post variation margin in such amounts, in such form, and under such circumstances as are required by the Swap Margin Rule. There is no threshold margin amount for variation margin pursuant to § __.4, and § __.10 requires covered swap entities to execute variation margin trading documentation no later than the time the covered swap entity commences trading non-cleared swaps with any swap entity or financial end user covered by the Swap Margin Rule.

[34] 80 FR 74886–74887 (describing the trading documentation requirements of § __.10).

[35] *Id.*

[36] BCBS/IOSCO statement on the final implementation phases of the *Margin requirements for non-centrally cleared derivatives,* March 5, 2019, available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD624.pdf,* stating that ''the framework does not specify documentation, custodial or operational requirements if the bilateral initial margin amount does not exceed the framework's €50 million initial margin threshold. It is expected, however, that covered entities will act diligently when their exposures approach the threshold to ensure that the relevant arrangements needed are in place if the threshold is exceeded.''

compressions, could be executed while still allowing those amended legacy swaps to remain exempt from the Swap Margin Rule.

The agencies are proposing amendments to clarify the agencies' implementation of the legacy swaps provisions of the Swap Margin Rule since its adoption in 2015. These amendments are intended to permit amendments to legacy swaps arising from certain routine industry practices over the life-cycle of a non-cleared swap that are carried out for logistical reasons or risk-management purposes. The proposed amendments are those that do not raise concerns that the covered swap entity is seeking to evade or otherwise delay the application of margin requirements for non-cleared swaps.

One of these proposed amendments recognizes the legacy status of a non-cleared swap that has been amended to reflect technical changes, such as addresses, the identities of parties for delivery of formal notices, and other administrative or operational provisions of the non-cleared swap that do not alter the non-cleared swap's underlying asset or indicator, such as a security, currency, interest rate, commodity, or price index, the remaining maturity, or the total effective notional amount. The types of technical changes described are necessary to reflect changes in a counterparty's circumstances, but are not associated with a desire by either party to increase or decrease its exposure to market risk factors. While the technical changes listed above would be permitted, a change in the non-cleared swap's underlying index would not be a technical change.

The second proposed amendment recognizes the legacy status of a non-cleared swap that has been amended solely to reduce the notional amount of the non-cleared swap, without altering other terms of the original non-cleared swap. For these purposes, a reduction in notional amount may be achieved through a partial termination of the original non-cleared swap, with the remaining non-terminated non-cleared swap being able to retain its legacy status. A reduction in notional amount could also be achieved by novating a portion of the original non-cleared swap's notional amount to a third party. The original non-cleared swap, with a lower notional amount, would retain legacy status, but the novated portion would not retain legacy status.

The third proposed amendment recognizes the legacy status of non-cleared swaps that have been modified as part of certain portfolio compression exercises used as a risk management tool. In compression, offsetting trades between two or more parties are amended or torn up and replaced, which reduces the size of gross derivatives exposures and generally reduces the number or frequency of payments between parties, thus maintaining or reducing the overall risk profile of the portfolio. In general, these compression exercises make use of third party service providers to assist in the choice of trades to be modified and the risk composition of the resulting portfolios.

In a simple bilateral form of compression between two counterparties, the dealer agrees with another dealer to compress trades so that offsetting positions are cancelled and only the net amount remains, without any change to the overall market exposures. The resulting net position is documented by amending one of the original swaps. This ''amended swap'' method is the predominant method used in compressions of non-cleared interest rate swaps. Compression can also be done on a multilateral basis among more than two counterparties, and is often even more efficient, as trades across multiple dealers involved in a compression exercise can be offset, reducing the risk in each relationship across the various counterparties involved in the compression. The resulting net position is documented by creating a replacement swap reflecting the net position. This ''replacement swap'' method is predominantly used in compression exercises for non-cleared credit default swaps, but it can also be used for interest rate swap compression. Compression often results in the cancellation of offsetting positions, but it could also result in new trades being booked into an existing non-cleared portfolio to reflect the netted-down risk of the original portfolio.

One reason that the agencies are permitting amendments resulting from compression exercises is to reduce the operational burden associated with IBOR replacements. While protocols to amend non-cleared swaps that reference an IBOR or another discontinued rate are in development, there is a possibility that counterparties may choose to replace portfolios of IBOR-based non-cleared swaps with replacement swaps generated through compression exercises.

In recognition of the value of risk-reducing compression exercises, the agencies are proposing to amend the Swap Margin Rule to expressly recognize the benefits of amending or replacing non-cleared swaps solely to accomplish risk-reducing or risk-neutral portfolio compression between or among covered swap entities and their counterparties, without converting the legacy swap into a swap subject to the Swap Margin Rule.

Under the proposed rule, amended swaps that reflect the outcome of a compression exercise are treated slightly differently than replacement swaps that are issued as a result of the compression exercise. If a non-cleared swap is amended solely as a result of a compression exercise, the amendments cannot extend the remaining maturity of the amended non-cleared swap or increase the total effective notional amount of the non-cleared swap.

Example 1: The limitations on remaining maturity and total effective notional amount in a compression exercise resulting in a replacement swap are different. For example, if swap 1 entered into by a covered swap entity and counterparty A has a total effective notional amount of $10 (long position) and a remaining maturity of 5 years, and swap 2 entered into by the same covered swap entity and the same counterparty A has a total effective notional amount of $5 (short position) and a remaining maturity of 4 years, the compression exercise might result in a cancellation of swap 2 and an amendment to swap 1 such that the total effective notional amount would become $5 (long position) and the remaining maturity would remain at 5 years. This amendment would be permitted under the proposed rule since the maturity of the amended swap is not longer than the maturity of swap 1 (5 years) and the total effective notional amount of the amended swap is not greater than the total effective notional amount of swap 1 ($10 long position). However, an amendment to swap 1 that extends the remaining maturity of the amended swap beyond the original 5 years or increases the total effective notional amount higher than the original $10 would not be able to take advantage of the proposed safe harbor.

A replacement swap cannot extend the longest remaining maturity of all of the swaps in the compression exercise and cannot have a total effective notional amount that exceeds the total effective notional amount of that longest remaining maturity swap.

Example 2: Using the terms of swap 1 in the example above, assume that swap 2 has a total effective notional amount of $5 (short position) and a remaining maturity of 3 years. The two swaps could be in a compression exercise in which both swaps are terminated and replaced with a new swap. The replacement swap must have a remaining maturity that does not extend the longest remaining maturity of swaps 1 and 2 (swap 1 has the longer remaining maturity of 5 years). The replacement swap must also have a total effective notional amount that does not exceed the total effective notional amount of the swap with the longest remaining maturity (swap 1 has the longer remaining maturity of 5 years, so the replacement swap cannot exceed swap 1's total effective notional amount of $10 long position).

Example 3: Assume that the following swaps are part of a compression exercise:

Swap contract No.	Total effective notional amount	Remaining maturity
1	10 (long)	5
2	4 (short)	4
3	7 (long)	3
4	3 (short)	2
5	17 (short)	1

If a compression exercise terminates all the swaps listed above and replaces them with a new replacement swap, the total effective notional amount of the replacement swap cannot exceed the sum of the total effective notional amounts for all swaps with the same or longer remaining maturity than the replacement swap. Therefore, if one assumes the compression exercise results in a remaining maturity of 3 years for the replacement swap, the replacement swap with a remaining maturity of 3 years could have a maximum total effective notional amount of the sum of the total effective notional amounts of the 5 year swap, the 4 year swap, and the 3 year swap, or 10 + 4 + 7 = $21.[37] Alternatively, if one assumes the compression exercise results in a remaining maturity of 2 years for the replacement swap, the replacement swap with a remaining maturity of 2 years could have a maximum total effective notional amount of the sum of the total effective notional amounts of the 5 year swap, the 4 year swap, the 3 year swap, and the 2 year swap or 10 + 4 + 7 + 3 = $24.

The agencies are also concerned about clarifying the legacy status of swaptions that are entered into before the applicable compliance date but exercised after that compliance date. As a general matter, a swaption is created when a covered swap entity and its counterparty enter into a derivative transaction granting one party an option to, at a later time, call for the transaction to be converted into a non-cleared swap between the two parties, the terms of which are set out in the derivative contract itself. The agencies believe it is not necessary to propose rule text to address the legacy status of swaptions that become non-cleared swaps once exercised. Although the exchange of payments under the non-cleared swap does not commence until after the applicable compliance date, the terms of that non-cleared swap were established and entered into during the original creation of the swaption contract, which was entered into before the applicable compliance date and therefore the resulting non-cleared swap retains legacy status. The exercise of the option under the derivative is not an amendment of the contract, but rather a second phase that operationalizes the original contract.

VII. Technical Changes

The proposed rule would delete § __ .1(e)(7), which includes an amendment relating to the QFC Rules. The text of § __.1(e)(7), with slight modifications, would be moved to § __.1(h)(1), so that it would reside in the section of the Swap Margin Rule dedicated to legacy swap amendments. The methods of amendment listed in § __.1(h) would apply not only to IBOR replacements, but also to any other contractual modifications permitted under § __.1(h), including amendments relating to the QFC Rules.

VIII. Request for Comments

A. IBORs

The agencies request comment on all aspects of the proposed rule as well as on the following specific questions.

(1) The proposed rule permits amendments to non-cleared swaps by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract (*i.e.,* tear-up). Should the agencies provide additional clarification in the rule as to types of permissible amendments to better reflect established or emerging industry practices? What specifically should be added or clarified, and why?

(2) Does the proposed rule provide sufficient flexibility regarding contract-by-contract, netting set, and compression amendments to the reference rate? What, if any, additional flexibility is needed, and why?

(3) The agencies have listed a number of IBORs as examples of rates that would be permitted to be replaced. To what extent should this list be revised to remove or to include any additional rates, such as the Swap Offer Rate of Singapore?

(4) The relief provided by the proposed rule would apply to the replacement of an IBOR. The agencies are also proposing to allow replacement of other non-IBOR reference rates if the covered swap entity reasonably expects that the rate will be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment. Is there a need to provide relief for replacement of rates under other circumstances? What potential criteria could the agencies impose on non-IBOR interest rate benchmarks in order for such a benchmark to be considered to have lost its relevance as a reliable benchmark due to a significant impairment? If so, please provide a description of the circumstances creating this need and a description of the rates that may need to be replaced, either now or in the future.

(5) The proposed rule anticipates that a reference rate may need to be amended more than once. What types of criteria should the regulation establish for subsequent amendments to reference rates? Please explain how those criteria maintain the robustness of the new reference rate and avoid the problems that plagued LIBOR, such as market manipulation, etc. Should the agencies impose a cap on the number of times a reference rate may be amended and, if so, how should that cap be structured?

(6) The proposed rule does not specify any criteria for a replacement rate, but rather leaves this open to the parties. What types of rates might parties settle on? Should the agencies limit the scope of the replacement rate to specific criteria, such as that the rate must be based on observable, risk-free characteristics? If so, what other criteria might be appropriate, or what specific rates might be appropriate?

(7) The proposed rule intends to be accommodating to accompanying amendments that may be necessary to maintain the relative economics of the non-cleared swap following the replacement of a reference rate. Do the accompanying amendments provide sufficient flexibility to permit the additional modifications that parties plan to make? If not, please explain what changes the agencies should contemplate and why, and explain how

[37] Note, however, that a replacement swap with a total effective notional amount of $21 would only be acceptable if the result is also risk-neutral or risk-reducing based on the long or short positions of each swap's total effective notional amount. The overall effect of the compression exercise must be either risk-neutral or risk-reducing.

they should be permitted under the rule. Alternatively, would the accompanying amendments change the non-cleared swap such that it does not resemble the original legacy contract? If this is a concern, how should the rule address it? For example, should the agencies prohibit an amendment to the currency from being eligible for the safe harbor?

(8) The proposed rule does not specify an end date by which these IBOR-related amendments must be completed. Should the agencies include an end date? Should it be one year, two years, five years, ten years? Are there legacy contracts that would still be in place in ten years such that a ten-year timeframe would be realistic?

(9) As noted above, the agencies propose to permit the replacement of an IBOR in the floating-rate leg of the swap with a new reference rate, and would also permit the fixed-rate leg in a fixed-floating interest rate swap to be modified to maintain the economics of the non-cleared swap. Is this approach appropriate in order for the fixed-floating swap to retain its legacy status, and if not, how should it be modified?

B. Non-Cleared Swaps Between CSEs and an Affiliate

(1) What, if any, additional conditions or limitations should the agencies impose before allowing a covered swap entity to take advantage of the exemption from initial margin requirements for inter-affiliate swaps? For example, the CFTC imposes certain limitations and conditions on its initial margin exemption for inter-affiliate swaps. Discuss why any additional conditions may be appropriate to ensure the safety and soundness of the covered swap entity.

(2) Should the definitions of ''affiliate'' and ''control'' in § _.11 be revised to match with the definitions of the Board's Regulation W, Regulation Y, Regulation Q, or any other regulations? Why or why not?

C. Additional Compliance Date for Initial Margin Requirements

(1) Does the proposed one-year extension of the final implementation timeline to September 1, 2021 substantially address all implementation challenges? Please explain.

D. Documentation Requirements

(1) What issues are there, if any, related to how parties document transactions in compliance with the Swap Margin Rule that should be considered by the agencies?

(2) Are there any reasons why covered swap entities would not be able to reasonably anticipate the point in time at which they will cross the $50 million initial margin threshold amount such that they can prepare the required documentation in time? Please explain.

E. Portfolio Compression Exercises and Other Amendments

(1) What are the methods used by covered swap entities to determine whether portfolio compression exercises would meet the requirements set out in the proposal, including not extending the remaining maturity or increasing the total effective notional amounts?

(2) Should the Rule limit compression exercises to mitigating only certain types of risk and if so, which types of risk?

(3) For a replacement swap that results from a compression exercise, should the agencies consider a different method of restricting either the total effective notional amount or the remaining maturity? Would commenters be supportive of an approach that limits the remaining maturity to an ''effective maturity'' calculation based on the total effective notional amounts in the exercise? For example, swap 1 has a notional amount of 10 and 3 years remaining maturity and swap 2 has a notional amount of 8 and 5 years remaining maturity. Under the ''effective maturity'' calculation, the replacement swap could not exceed an effective maturity of 3 years and 10 months, calculated as (3*10 + 5*8)/(10+8). The replacement swap with a 3 year and 10 month maturity would also not be able to exceed a total effective notional amount of 18 (10+8).

(4) How should the Rule be more specific about technical amendments that are permitted? How can the Rule better explain that amending a swap's underlying asset or indicator, such as a security, currency, interest rate, commodity, or price index, is not a technical amendment?

IX. Administrative Law Matters

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act [38] requires the OCC, Board, and FDIC to use plain language in all proposed and final rules published after January 1, 2000. The OCC, Board, and FDIC have sought to present the proposed rule in a simple and straightforward manner and invite comments on whether the proposal is clearly stated and effectively organized, and how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed rule clearly stated? If not, how could the proposed rule be more clearly stated?
- Does the proposed rule contain language or 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 proposed rule easier to understand? If so, what changes to the format would make the proposed rule easier to understand?
- What else could we do to make the proposed rule easier to understand?

B. Paperwork Reduction Act Analysis

Certain provisions of the proposed rulemaking contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the agencies may not conduct or sponsor, and a 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 agencies reviewed the proposed rulemaking and determined that it revises certain recordkeeping requirements that have been previously cleared under various OMB control numbers. In order to be consistent across the agencies, the agencies are also applying a conforming methodology for calculating the burden estimates. The agencies are proposing to extend for three years, with revision, these information collections. The OCC and FDIC have submitted to OMB for review under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). The Board has reviewed the information collection under its delegated authority. The OMB control numbers are 1557–0251 (OCC), 3064–0204 (FDIC), and 7100–0364 (Board). The FCA has determined the notice of proposed rulemaking has no PRA implications because Farm Credit System institutions are Federally chartered instrumentalities of the United States and instrumentalities of the United States are specifically excepted from the definition of ''collection of information'' contained in 44 U.S.C. 3502(3). The FHFA has determined that the notice of proposed rulemaking does not contain any

[38] Public Law 106–102, 113 Stat. 1338, 1471 (codified at 12 U.S.C. 4809).

collection of information for which the agency must obtain clearance under the PRA.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

Current Actions

The proposed rulemaking removes the recordkeeping requirement in section __.11(b) that a covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to section _.3(b) and provide documentation of such amount to each affiliate on a daily basis.

Proposed Revision, With Extension, of the Following Information Collections

Title of Information Collection: Reporting and Recordkeeping Requirements Associated with Swaps Margin and Swaps Push-Out.

Frequency: Annual and event generated.

Affected Public: Businesses or other for-profit.

Estimated average hours per response:

Reporting

Section _.1(d)—1 hour (on average of 1,000 times per year).

Sections _.8(c) and _.8(d)—240 hours.

Section _.8(f)(3)—50 hours.

Section _.9(e)—10 hours (on average of 3 times per year).

Sections 237.22(a)(1) and 237.22(e) (*Board only*)—7 hours.

Recordkeeping

Sections _.2 (definition of ''eligible master netting agreement,'' item 4), 237.8(g), and 237.10—5 hours.

Section _.5(c)(2)(i)—4 hours.

Section _.7(c)—100 hours.

Sections _.8(e) and 237.8(f)—40 hours.

Section _.8(h)—20 hours.

Disclosure

Section _.1(h)—1 hour.

OCC

Respondents: Any national bank or a subsidiary thereof, Federal savings association or a subsidiary thereof, or Federal branch or agency of a foreign bank that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 10.

Proposed revisions only estimated annual burden: –2,500 hours.

Total estimated annual burden: 14,900 hours.

Board

Respondents: Any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. 1841), savings and loan holding company (as defined in 12 U.S.C. 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 41.

Proposed revisions only estimated annual burden: –10,209 hours.

Total estimated annual burden: 61,104 hours.

FDIC

FDIC: Any FDIC-insured state-chartered bank that is not a member of the Federal Reserve System or FDIC-insured state-chartered savings association that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Estimated number of respondents: 1.[39]

Proposed revisions only estimated annual burden: –249 hours.

Total estimated annual burden: 1,490 hours.

C. Regulatory Flexibility Act Analysis

OCC: In general, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires that in connection with a rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities. Under section 605(b) of the RFA, this analysis is not required if an 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 brief explanatory statement in the **Federal Register** along with its rule.

As part of our analysis, we consider whether, pursuant to the RFA, the proposed rule would have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 782 small entities.[40] Among these 782 small entities, 44 could be affected by the proposed rule if one or more of these small entities are a party to a financial contract with a covered swap entity. Because we believe banks will incur *de minimis* costs, if any, to comply with the proposed rule, we conclude that the proposed rule, if implemented, would not have a significant economic impact on a substantial number of small entities.[41]

Board: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), generally requires that an agency prepare and make available for public comment an initial regulatory flexibility analysis in connection with a notice of proposed

[39] The FDIC estimates zero entities, but is estimating one here as a placeholder.

[40] We base our estimate of the number of small entities on the Small Business Administration's (SBA's) size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation, 13 CFR 121.103(a), we count the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution as a small entity. We use December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* footnote 8 of the SBA's Table of Size Standards.

[41] As one way of determining whether any of the small entities is a covered swap entity, the OCC reviewed the CFTC's listing of registered swap dealers at *http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

rulemaking or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.[42] The Board welcomes comment on all aspects of the initial regulatory flexibility analysis. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

As described above, the proposed rule would (i) permit legacy swaps to retain their legacy status in the event that they are amended to replace an IBOR or other discontinued rate, (ii) repeal the inter-affiliate initial margin provisions, introduce an additional compliance date for initial margin requirements, (iii) introduce an additional compliance date for initial margin requirements, (iv) clarify the point in time at which trading documentation must be in place, (v) permit legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and (vi) make technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the QFC Rules.

This proposed rule applies to financial institutions that are covered swap entities that are subject to the requirements of the Swap Margin Rule. Under SBA regulations, the finance and insurance sector includes commercial banking, savings institutions, credit unions, other depository credit intermediation and credit card issuing entities (financial institutions). With respect to financial institutions that are covered swap entities under the Swap Margin Rule, a financial institution generally is considered small if it has assets of $600 million or less.[43] Covered swap entities would be considered financial institutions for purposes of the RFA in accordance with SBA regulations. The Board does not expect that any covered swap entity is likely to be a small financial institution, because a small financial institution is unlikely to engage in the level of swap activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the U.S. Securities and Exchange Commission (SEC).[44] None of the current Board-regulated covered swap entities are small entities.

The Board does not believe the proposed rule will result in any new reporting, recordkeeping or other compliance requirements. In light of the foregoing, the Board does not believe that this proposed rule would have a significant economic impact on a substantial number of small entities and therefore there are no significant alternatives to the proposed rule that would reduce the impact on small entities.

FDIC: The RFA generally requires that, in connection with a proposed rulemaking, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposed rule on small entities. However, a regulatory flexibility analysis is not required if the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The SBA has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million that are independently owned and operated or owned by a holding company with less than or equal to $600 million in total assets.[45] 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 non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-supervised institutions. For the reasons described below, the FDIC certifies pursuant to section 605(b) of the RFA that the proposed rule will not have a significant economic impact on a substantial number of small entities.

According to data from recent Consolidated Reports of Income and Condition (Call Report),[46] the FDIC supervised 3,465 institutions. Of those, 2,705 are considered ''small,'' according to the terms of the RFA. As discussed previously, the proposed rule directly applies to covered swap entities (which includes persons registered with the CFTC as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the SEC as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934) that are subject to the requirements of the Swap Margin Rule. The FDIC has identified 105 swap dealers and major swap participants that, as of May 22, 2019, have registered as swap entities.[47] None of these institutions are supervised by the FDIC.

As an amendment to the Swap Margin Rule, the proposed rule also affects counterparties to swaps entered into by covered swap entities. However, the Terrorism Risk Insurance Program Reauthorization Act of 2015 excludes non-cleared swaps entered into for hedging purposes by a financial institution with total assets of $10 billion or less from the requirements of the Swap Margin Rule. Given this exclusion, a non-cleared swap between a covered swap entity and a small FDIC-supervised entity that is used to hedge a commercial risk of the small entity will not be subject to the Swap Margin Rule. The FDIC believes that it is unlikely that any small entity it supervises will engage in non-cleared swaps for purposes other than hedging.

Given that no FDIC-supervised small entities are covered swap entities and that it is unlikely that FDIC-supervised small entities enter into non-cleared swaps for purposes other than hedging, this proposed rule is not expected to have a significant economic impact on

[42] *See* 5 U.S.C. 603(a).

[43] *See* 13 CFR 121.201 (effective December 2, 2014, as amended by 84 FR 34261, effective August 19, 2019); *see also* 13 CFR 121.103(a)(6) (noting factors that the SBA considers in determining whether an entity qualifies as a small business, including receipts, employees, and other measures of its domestic and foreign affiliates).

[44] The CFTC has published a list of provisionally registered swap dealers as of October 17, 2017 that does not include any small financial institutions. *See http://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.* The SEC has not yet imposed a registration requirement on entities that meet the definition of security-based swap dealer or major security-based swap participant.

[45] The SBA defines a small banking organization as having $600 million or less in assets, where an organization'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). In its determination, the ''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 covered entity is ''small'' for the purposes of RFA.

[46] FDIC Call Report, March 31, 2019.

[47] While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of June 28, 2019, there was no date established as the compliance date and no SEC-published list of any such entities that so registered (*see* 84 FR 4906 at 4925). Accordingly, no security-based swap dealers and no major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 105 institutions referred to in the text, the FDIC used the list of swap dealers set forth, on June 28, 2019 (providing data as of May 22, 2019) at *https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html.* Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association *https://www.nfa.futures.org/members/sd/index.html* to determine whether there were registered major swap participants. As of June 21, 2019, there were no major swap participants listed on this link.

a substantial number of small entities supervised by the FDIC. For these reasons, the FDIC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, within the meaning of those terms as used in the RFA. Accordingly, a regulatory flexibility analysis is not required.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

FCA: Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities; nor does the Federal Agricultural Mortgage Corporation meet the definition of ''small entity.'' Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

FHFA: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. FHFA need not undertake such an analysis if the agency has certified the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act, and certifies that the proposed rule does not have a significant economic impact on a substantial number of small entities because the proposed rule is applicable only to FHFA's regulated entities, which are not small entities for purposes of the Regulatory Flexibility Act.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act) (2 U.S.C. 1532) requires that the OCC prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation, currently $154 million) in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the OCC to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC analyzed the amendments proposed in this notice of proposed rulemaking, and has determined that they would not result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $154 million in any one year. Accordingly, the OCC has not prepared a written statement under sections 202 and 205.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, each Federal banking agency must 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.[48] In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally to 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 form.[49] Each Federal banking agency has determined that the proposed rule would not impose additional reporting, disclosure, or other requirements; therefore the requirements of the RCDRIA do not apply. However, the agencies note that comments on these matters have been solicited in other sections of this Supplementary Information section, and that the requirements of RCDRIA will be considered as part of the overall rulemaking process. In addition, the agencies also invite any other comments that will further inform the agencies' consideration of RCDRIA.

[48] 12 U.S.C. 4802(a).

[49] 12 U.S.C. 4802.

List of Subjects

12 CFR Part 45

Administrative practice and procedure, Capital, Margin requirements, National Banks, Federal Savings Associations, Reporting and recordkeeping requirements, Risk.

12 CFR Part 237

Administrative practice and procedure, Banks, banking, Foreign banking, Holding companies, Reporting and recordkeeping requirements, Swaps.

12 CFR Part 349

Administrative practice and procedure, Banks, banking, Holding companies, Capital, Margin Requirements, Reporting and recordkeeping requirements, Savings associations, Risk, Swaps.

12 CFR Part 624

Accounting, Agriculture, Banks, Banking, Capital, Cooperatives, Credit, Margin requirements, Reporting and recordkeeping requirements, Risk, Rural areas, Swaps.

12 CFR Part 1221

Government-sponsored enterprises, Mortgages, Securities.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the common preamble and under the authority of 12 U.S.C. 93a and 5412(b)(2)(B), the Office of the Comptroller of the Currency proposes to amend part 45 of Title 12, Code of Federal Regulations, as follows:

PART 45—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 1. The authority citation for part 45 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 12 U.S.C. 1 *et seq.,* 12 U.S.C. 93a, 161, 481, 1818, 3907, 3909, 5412(b)(2)(B), and 15 U.S.C. 78o–10(e).

■ 2. Section 45.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 45.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) *Compliance dates.* * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 45.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 45.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 3. Amend § 45.10 by revising paragraph (a) to read as follows:

§ 45.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 45.3 or § 45.4, as applicable; and

* * * * *

■ 4. Section 45.11 is revised to read as follows:

§ 45.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 45.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 45.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Board of Governors of the Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the common preamble, the Board of Governors of the Federal Reserve System proposes to amend 12 CFR part 237 to read as follows:

PART 237—SWAPS MARGIN AND SWAPS PUSH–OUT

■ 5. The authority citation for part 237 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 15 U.S.C. 8305, 12 U.S.C. 221 *et seq.,* 12 U.S.C. 343–350, 12 U.S.C. 1818, 12 U.S.C. 1841 *et seq.,* 12 U.S.C. 3101 *et seq.,* and 12 U.S.C. 1461 *et seq.*

Subpart A— Margin and Capital Requirements for Covered Swap Entities (Regulation KK)

■ 6. Section 237.1 is amended by:
■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and
■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 237.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

(6) September 1, 2020 with respect to requirements in § 237.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 237.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this subpart for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this subpart if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 7. Amend § 237.10 by revising paragraph (a) to read as follows:

§ 237.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 237.3 or § 237.4, as applicable; and

* * * * *

■ 8. Section 237.11 is revised to read as follows:

§ 237.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 237.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 237.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the Supplementary Information section, the Federal Deposit Insurance Corporation proposes to amend 12 CFR Chapter III as follows:

PART 349—DERIVATIVES

■ 9. The authority citation for subpart A of part 349 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), and 12 U.S.C. 1818 and 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1813(q), 1818, 1819, and 3108.

■ 10. Section 349.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 349.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 349.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 349.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 11. Amend § 349.10 by revising paragraph (a) to read as follows:

§ 349.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 349.3 or § 349.4, as applicable; and

* * * * *

■ 12. Section 349.11 is revised to read as follows:

§ 349.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 349.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 349.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Farm Credit Administration

Authority and Issuance

For the reasons set forth in the preamble, the Farm Credit Administration proposes to amend chapter VI of title 12, Code of Federal Regulations, as follows:

PART 624—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 13. The authority citation for part 624 continues to read as follows:

Authority: 7 U.S.C 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 2154, 12 U.S.C. 2243, 12 U.S.C. 2252, 12 U.S.C. 2279bb–1.

■ 14. Section 624.1 is amended by

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 624.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 624.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 624.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

* * * * *

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or

among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or (B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 15. Amend § 624.10 by revising paragraph (a) to read as follows:

§ 624.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this subpart, and at such time as initial margin or variation margin is required to be collected or posted under § 624.3 or § 624.4, as applicable; and

* * * * *

■ 16. Section 624.11 is revised to read as follows:

§ 624.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 624.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 624.2, and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Federal Housing Finance Agency

Authority and Issuance

For the reasons set forth in the preamble, the Federal Housing Finance Agency proposes to amend chapter XII of title 12, Code of Federal Regulations, as follows:

PART 1221—MARGIN AND CAPITAL REQUIREMENTS FOR COVERED SWAP ENTITIES

■ 17. The authority citation for part 1221 continues to read as follows:

Authority: 7 U.S.C. 6s(e), 15 U.S.C. 78o–10(e), 12 U.S.C. 4513, and 12 U.S.C. 4526(a).

■ 18. Section 1221.1 is amended by:

■ a. Revising paragraphs (e)(6), (e)(7), (h) introductory text, and (h)(1); and

■ b. Adding paragraphs (h)(3) through (h)(5).

The revisions and additions read as follows:

§ 1221.1 Authority, purpose, scope, exemptions and compliance dates.

* * * * *

(e) * * *

* * * * *

(6) September 1, 2020 with respect to requirements in § 1221.3 for initial margin for any non-cleared swaps and non-cleared security-based swaps, where both:

(i) The covered swap entity combined with all its affiliates; and

(ii) Its counterparty combined with all its affiliates, have an average daily aggregate notional amount of non-cleared swaps, foreign exchange forwards and foreign exchange swaps for March, April and May 2020 that exceeds $50 billion, where such amounts are calculated only for business days; and

(iii) In calculating the amounts in paragraphs (e)(6)(i) and (ii) of this section, an entity shall count the average daily aggregate notional amount of a non-cleared swap, a non-cleared security-based swap, a foreign exchange forward or a foreign exchange swap between the entity and an affiliate only one time, and shall not count a swap or security-based swap that is exempt pursuant to paragraph (d) of this section.

(7) September 1, 2021 with respect to requirements in § 1221.3 for initial margin for any other covered swap entity with respect to non-cleared swaps and non-cleared security-based swaps entered into with any other counterparty.

(h) *Legacy swaps.* Covered swaps entities are required to comply with the requirements of this part for non-cleared swaps and non-cleared security-based swaps entered into on or after the relevant compliance dates for variation margin and for initial margin established in paragraph (e) of this section. Any non-cleared swap or non-cleared security-based swap entered into before such relevant date shall remain outside the scope of this part if amendments are made to the non-cleared swap or non-cleared security-based swap by method of adherence to a protocol, contractual amendment of an agreement or confirmation, or execution of a new contract in replacement of and immediately upon termination of an existing contract, as follows:

(1) Amendments to the non-cleared swap or non-cleared security-based swap solely to comply with the requirements of part 47, subpart I of part 252 or part 382 of title 12, as applicable;

* * * * *

(3)(i) Amendments to the non-cleared swap or non-cleared security-based swap that are made solely to accommodate the replacement of:

(A) An interbank offered rate (IBOR) including, but not limited to, the London Interbank Offered Rate (LIBOR), the Tokyo Interbank Offered Rate (TIBOR), the Bank Bill Swap Rate (BBSW), the Singapore Interbank Offered Rate (SIBOR), the Canadian Dollar Offered Rate (CDOR), the Euro Interbank Offered Rate (EURIBOR), and the Hong Kong Interbank Offered Rate (HIBOR);

(B) Any other interest rate that a covered swap entity reasonably expects to be discontinued or reasonably determines has lost its relevance as a reliable benchmark due to a significant impairment; or

(C) Any other interest rate that succeeds a rate referenced in paragraph (h)(3)(i)(A) or (h)(3)(i)(B) of this section. An amendment made under this paragraph (h)(3)(i)(C) could be one of multiple amendments made under this

paragraph (h)(3)(i)(C). For example, an amendment could replace an IBOR with a temporary interest rate and later replace the temporary interest rate with a permanent interest rate.

(ii) Amendments to accommodate replacement of a rate described in paragraph (h)(3)(i) may also incorporate spreads or other adjustments to the replacement rate and make other necessary technical changes to operationalize the determination of payments or other exchanges of economic value using the replacement rate, including changes to determination dates, calculation agents, and payment dates, so long as the changes do not extend the maturity or increase the total effective notional amount of the non-cleared swap or non-cleared security-based swap.

(4) The non-cleared swap or non-cleared security-based swap was amended or replaced solely to reduce risk or remain risk-neutral through portfolio compression between or among covered swap entities and their counterparties as long as:

(i) A non-cleared swap or non-cleared security-based swap that is amended to reflect the outcome of the compression exercise does not:

(A) Extend the remaining maturity; or

(B) Increase the total effective notional amount of that swap; or

(ii) A non-cleared swap or non-cleared security-based swap that is entered into as a replacement to reflect the outcome of the compression exercise does not:

(A) Exceed the sum of the total effective notional amounts of all of the swaps that were submitted to the compression exercise that had the same or longer remaining maturity as the replacement swap; or

(B) Exceed the longest remaining maturity of all the swaps submitted to the compression exercise.

(5) The non-cleared swap or non-cleared security-based swap was amended solely for one of the following reasons:

(i) To reflect technical changes, such as addresses, identities of parties for delivery of formal notices, and other administrative or operational provisions as long as they do not alter the non-cleared swap's or non-cleared security-based swap's underlying asset or indicator, the remaining maturity, or the total effective notional amount; or

(ii) To reduce the notional amount, so long as:

(A) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully terminated; or

(B) All payment obligations attached to the total effective notional amount being eliminated as a result of the amendment are fully novated to a third party, who complies with applicable margin rules for the novated portion upon the transfer.

■ 19. Amend § 1221.10 by revising paragraph (a) to read as follows:

§ 1221.10 Documentation of margin matters.

* * * * *

(a) Provides the covered swap entity and its counterparty with the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required by this part, and at such time as initial margin or variation margin is required to be collected or posted under § 1221.3 or § 1221.4, as applicable; and

* * * * *

■ 20. Section 1221.11 is revised to read as follows:

§ 1221.11 Initial margin exemption for affiliates.

(a) The requirement for a covered swap entity to collect or post initial margin under § 1221.3 does not apply with respect to any non-cleared swap or non-cleared security-based swap with a counterparty that is an affiliate.

(b) For purposes of this section, *an affiliate* means:

(1) An affiliate as defined in § 1221.2; and

(2) Any company that controls, is controlled by, or is under common control with the covered swap entity through the direct or indirect exercise of controlling influence over the management or policies of the controlled company.

Dated: September 17th, 2019.

Joseph M. Otting,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, October 21, 2019.

Ann E. Misback,

Secretary of the Board. Federal Deposit Insurance Corporation. By order of the Board of Directors.

Dated at Washington, DC, on September 17, 2019.

Robert E. Feldman,

Executive Secretary.

By order of the Board of the Farm Credit Administration.

Dated at McLean, VA, this 17th day of September, 2019.

Dale L. Aultman,

Secretary.

Dated: August 27, 2019.

Mark A. Calabria,

Director, Federal Housing Finance Agency.

[FR Doc. 2019–23541 Filed 11–6–19; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 8070–01–P; 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AF06

Chartering and Field of Membership

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposed rule and supplemental statement.

SUMMARY: The NCUA Board (Board) is proposing to amend its chartering and field of membership (FOM) rules with respect to applicants for a community charter approval, expansion, or conversion. Specifically, the Board is proposing to re-adopt a provision to allow an applicant to designate a Combined Statistical Area (CSA), or an individual, contiguous portion thereof, as a well-defined local community (WDLC), provided that the chosen area has a population of 2.5 million or less. Separately, in accordance with an August 2019 opinion and order issued by the D.C. Circuit Court of Appeals (court) with respect to communities based on a Core-Based Statistical Area (CBSA) or a portion thereof, the Board is providing further explanation and support for its elimination of the requirement to serve the CBSA's core area as provided for in a 2016 rulemaking. In addition, the Board is proposing to clarify existing requirements and add an explicit provision to its rules to address concerns about potential discrimination in the FOM selection for CSAs and CBSAs.

DATES: Comments must be received by December 9, 2019.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *NCUA Website: http://www.ncua.gov/RegulationsOpinionsLaws/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.

• *Email:* Address to *regcomments@ncua.gov*. Include ''[Your name] Comments on Chartering and Field of Membership Proposed Rule'' in the email subject line.

• *Fax:* (703) 518–6319. Use the subject line described above for email.

• *Mail:* Address to Gerard Poliquin, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

• *Hand Delivery/Courier:* Same as mail address.

Public inspection: All public comments are available on the agency's website at *http://www.ncua.gov/RegulationsOpinionsLaws/comments* as submitted, except as may not be possible for technical reasons. Public comments will not be edited to remove any identifying or contact information. Paper copies of comments may be inspected in NCUA's law library, at 1775 Duke Street, Alexandria, Virginia 22314, by appointment weekdays between 9:00 a.m. and 3:00 p.m. To make an appointment, call (703) 518–6540 or send an email to *OGCMail@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: For program issues: Martha Ninichuk, Director, or JeanMarie Komyathy, Deputy Director; Office of Credit Union Resources and Expansion, at 1775 Duke Street, Alexandria, VA 22314 or telephone (703) 518–1140. For legal issues: Michael J. McKenna, General Counsel, Ian Marenna, Associate General Counsel, or Marvin Shaw, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

As discussed below, the Board is: (1) Proposing to re-adopt the presumptive WDLC option consisting of a CSA or an individual, contiguous portion of a CSA, provided that the chosen area, whether it is an entire CSA or a portion of one, is no more than 2.5 million; [1] (2) explaining further, with additional reasoning and factual support, the basis for eliminating the core area service requirement for FCUs that choose a CBSA as a WDLC; and (3) proposing to amend the NCUA's regulations regarding community FOM applications, amendments, and expansions for CSAs and CBSAs to require the applicant to explain why it has selected its FOM and to demonstrate that its selection will serve low- and moderate-income segments of a community. The proposal also would provide express authority for the NCUA to review and evaluate the foregoing explanation and submission regarding low- and moderate-income individuals, and to reject an application if the agency determines that the FCU's selection reflects discrimination. The Board proposes to apply this provision to CSAs and CBSAs because, unlike other community-based FOMs that are based on political jurisdictions or rural districts, there could be a potential to engage in ''gerrymandering'' or ''redlining,'' although the Board emphasizes there is a lack of evidence of FCUs engaging in such gerrymandering. The following sections provide background on the relevant legislation, rulemakings, and court decisions that inform this action.

A. Overview

Under the Federal Credit Union Act (Act), seven or more individuals may create a federal credit union (FCU) by presenting a proposed charter to the Board and paying a fee.[2] These individuals, referred to as ''subscribers,'' must pledge to deposit funds for shares in the FCU and describe the FCU's proposed FOM.[3] An FOM consists of those persons and entities eligible for membership based on an FCU's type of charter. Before granting an FCU charter, the Board must complete an appropriate investigation and determine the character and fitness of the subscribers, the economic advisability of establishing the FCU, and the conformity of the organization certificate (referred to as the charter or chartering document) with the Act.[4] Under the Act, FCUs may choose from two general categories of FOM: Common-bond and community.[5]

The NCUA's Chartering and Field of Membership Manual, incorporated as Appendix B to part 701 of the NCUA regulations (Chartering Manual),[6] implements the chartering and FOM requirements that the Act establishes for FCUs. The Chartering Manual provides generally that the NCUA will grant a charter if the FOM requirements are met, the subscribers are of good character and fit to represent the proposed FCU, and the establishment of the FCU is economically advisable.[7] In addition, ''[i]n unusual circumstances, the NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.'' [8]

In adopting the Credit Union Membership Access Act of 1998 (CUMAA), which amended the Act, Congress reiterated its longstanding support for credit unions, noting their ''specific mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' [9] As amended by CUMAA, the Act provides a choice among three charter types: A single group sharing a single occupational or associational common bond; [10] a multiple common bond consisting of groups each of which have a distinct occupational or associational common bond among members of the group; [11] and a community consisting of ''persons or organizations within a well-defined local community, neighborhood, or rural district.'' [12]

Congress has expressly delegated to the Board substantial authority in the Act to define what constitutes a WDLC, neighborhood, or rural district for purposes of ''making any determination'' regarding a community credit union,[13] and to establish applicable criteria for any such determination.[14] To qualify as a WDLC, neighborhood, or rural district, the Board requires the proposed area to have ''specific geographic boundaries,'' such as those of ''a city, township, county (single or multiple portions of a county) or their political equivalent, school districts or a clearly identifiable neighborhood.'' [15] The boundaries themselves may consist of political borders, streets, rivers, railroad tracks, or other static geographical features.[16] The Board continues to emphasize that common interests or interaction among residents within those boundaries are essential features of a local community.

[1] References to CSAs or portions thereof in this proposed rule should be understood to carry this 2.5 million population limit. As noted above, under the proposed rule, an applicant may select an entire CSA as its WDLC if its population is 2.5 million or below. Alternatively, if the CSA's population is greater than 2.5 million, the applicant may still base its WDLC on the CSA but must select an individual, contiguous portion of the CSA that has a population no greater than 2.5 million.

[2] 12 U.S.C. 1753(3).

[3] 12 U.S.C. 1753(5).

[4] 12 U.S.C. 1754.

[5] 12 U.S.C. 1759(b).

[6] Appendix B to 12 CFR part 701 (Appendix B). The Chartering Manual is a single regulation that addresses all aspects of the chartering of FCUs. In that respect, it is similar to the regulations of the Office of the Comptroller of the Currency applicable to the chartering of national banks or Federal savings associations. 12 CFR part 5.

[7] Appendix B, Ch. 1, § 1.

[8] Id.

[9] Public Law 105–219, 2, 112 Stat. 913 (Aug 7, 1998).

[10] 12 U.S.C. 1759(b)(1).

[11] Id. 1759(b)(2)(A).

[12] Id. 1759(b)(3).

[13] Id. 1759(g)(1)(A).

[14] Id. 1759(g)(1)(B).

[15] Appendix B, Ch. 2, section V.A.2.

[16] Appendix B, Ch. 2, section V.A.5.

Until 2010, the Chartering Manual required FCUs seeking to establish an area as a WDLC to submit for NCUA approval a narrative, supported by documentation, that demonstrated indicia of common interests or interaction among residents of a proposed community (the ''narrative model'') if the community extended beyond a single political jurisdiction (''SPJ'').[17] A WDLC was (and still is) required to consist of a contiguous area, as reflected in the current text of the Chartering Manual.[18] In 2010, the Board replaced the narrative model in favor of an objective model that provided FCUs a choice between two statistically based ''presumptive communities'' that each by definition qualifies as a WDLC (the ''presumptive community model'').[19] The Board did so because it found the narrative model cumbersome, time-consuming, and subjective. By contrast, the Board found that the presumptive community approach, and particularly the use of statistical areas, would minimize ambiguity and make the application process less time-consuming.[20] Further, the Board carefully considered the expertise and reasoning of the agencies that devised the statistical areas in deciding to designate these areas as WDLCs. In particular, the Board noted its agreement with the Office of Management and Budget (OMB) that commuting patterns within statistical areas demonstrate a high degree of social and economic integration with the central county.[21]

One kind of presumptive community is an ''[SPJ] . . . or any contiguous portion thereof,'' regardless of population.[22] The second is a single CBSA [23] (as defined above) as designated by the U.S. Census Bureau (Census Bureau), or a well-defined portion thereof, which under the 2010 final rule was subject to a 2.5 million population limit.[24]

For CBSAs that OMB has subdivided into metropolitan divisions, a community consisting of a portion of the CBSA was required to conform to the boundaries of such divisions. That is, the community could not cover multiple divisions within a CBSA. Under either of the ''presumptive community'' options, an FCU was required to demonstrate its ability to serve its entire proposed community, as demonstrated by the required business and marketing plans.[25]

B. 2015 and 2016 Rulemakings

On November 19, 2015, the Board approved a proposed rule to amend various provisions of the Chartering Manual, including the WDLC and rural district options for community FOMs (''2015 Proposed Rule'').[26] As relevant here, in the 2015 Proposed Rule, the Board proposed to amend the community FOM options by: (1) Eliminating the requirement for an FCU serving a CBSA to serve its core area; (2) permitting FCUs to serve a portion of a CBSA up to a 2.5 million population limit, even if the CBSA's total population is greater than 2.5 million; [27] (3) permitting FCUs to serve CSAs,[28] which combine contiguous CBSAs, or a portion of a CSA, provided that the chosen area has a population no greater than 2.5 million; (4) permitting FCUs to apply to the NCUA to add adjacent areas to existing WDLCs consisting of SPJs, CBSAs, or CSAs, based on a showing of interaction by residents on both sides of the adjacent areas; and (5) increasing the population limit for rural district FOMs from the greater of 250,000 or 3 percent of the relevant state's population to 1 million, subject to a requirement that the rural district not expand beyond the states immediately contiguous to the state in which the FCU has its headquarters.

On October 27, 2016, the Board approved two rulemakings relating to the Chartering Manual. One was a final rule and the other a proposed rule. In the final rule,[29] the Board adopted the five provisions of the 2015 Proposed Rule that are set forth above (''2016 Final Rule''). In the new proposed rule, the Board proposed additional changes to the community charter provisions (''2016 Proposed Rule'').[30] Specifically, the Board proposed permitting an applicant for a community charter to submit a narrative to establish the existence of a WDLC as an alternative to stand alongside the SPJ and presumptive statistical community options. According to the proposed rule, the narrative model would serve the same purpose as in years prior to 2010, when the narrative model was used exclusively. Further, among other matters, the Board proposed permitting an FCU to designate a portion of a statistical area as its community without regard to metropolitan division boundaries.

C. March 2018 Federal District Court Decision

The American Bankers Association (ABA) challenged several of the community FOM provisions under the Administrative Procedure Act (APA).[31] On March 29, 2018, the U.S. District Court for the District of Columbia upheld, or left in place, three provisions and vacated two provisions of the 2016 Final Rule (''March 2018 District Court

[17] 75 FR 36257 (June 25, 2010).

[18] Appendix B., Ch. 2., section V.A.2. The Chartering Manual also contained this requirement in 2003 under the narrative model. 68 FR 18334 (Apr.15, 2003). ''The well-defined local community, neighborhood, or rural district may be met if: The area to be served is multiple contiguous political jurisdictions, *i.e.,* a city, county, or their political equivalent, or any *contiguous* portion thereof and if the population of the requested well-defined area does not exceed 500,000.'' (emphasis added).

[19] As explained in the 2010 final rule that discontinued the use of the narrative model, the Board ''does not believe it is beneficial to continue the practice of permitting a community charter applicant to provide a narrative statement with documentation to support the credit union's assertion that an area containing multiple political jurisdictions meets the standards for community interaction and/or common interests to qualify as a WDLC. As [the proposed rule] noted, the narrative approach is cumbersome, difficult for credit unions to fully understand, and time consuming. . . . While not every area will qualify as a WDLC under the statistical approach, NCUA stated it believes the consistency of this objective approach will enhance its chartering policy, assure the strength and viability of community charters, and greatly ease the burden for any community charter applicant.'' 75 FR 36257, 36260 (June 25, 2010).

[20] 75 FR 36257, 36259, 36260 (June 25, 2010).

[21] 75 FR 36257, 36259 (June 25, 2010).

[22] Appendix B, Ch. 2, section V.A.2.A of the Chartering Manual defines ''single political jurisdiction'' as ''a city, county, or their political equivalent, or any single portion thereof.''

[23] A CBSA is composed of the country's Metropolitan Statistical Areas and Micropolitan Statistical Areas. ''Metropolitan Statistical Areas'' are defined by OMB as having ''at least one urbanized area of 50,000 or more population, plus adjacent territory that has a high degree of social and economic integration with the core as measured by commuting ties.'' ''Micropolitan Statistical Areas'' are identical to Metropolitan Statistical Areas except that their urbanized areas are smaller, *i.e.,* the urbanized area contains at least 10,000 but fewer than 50,000 people. A ''Metropolitan Division'' is a subdivision of a large Metropolitan Statistical Area. Specifically, a Metropolitan Division is ''a county or group of counties within a Metropolitan Statistical Area that has a population core of at least 2.5 million.'' OMB Bulletin No. 15–01 (July 15, 2015).

[24] Id. ''A total population cap of 2.5 million is appropriate in a multiple political jurisdiction context to demonstrate cohesion in the community.'' 75 FR 36257, 36260 (June 25, 2010).

[25] Appendix B, Ch. 2, § V.A.4

[26] 80 FR 76748 (Dec. 10, 2015).

[27] Similar to CSAs, as discussed in note 1, this provision allows an applicant to serve an entire CBSA if its population is no greater than 2.5 million. If the CBSA's population exceeds 2.5 million, an applicant may still base its WDLC on the CBSA but must select an individual, contiguous area that has a population no greater than 2.5 million.

[28] CSAs are composed of adjacent CBSAs that share what OMB calls ''substantial employment interchange.'' OMB characterizes CSAs as ''representing larger regions that reflect broader social and economic interactions, such as wholesaling, commodity distribution, and weekend recreational activities, and are likely to be of considerable interest to regional authorities and the private sector.'' OMB Bulletin No. 15–01.

[29] 81 FR 88412 (Dec. 7, 2016).

[30] 81 FR 78748 (Nov. 9, 2016).

[31] 5 U.S.C. 702.

Decision'').[32] Specifically, the court upheld the provision allowing an FCU to serve areas within a CBSA that do not include the CBSA's core, holding that the definition was a reasonable interpretation of ''local community'' and that the elimination of the core area service requirement was supported by the administrative record. The court also upheld the provision allowing an FCU to add an adjacent area to a presumptive community, similarly holding that this provision was reasonable under the Act and that the Board chose reasonable factors to evaluate whether adjacent areas are part of the same local community. Also, the court upheld the elimination of the requirement that a CBSA as a whole have a population of no more than 2.5 million in order for even a portion of the CBSA to qualify as a WDLC, holding that the plaintiff had waived this challenge by failing to raise it in the rulemaking.

The court vacated the provision defining any individual portion of a CSA, up to a population limit of 2.5 million, as a WDLC, holding that it was manifestly contrary to the Act. Finally, the court also vacated the provision to increase the population limit to 1 million people for rural districts, finding it manifestly contrary to the Act.

Both parties appealed this decision. The NCUA appealed the court's rulings on CSAs and the expansion of a rural district's population limit to 1 million. The ABA appealed only the ruling on the core area service requirement. The CSA and rural district provisions remained vacated while the appeal was pending. Accordingly, the NCUA rescinded approvals granted under those provisions and ceased approving new applications. The NCUA filed a notice with the court on April 19, 2018, stating that it did not interpret the court's March 29, 2018, order as mandating de-listing of members who joined FCUs under the vacated provisions. The notice also stated that the ABA did not intend to seek an order de-listing such members.

D. 2018 Final Rule

On June 21, 2018, while the appeal was pending, the Board adopted certain limited aspects of the 2016 Proposed Rule in a final rule (''2018 Final Rule'').[33] Specifically, the 2018 Final Rule amended the Chartering Manual to: (1) Allow an FCU seeking to serve a community FOM to submit a narrative to support its chosen area, as an alternative to the presumptive community options; and (2) eliminate the requirement that a WDLC based on a CBSA must be confined to a single metropolitan division within a CBSA. For the narrative model for establishing a WDLC for a community FOM, the Board established a public hearing process for any such proposed community with a population greater than 2.5 million. Further, with regard to the change to CBSA limitations based on metropolitan division boundaries, the Board noted that no commenters objected to this relatively technical change. In addition, in light of the March 2018 District Court Decision vacating the CSA option, the Board removed the CSA option from the Chartering Manual while it amended the portions of the Chartering Manual that contained this option. The 2018 Final Rule contained no statement on the validity of the CSAs or any other indication that the Board had decided to abandon or re-visit this definition. Because the 2016 Proposed Rule did not propose any changes to the rural district definition, the Board did not amend or remove the rural district provision in the 2018 Final Rule.

E. August 2019 Court of Appeals Decision

On August 20, 2019, a three-judge panel of the D.C. Circuit Court of Appeals issued a decision on the appeal (''August 2019 Court of Appeals Decision'').[34] The court reversed the district court's rulings on CSAs and rural districts and directed the district court to enter summary judgment for the NCUA on both issues. The court also reversed the ruling on the core area service requirement for CBSAs, remanding the issue to the agency for further explanation without vacating the provision.

With respect to CSAs and rural districts up to 1 million people, the court held that both provisions are consistent with the Act and were reasonably explained. First, the court found the CSA provision consistent with the ''local community'' provision of the Act.[35] Further, the court found that the CSA definition, which is based on commuting relationships, rationally advances the statutory purpose of ensuring an affinity or common bond among members.[36] The court also found that the definition rationally advances the Act's safety and soundness purposes.[37] On this point, the court found that allowing for larger communities could promote the economic viability of community FCUs.[38] The court also held that the 2018 Final Rule's removal of the CSA option from the Chartering Manual did not render that issue moot, citing evidence of the Board's intention to re-promulgate this provision if the court upheld it.[39]

Second, the court held that the expansion of the rural district definition to areas including 1 million people is consistent with the Act.[40] The court found that the term ''rural district'' does not connote specific population or geographic constraints.[41] The court also found that the Board reasonably explained the expansion, including the 2016 Final Rule's discussion of the agency's experience with several larger rural districts under the pre-2016 rule.[42]

By contrast, the court reversed the district court's ruling on the core area service requirement and directed the district court to enter summary judgment for the plaintiff on this provision and remand, without vacating, this provision to the agency for further explanation.[43] The court held that this provision is consistent with the Act but that the 2016 Final Rule did not adequately explain it in light of the concern that commenters raised about the potential for FCUs to engage in redlining or gerrymandering of CBSAs to avoid serving minority or low-income individuals.[44] The court did not find the 2016 Final Rule's discussion of the agency's ongoing evaluations and supervisory process adequate to explain the provision because the court found that those efforts related to service of those within the FOM, not those excluded from it by definition.[45] In considering whether to vacate this provision or remand it without vacating it, the court found that vacating the provision would raise a substantial likelihood of disruptive effect by making it more difficult for poor and minority suburban residents to receive adequate financial services.[46] The court also noted the potential for the Board to provide sufficient justification for the provision on remand.[47] Accordingly, the court directed the district court to

[32] *Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 306 F. Supp. 3d 44 (D.D.C. 2018).

[33] 83 FR 30289 (June 28, 2018).

[34] *Am. Bankers Ass'n* v. *Nat'l Credit Union Admin.,* 934 F.3d 649 (D.C. Cir. 2019).

[35] Id. at 664.

[36] Id. at 665.

[37] Id. at 665–66.

[38] Id. at 666.

[39] Id. at 661–62.

[40] Id. at 672.

[41] Id. at 672–73.

[42] Id. at 673.

[43] Id. at 674.

[44] Id. at 670.

[45] Id. at 670–71.

[46] Id. at 674.

[47] Id.

remand this provision without vacating it, and noted that it expected the Board to act ''expeditiously.''[48] The court did not prescribe a specific deadline or procedure for the Board to follow. Therefore, this provision and approvals that the agency has granted under it remain in effect while the matter is on remand to the agency.

Currently, the Chartering Manual does not contain CSAs or portions thereof as an option for a WDLC. As a result of the August 2019 Court of Appeals Decision, the Board proposes to re-adopt the provision allowing a CSA or an individual, contiguous portion of a CSA, to be a presumptive statistical-based WDLC, provided that the chosen area has a population of no more than 2.5 million. The 2016 Final Rule's expanded definition of rural districts remains in the Chartering Manual and was upheld by the court's decision. Accordingly, the Board does not need to address rural districts in this proposed rule.[49] Finally, the Board provides further explanation and support, and proposes to add a provision to the Chartering Manual with respect to potential discrimination to address the August 2019 Court of Appeals Decision. The Board is issuing this proposed rule promptly after the decision in light of the Court of Appeals' expectation that the agency act expeditiously to provide further explanation on the CBSA core area service requirement.

II. FOM 3 Proposed Rule and Further Explanation on Core Area Service Requirement

A. Overview

The Board emphasizes that this proposed rule is limited in scope and is intended to address only three aspects of the August 2019 Court of Appeals Decision regarding WDLCs. Specifically, the Board is: (1) Proposing to re-adopt the presumptive WDLC option consisting of a CSA or a portion of a CSA with a population of up to 2.5 million; (2) explaining further, with additional reasoning and factual support, the basis for eliminating the core area service requirement for FCUs that choose a portion of a CBSA as a WDLC; and (3) proposing to amend the Chartering Manual as it applies to applications, conversions, and expansions for CSAs and CBSAs to require the applicant to explain why it has selected its FOM and to demonstrate that its selection is not based on discriminatory intent, and to provide express regulatory authority for the NCUA to review this aspect of the application, conduct a further evaluation, if appropriate, and reject an application if the agency determines that the selection is based on discriminatory intent.

The Board notes that these proposed changes to the chartering process reaffirm the current application and review process and make more explicit the steps that the applicant and the agency each follow. As a matter of well-established practice, after the agency receives an application for a community charter, the Office of Credit Union Resources and Expansion (CURE) conducts a thorough review of the application and frequently consults with other agency offices, including the Office of General Counsel for legal issues, and the appropriate Regional Office and the Office of Examination and Insurance for safety and soundness issues. CURE has the option of approving, denying, or requesting more information about the application.[50]

The Board is providing a 30-day comment period in light of the focused nature of the proposed rule and the Court of Appeals' expectation that the Board would act ''expeditiously'' on remand.[51] The Board emphasizes that it is not re-visiting any other portion of the 2015, 2016, or 2018 FOM rulemakings and is not soliciting comments on those other matters. In particular, the Board is not re-visiting these elements (among others) of the 2016 Final Rule: (1) The expansion of permissible rural districts up to one million people; (2) the option to add an adjacent area to a presumptive community; and (3) the elimination of the 2.5 million population cap on CBSAs as a whole, which had previously disqualified as WDLCs portions of any CBSAs with total population over 2.5 million, even if the chosen portion was within that limit.[52]

B. CSAs

For the reasons stated in the 2015 and 2016 rulemaking, the Board proposes to revise the definition of WDLC in the Chartering Manual to include, as it did before the 2018 Final Rule, a CSA or a single, contiguous portion thereof with a population of up to 2.5 million. As stated above, in the 2018 Final Rule, when the Board amended other portions relating to WDLCs that contained references to CSAs, the Board removed the CSA provisions in light of the 2018 District Court Decision. In doing so, the Board did not intend to change or re-visit its carefully reasoned determination in the 2016 Final Rule that such areas constitute WDLCs, but instead modified the rule to be ''consistent with the District Court decision.''[53] Because the 2019 Court of Appeals Decision reversed the lower court's decision on this issue and upheld the CSA provision from the 2016 Final Rule, the Board now proposes to re-adopt this provision. As the Board details below, it relies on the same reasons it cited in the 2016 Final Rule and restates those below.

i. 2016 Final Rule

In the 2016 Final Rule, the Board noted that many commenters supported the proposal on CSAs, concurring that OMB's approach in designating CSAs is consistent with the NCUA's long-standing consideration of factors such as employment, commuting patterns, and economic interaction to identify a WDLC. Commenters also cited social and economic integration among residents within CSAs given that CSAs represent the same ''commonality of substantial employment interchange'' that an individual CBSA's residents must have.

Bank trade associations opposed recognizing CSAs as ''presumptive communities.'' One criticized the proposal as exceeding the reasonable definition of ''local.'' Others contended that a CSA is necessarily too expansive to be ''local'' because it ''represents larger regions'' that can encompass thousands of square miles crossing county and state borders. One opponent predicted that CSAs would be used to create state-wide FOMs, believing that this was not what Congress intended. Another claimed that Congress sought to impose narrow limits on areas a community credit union serves.

The Board observed that those commenters overlooked certain facts that contradict the notion that a CSA is too expansive to be ''local.'' First, of the

[48] Id.

[49] On October 4, 2019, the ABA filed a petition for rehearing *en banc* with respect to panel's ruling on the CSA and rural district provisions. The petition is pending as of the date of this proposed rule.

[50] CURE staff reviews applications for new or amended charters for compliance with the Act and the requirements of the Chartering Manual, including an applicant's ability to serve low- and moderate-income individuals in the community. After CURE completes its review, it obtains input from other divisions in the agency, as noted above. Accordingly, the Board notes that the review process typically takes several months, and the decision to grant a community charter is not automatic.

[51] See NCUA Interpretive Ruling and Policy Statement 87–2, as amended, 52 FR 35231 (Sept. 18, 1987).

[52] In addition, the Board is not proposing to re-visit any of the non-community FOM changes that it made in the 2016 Final Rule.

[53] 83 FR at 30291.

174 CSAs that OMB had designated at that time, the 22 largest would not qualify as a WDLC because each, as a whole, exceeds the 2.5 million population cap.[54] Second, the average geographic size among the 152 CSAs that would each have qualified as a WDLC at that time, at 4,553 square miles, was comparable to the average geographic size among the 243 individual CBSAs the Board has approved since 2010, at 4,572 square miles.

The Board adopted the proposal because a CSA simply unifies, as a single community, two or more contiguous CBSAs that each independently met the existing rule's definition of a ''statistical area'' that presumptively qualifies as a WDLC. Accordingly, subject to the existing 2.5 million population limit for a CBSA, the 2016 Final Rule added to the ''statistical area'' definition ''all or an individual portion of . . . a Combined Statistical Area designated by the U.S. Office of Management and Budget.'' [55]

As summarized above, the 2018 District Court Decision vacated the CSA provision, and the 2019 Court of Appeals Decision reversed this ruling, finding the commuting relationships that OMB uses to define CSAs to be a reasonable proxy for community.

ii. New Proposal

For all the reasons set forth above, the Board proposes to re-adopt the CSA provision from the 2016 Final Rule. The Board continues to believe CSAs or a single portion thereof, with the chosen area being subject to a 2.5 million population limit, are sufficiently compact to promote interaction and common interests among its residents. The factual record regarding CSAs is materially identical to what existed in 2016, and the Board is aware of no substantial changes in these statistical areas that warrant departing from the well-founded basis for this provision in the 2016 Final Rule. The only change from the 2016 Final Rule is clarifying language in the proposed text of the Chartering Manual on the requirement that an FCU select a single, contiguous portion of a CSA to meet the WDLC requirement. Such a change is consistent with the current regulatory text for SPJs and CBSAs,[56] the 2016 Final Rule preamble on CSAs, and the NCUA's longstanding, consistent practice with respect to geographic areas. The Board solicits comments on this proposal and will consider any comments it receives. The Board notes, however, that it is most interested in any comments that differ from or expand upon those that the Board thoroughly reviewed in connection with the 2016 Final Rule.

C. CBSA Core Area Service Requirement

As discussed above, the 2019 Court of Appeals Decision remanded to the Board for further explanation the provision of the 2016 Final Rule that amended the WDLC definition to include CBSAs or portions thereof with a population up to 2.5 million without the requirement to serve the core area of the CBSA. The Court of Appeals did not accept the Board's explanation in the 2016 Final Rule that its periodic evaluations of service policies and its experience in this area addressed this issue. As explained in detail below, the Board is issuing further explanation on this issue in light of the court's decision. In addition, the Board is elaborating on its support and basis for this provision. The Board believes that each reason that it lays out below is independently sufficient to support this provision. The Board is soliciting public comments generally on the issues concerning the CBSA core area service requirement. The Board would also be interested specifically in any comments on how the core area service requirement may affect FCUs' ability to serve low- and moderate-income segments of communities.

i. 2015 Proposed Rule

As discussed in the 2015 Proposed Rule, in its 2010 rulemaking on CBSAs, the Board required that when an FCU applies to serve a community consisting of a portion of a CBSA, that portion include the CBSA's ''core area,'' which the NCUA defines as the most populated county or named municipality in the CBSA's title.[57] The primary purpose of this requirement was to acknowledge the core area as the typical focal point for common interests and interaction among residents. The NCUA's review of progress under approved FCUs' business and marketing plans between 2010 and 2015 indicated that those FCUs are adequately serving low-income persons and underserved areas without regard to their location within the community. Accordingly, the Board proposed to repeal the core area requirement as an indicator of service to low-income persons and underserved areas, in favor of the agency's practice of annually reviewing the progress of business and marketing plans for three years following charter approval or expansion, and relying on those plans to assess those service objectives within an original or an expanded community.

ii. 2016 Final Rule

In the 2016 Final Rule, after considering public comments on this issue, the Board adopted the proposal to eliminate the core area service requirement.

The majority of commenters favored repeal of the core area service requirement, stating that it is not mandated by the Act and thus unnecessarily imposes an additional constraint on whom FCUs can serve. They further stated that relief from an obligation to serve a ''core area'' would give FCUs the flexibility to adapt to the specific area each initially is able to serve reasonably and safely, allowing each FCU to establish and maintain a ''marketplace footprint'' there. Other commenters criticized the ''core area'' service requirement for dividing an otherwise viable community or excluding portions that would enhance its viability; for causing an FCU to sacrifice service to other areas within the chosen portion of a CBSA; and as a disincentive to serve populated urban areas due to the additional cost and resources of serving a core area.

In contrast, bank-affiliated commenters generally favored retaining the ''core area'' service requirement. One predicted that its absence would effectively permit ''redlining'' through formation of a community primarily consisting of wealthier areas within a CBSA, while excluding areas where low-income and minority populations are concentrated. Another urged the Board to retain the core area service requirement given that, unless expressly required by state law, credit unions typically are not subject to the Community Reinvestment Act of 1977 (CRA), which requires financial institutions *other than credit unions* to publicly document service to people of modest means.[58]

In response to those opposing the proposal, the Board cited the agency's supervisory process and its ability to follow up on member complaints of discrimination affecting low- and

[54] As of the date of this proposed rule, there are 175 CSAs. OMB Bulletin 18–04 (Sept. 14, 2018).

[55] Appendix B, Ch. 2, § V.A.2. The 2.5 million population cap on CBSAs as a whole was eliminated in the 2016 Final Rule, as discussed in footnote 27 above.

[56] Appendix B, Ch. 2, V.A.2 (providing that the WDLC requirement is met for SPJs if the area is a recognized SPJ ''or any single portion thereof'' and for statistical areas if the area is a CBSA or ''a portion thereof,'' which ''must be contiguous'').

[57] 75 FR 36257, 36260 (June 25, 2010).

[58] 12 U.S.C. 2902(2). Congress has amended the CRA seven times (1989, 1991, 1992, 1994, 1995, 1999, and 2005) since its initial enactment and has declined to apply the CRA requirements to credit unions each time.

moderate-income and underserved populations. Further, the Board observed that the Act does not mandate any such requirement for a community.

Based on these considerations, the Board repealed the core area service requirement in the 2016 Final Rule. As discussed above, the Court of Appeals has remanded this provision for further explanation.

iii. Further Explanation and Support

The Board has carefully reviewed the 2018 District Court Decision, the 2019 Court of Appeals decision, and the record associated with the 2016 Final Rule. As described below, the Board now provides further explanation for the elimination of the core area service requirement for CBSAs. The Board also sets forth new information and data that support eliminating this requirement and seeks comments on that information. To be clear, the Board believes that the further explanation based solely on the record reflected in the 2016 Final Rule is sufficient to support this provision. The new information and data provide additional support that is also sufficient on its own to support this provision. In light of both sets of considerations, the Board continues to find that it is consistent with the Act and its underlying purposes to eliminate this requirement.

1. Background on the CRA, the Federal Credit Union Act, and Anti-Discrimination Laws Applicable to FCUs

As discussed above, the Court of Appeals noted that it did not believe that the NCUA had adequately responded to commenters' objections that the elimination of the core requirement might permit FCUs to engage in discriminatory redlining. In addressing this issue, the Board has reviewed the history of redlining and how it relates to the establishment and mission of FCUs. This background informs the Board's response to the court's direction to provide further explanation.

The term ''redlining'' has a long history associated with banks denying financial services to low-income and minority communities. In the 1930s, allegations of ''redlining'' certain neighborhoods originated with the Federal Housing Administration. The Federal Home Loan Bank Board—a predecessor to the Office of the Comptroller of the Currency (OCC) in regulating federal savings associations—supervised the Home Owners' Loan Corporation, which created ''residential security maps'' to withhold mortgage capital from neighborhoods that were deemed ''unsafe.'' In contrast, the contemporaneous FCU Act of 1934 did not encourage such discriminatory practices. In fact, by focusing on common bonds, the Act encouraged lending to people of modest means and diverse backgrounds.

With respect to chartering new financial institutions, Congress focused on the concept of ''redlining'' with respect to chartering banks and has not applied this term to chartering new community credit unions.[59] Rather, compared to its decision to apply the anti-redlining provisions in the CRA to banks, Congress established a different statutory framework for FCUs to encourage providing financial services to low- and moderate-income residents.

The Board is mindful that Congress has developed several statutory regimes to encourage financial institutions to provide credit to residents of low- and moderate-income neighborhoods. Banks and federal savings associations are subject to the CRA; government-sponsored enterprises (GSEs), such as Fannie Mae and Freddie Mac, are subject to affordable housing goals relating to underserved areas under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008;[60] and FCUs are subject to the Act, which is intended to improve access to credit for underserved communities.

With respect to banks, the OCC noted that Congress enacted the CRA to ''encourage efforts to meet the credit needs of all community members, including residents of low- and moderate-income neighborhoods.''[61] In addition, the CRA has a second mandate to prohibit redlining (*i.e.,* the denying of or increasing the cost of banking of residents of racially defined neighborhoods).[62] In explaining its supervisory obligation under the CRA, the Federal Reserve states that, among other things, it ''examines state member banks to evaluate and rate their performance under the CRA; considers banks' CRA performance in context with other supervisory information when analyzing applications for mergers, acquisitions, and branch openings; and shares information about community development techniques with bankers and the public.[63] Similarly, the FDIC states the ''CRA requires the FDIC to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered.''[64]

By contrast, with respect to FCUs, Congress enacted the Act to encourage lending to communities with low and moderate incomes. Specifically, in 1998, Congress enacted CUMAA to amend the Act. Section 2, which sets forth CUMAA's ''Findings,'' states: ''Credit unions . . . have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' Further, section 109 of the Act facilitates the formation of community-chartered FCUs to provide financial services to underserved areas.[65] For instance, the accompanying House Report to CUMAA noted that ''[a]ny person or organization within an underserved local community, neighborhood, or rural district may be added to multiple common bond credit unions which establishes and maintains an office or facility in the underserved areas.''[66] Congress then directed the Board to issue regulations to implement the FOM requirements, including special provisions encouraging service to such underserved communities. The Board did so by issuing the Chartering Manual.

The Board has issued these regulations to further encourage FCUs to provide credit and other financial services to members in underserved areas. For instance, the 2016 Final Rule's elimination of the core area service requirement was intended to provide additional flexibility to community-based FCUs, thereby allowing newly chartered or expanded FCUs to provide financial services to low- and moderate-income segments of

[59] 12 U.S.C. 2901. The ''Findings'' section of this provision directs banks to ''serve the convenience and needs of the communities in which they are chartered to do business.'' 12 U.S.C. 2901(a)(1). In addition, Congress required the banking regulators to ''assess the institution's record of meeting the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of such institution, and take such record into account in its evaluation of an application for a deposit facility by such institution.'' 12 U.S.C. 2903(a)(1) and (2).

[60] Public Law 110–289 (July 30, 2008); 12 U.S.C. 4511. With respect to the GSEs, Congress directed them to comply with an affordable housing mandate to encourage mortgage lending to underserved communities. Specifically, the GSEs are subject to goals for single-family mortgages for low-income families. The Housing and Economic Recovery Act of 2008 also subjects the GSEs to duty-to-serve rules aimed at facilitating a secondary market for mortgages for very low-, low-, and moderate-income families in manufactured housing, affordable housing preservation, and rural housing. 12 U.S.C. 4565(a).

[61] *https://www.occ.gov/topics/consumers-and-communities/cra/index-cra.html.*

[62] Id. See also, American Bankers Association, Community Reinvestment Act, *https://www.aba.com/banking-topics/compliance/acts/community-reinvestment-act.*

[63] *https://www.federalreserve.gov/consumerscommunities/cra_about.htm.*

[64] *https://www.fdic.gov/regulations/cra/.*

[65] 12 U.S.C. 1759.

[66] H.R. Rep. No. 105–472, at 19 (1998).

communities that are outside the core. As explained below, this reflects the fact that some areas outside some of the core areas may have more low- and moderate-income areas, while the core, which is often closer to business centers, may sometimes have more affluent residents. Further, many FCUs, which often are not large financial institutions, do not have the financial wherewithal to serve both the core of a CBSA and the rest of the CBSA.[67] Allowing such an FCU the flexibility to serve the CBSA without the core results in the FCU being financially capable of providing reasonably priced financial services to more low- and moderate-income individuals rather than fewer.

The Board further notes that the ABA, in its comments about redlining, appears to intermix the two concepts at the heart of the CRA.[68] As the OCC's CRA Handbook explains, the CRA addresses both the initial chartering of banks as well as lending practices. As noted above, the CRA's directive to banks during the chartering process to ''encourage efforts to meet the credit needs of all community members, including residents of low- and moderate-income neighborhoods'' is not a statutory provision applicable to FCUs. Rather, under the Act, FCUs provide financial services to underserved communities through the statute's unique chartering and application process. For instance, a major component of the CRA, as applied to banks, is supervising the branching decisions of applicants for bank charters; in contrast, with respect to community charters, Congress has not found it necessary to direct the NCUA to supervise FCUs' branching decisions. Second, the CRA directs banks to prohibit redlining in its lending and operations decisions. In addition to the fact that Congress has never mandated that the CRA apply to FCUs, the Board further notes that Congress has applied many other anti-discrimination statutes to FCUs. Accordingly, the potential for discrimination by an FCU is further lessened because, like other financial institutions, FCUs are subject to consumer protection statutes such as the Equal Credit Opportunity Act of 1974[69] (referred to as ECOA), which is implemented by Regulation B,[70] and the Fair Housing Act of 1968.[71] Further, the member-based, cooperative nature of FCU ownership and management is an organic incentive for an FCU to serve its low- and moderate-income member-owners in a way that does not exist in a for-profit bank's relationship with its customers.

Given these important historical distinctions between the chartering of FCUs and banks and the other provisions that help to limit potential discrimination by FCUs based on income or other considerations, the Board concludes that the best way to address the Court of Appeals' concern is in a tailored manner. The Board can do so by clarifying and bolstering protections against potential discrimination through further explanation of the 2016 Final Rule and by adopting new requirements for certain community-based FCUs to address these issues more explicitly in the application process. The discussion below details the Board's reasoning and proposal.

2. Further Explanation of the 2016 Final Rule's Elimination of the Core Area Service Requirement

The Board has reviewed the record from the 2016 Final Rule and concludes that removing the core area service requirement will better allow FCUs to serve low- or moderate-income segments of communities in areas outside the cores. This consideration is consistent with a view that credit union-affiliated commenters expressed in response to the 2015 Proposed Rule. After reviewing the decisions from the District Court and the Court of Appeals in this matter and the comment letters from the 2015 and 2016 rulemaking, the Board has determined that this factor supports eliminating the core area service requirement. In the 2016 Final Rule, the Board relied on the agency's supervisory processes and experience in eliminating the requirement to serve the core area. The Board has reconsidered the matter and concludes that the provision is appropriate because the enhanced flexibility would facilitate service to low-income communities outside core areas. Because cores are relatively populous, retaining the core area service requirement would in many instances make it more difficult for an FCU applicant to serve areas beyond the core. Given the potential to serve low- or moderate-income residents in areas outside the core, the Board believes that eliminating this requirement would provide benefits to low- or moderate-income individuals.

Accordingly, the Board affirms this provision because it would expand access to financial services to low- or moderate-income individuals, which is directly responsive to the concern raised in the prior rulemaking and discussed by the court.

3. Consideration of Supplemental Information

In addition, to supplement the record and offer further support for this provision, the Board has reviewed data reflecting the distribution of incomes across CBSAs in several metropolitan areas.

In response to the court's concern that the ABA warned against redlining and objected that community credit unions could now ''serv[e] wealthier suburban counties and exclud[e] markets containing low-income and minority communities that reside in core area,''[72] the Board has conducted quantitative analysis indicating that core areas often contain higher-income communities and more expensive housing than certain suburban and exurban areas surrounding the core.

Washington, DC Example

Without the core area service requirement, a new or expanded community charter could be granted to serve low- and moderate-income areas, including Silver Spring/Takoma Park, in Montgomery County and Prince George's County Maryland, which are within close proximity to Washington, DC. These areas have the following median household income based on the America Community Survey, which is produced by the Census Bureau.[73] The latest year for which data are available is 2017.

Zip code	Median household income
20783 Hyattsville (Prince George's County)	$60,783
20903 Hyattsville	63,106
20912 Silver Spring	73,961

[67] In fact, as of June 30, 2019, approximately 75% of all FCUs have total assets under $100 million. Further, approximately 60% of community-based FCUs have total assets under $100 million.

[68] In addition, the ABA itself appears to contend that the CRA is not effective in providing credit to underserved communities. For instance, on its website, the ABA states: ''The rules implementing CRA, however, have not kept pace with the times or with new technologies and are actually holding back investment in the very communities the law is intended to serve.'' Further, in a comment letter to the bank regulators regarding the CRA, the ABA stated that ''the objectives of the CRA statute are being undermined by outdated implementing regulations.'' See ABA Comment Letter to OCC Docket ''Reforming the Community Reinvestment Act Regulatory Framework,'' Docket ID OCC 2018–0008.

[69] 15 U.S.C. 1691 et. seq.

[70] 12 CFR part 1002.

[71] Public Law 90–284, 82 Stat. 73 (enacted Apr. 11, 1968).

[72] 934 F.3d at 669.

[73] *https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.*

With the core area service requirement, such a new community charter would have to include the entire District of Columbia because that is the ''named'' community in the CBSA. Mandating the core provision would require far more FCU resources, which may not exist, thereby making it more difficult—and potentially impossible—for a potential applicant for a community charter to serve the entire community for several reasons. First, the geographic footprint would be much larger; and second, it would require the new FCU to establish branches in some affluent areas with significantly higher leasing costs. For instance, the following zip codes in Northwest DC—Foxhall, Friendship Heights, and Tenleytown—have the following median incomes, which are roughly double that of some suburban areas.

Northwest Washington

Zip code	Median household income
20007—Foxhall	$123,154
20008—Van Ness	120,342
20016—Friendship Heights	140,545

Atlanta Example

Similarly, Fulton County is the core of the Atlanta metropolitan area, yet certain neighborhoods in Fulton County have much higher median household income than neighboring DeKalb and Gwinnett Counties. Without the core area service requirement, a new community charter could be granted to serve low- and moderate-income areas, including Chamblee and Doraville, in DeKalb County and Norcross in Gwinnett County, both of which border Fulton County. These areas have the following median household income based on the America Community Survey, which is produced by the Census Bureau.[74] The latest year for which data are available is 2017.

DeKalb and Gwinnett County Areas

Zip code	Median household income
30093—Norcross—Gwinnett County	$37,862
30340—Doraville—DeKalb County	50,076
30341—Chamblee—DeKalb County	54,142

Fulton County

Zip code	Median household income
30327—Buckhead	$148,480
30022—Alpharetta	103,228
30305—Paces Ferry	98,506

The situation in which household income is sometimes higher in certain neighborhoods in a CBSA's core as compared to suburban areas in adjacent counties outside the ''core'' is common in many other metropolitan areas, including Boston, Philadelphia, and others. A further irony is that the core area service requirement would often require an applicant to provide financial service to relatively wealthy individuals in high-income areas who have ample options for their financial needs. Thus, the requirement may result in a potential applicant for a community charter either not seeking a charter for the low- to moderate-income areas or expending resources on wealthier areas in the core that have less need for such new services.

Based on the above discussion and examples, the Board has concluded that this requirement may decrease potential credit opportunities for low- and moderate-income segments of communities in some circumstances. By removing the ''core'' provision, the Board anticipates that a potential FCU applicant can focus its limited resources to better serve such communities.

In addition to the data on income cited above, the Board has considered data reflecting that community FCUs tend to serve most CBSA core areas across the country. Currently, the NCUA's data show that a substantial majority of CBSAs, including their core areas, are currently served by community-based FCUs. FCUs of various other charter types also serve core areas across the country. In addition, FCUs currently serve the entirety of several of the most populous SPJs in the country—Los Angeles County, California; Houston, Texas; Philadelphia, Pennsylvania; and San Antonio, Texas. If any of these FCUs seeks to amend their FOM to exclude the core area, such a request will be evaluated by the NCUA, and the NCUA will consider whether the proposed amended charter is discriminatory.[75] Because of this expansive coverage of core areas by community FCUs, which the Board does not expect to change substantially, the Board finds that it is reasonable to eliminate the core area service requirement. As the data show, FCUs, and community FCUs in particular, are currently serving core areas extensively across the country. This finding is independent of the finding above regarding income, and the Board views each factor as independently sufficient to support this provision.

Furthermore, approximately 700 community-based FCUs are currently designated as low-income credit unions pursuant to the Act and the NCUA's regulations.[76] These credit unions have the potential to serve over 10 million members across the country. As directed by Congress, the NCUA accords this designation to credit unions that predominantly serve low-income members. By obtaining this designation, credit unions gain greater flexibility in accepting nonmember deposits,[77] are exempt from the aggregate loan limit on business loans that otherwise applies to all federally insured credit unions,[78] may offer secondary capital accounts to strengthen their capital base,[79] and gain access to grants and loans from the Community Development Revolving Loan Program for Credit Unions.[80] Accordingly, the Board believes that community-based FCUs have both strong incentives and a strong record of providing service to low-income segments of communities.

Separately, the agency's experience in implementing this provision since 2016 indicates that FCUs generally have non-discriminatory bases for pursuing this option. For example, in the three applications that the agency granted between 2016 and 2019 under this provision, the agency detected no evidence of discrimination. Instead, the applicants selected their FOMs either to operate within their current capacity limitations or to be able to serve outlying areas in CBSAs with a populous core area. For example, one FCU that was serving a county outside a core area added an adjacent (also non-core) county given its proximity and its lack of credit union services. This FCU also made this selection based on its branch structure and capacity. Another FCU that invoked this option selected areas outside of New York City within that CBSA. If the FCU had been required to include the core area, it would not have been able to include any outlying areas in its FOM due to resource concerns and the limitations of its

[74] *https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml.*

[75] 81 FR at 88414.

[76] 12 U.S.C. 1757(6); 12 CFR 701.34.

[77] 12 U.S.C. 1757(6).

[78] 12 U.S.C. 1759a(b)(2)(A).

[79] 12 CFR 701.34(b)–(d). Credit unions must submit a secondary capital plan under § 701.34(b)(1) before issuing secondary capital accounts.

[80] 12 CFR 705.2.

ability to serve a certain number of members. The third FCU that chose this option decided to serve a single county and two adjacent municipalities. This FCU has under $50 million in assets, and thus this modest expansion was consistent with its resources and ability to serve. In light of these experiences, as distinct from the data discussed above, the Board finds that the risk of discrimination is minimal and that FCUs have invoked the subject provision to serve areas outside the core that would otherwise have been omitted if the core area service requirement had been in place.

4. Proposed New Factor in the Chartering Manual To Address Service to Low- and Moderate-Income Individuals

Separately, the Board proposes to amend the Chartering Manual to clarify and bolster the NCUA's authority to reject applications to serve community-based FOMs consisting of CSAs or CBSAs, if the agency determines that the FCU's proposal is based on discriminatory intent or a desire to exclude low- or moderate-income individuals. This provision, if adopted, would serve as an additional means to address the issue that the court raised regarding redlining and other forms of illegal discrimination. In essence, this provision would require an FCU to demonstrate that its choice of FOM, including choosing not to serve the core, is based on sound legal and business judgment and not an attempt to redline or discriminate on an illegal basis. This provision would add to the existing requirement for applicants to submit acceptable business plans, which applies to all community-based FOM applications. The Board believes that the further explanation and support set forth above is sufficient on its own to sustain the 2016 Final Rule's elimination of the core area service requirement.

At the outset, as discussed in detail above, the Board notes that the CRA and the frequently associated ''redlining'' prohibition does not specifically apply to FCUs by statute or regulation. The Board has reviewed and understands the 2019 Court of Appeals Decision's distinction between redlining in the CRA context and other potential gerrymandering of a service area with the intention of excluding low-income or minority individuals, or both. The Board is mindful of the potential harm caused by discrimination in various contexts and reinforces its long-standing commitment to require compliance with all applicable anti-discrimination laws. In the context of chartering and selecting a community-based FOM, the Board believes that it can clarify and add to its existing authorities to ensure that it has the necessary tools to address any discrimination that it may encounter in the community FOM chartering process. The Board finds it unnecessary to impose this requirement for WDLCs consisting of SPJs or to rural districts because those community types do not pose the same potential for redlining or gerrymandering that the court considered.[81]

The Board notes that its existing requirements and practices already address community service in the chartering or FOM expansion process. As discussed in the 2016 Final Rule, FCUs seeking or expanding a community FOM must submit a business plan supported by realistic assumptions.[82] Specifically, the Chartering Manual currently requires an applicant for a community charter to submit a ''marketing plan addressing how the community will be served for the 24-month period after the proposed conversion to a community charter, including detailing: How the credit union will implement its business plan; the unique needs of the various demographic groups in the proposed community; how the credit union will market to each group, particularly underserved groups; which community-based organizations the credit union will target in its outreach efforts; the credit union's marketing budget projections dedicating greater resources to reaching new members; and the credit union's timetable for implementation, not just a calendar of events.'' [83]

In the agency's experience, these business plans explain the applicant's reason for selecting a particular FOM, including cost or marketing considerations. The Board proposes to build on that existing practice to more expressly address the court's decision through specific provisions and requirements in the Chartering Manual applicable to CSAs and CBSAs.

Taking this experience and background into account, the Board is proposing to make explicit that an applicant for a community FOM consisting of a CSA or CBSA must address how it will serve low- and moderate-income segments of a community. To make certain that the agency has explicit discretion to ensure that the FCU applicant will not exclude service to low- and moderate-income segments of communities, the Board proposes to amend the Chartering Manual to provide that the NCUA may require additional information on how the FCU's business needs support its selection, conduct any further inquiry that it deems appropriate, and reject either an initial charter application or an expansion or amendment request if the NCUA determines that a community-based FCU has chosen its specific geographic FOM based on discriminatory intent or effect.

In the ordinary course, the Board would expect CURE, in consultation with other agency offices, as necessary, to consider income distribution or other statistical evidence to gauge whether a particular application may call for further review. In addition, under this proposal, CURE may consider other information in determining whether further review is needed, including, but not limited to, inclusion or exclusion of predominantly low- or moderate-income Census tracts within a statistical area, the statements and supporting information from the applicant FCU regarding how it intends to serve low- and moderate-income individuals, and, if applicable, the FCU's record of consumer compliance or fair lending violations. If CURE denies an application on this basis, the applicant could appeal to the Board, as with other whole or partial application denials under the Chartering Manual. To complement this express regulatory authority, the Board also proposes to amend the Chartering Manual to require community-based FCUs that select a CSA or a CBSA to document that it has a non-discriminatory purpose(s) for selecting its FOM and for the NCUA to review such submissions and follow up as appropriate.

The Board believes that this measured approach would provide the agency clear authority in the text of the Chartering Manual to act in appropriate cases based on its extensive experience in evaluating FCUs' service plans. This approach is also appropriate because it expands on the existing principle and provision in Chapter 1 of the Chartering Manual that the NCUA may examine

[81] Under the SPJ provision, an FCU may serve an entire SPJ regardless of population, which limits the potential for the redlining that the court discussed. Likewise, rural districts present limited potential for this conduct because the provision enables FCUs to serve a combination of urban and rural areas to build sufficient capacity to be viable. It would therefore be contrary to this model for FCUs to use the rural district provision to attempt to exclude low- or moderate-income areas, since rural areas are predominantly populated by individuals with low and moderate incomes. See 81 FR at 88417 (''[T]he Board finds it compelling that in 97 percent of non-metropolitan counties, more than 50 percent of the population is either low, moderate, or middle income.'')

[82] FCUs amending their FOMs to add bordering areas submit a ''streamlined'' business plan. Appendix B, Ch. 2., V.B.

[83] Appendix B, Ch. 2, V.A.4.

other factors in unusual cases when deciding whether to grant a charter, including other federal laws and public policy.[84] It would also be consistent with the purposes animating the NCUA's organic Act, which recognizes that FCUs ''have the specified mission of meeting the credit and savings needs of consumers, especially persons of modest means.'' [85] The proposed amendment would more clearly apply these considerations to community expansion and amendment requests and provide more specific considerations than the general principle in Chapter 1. In sum, after reviewing the August 20, 2019 Court of Appeals Decision and the existing authority in the Chartering Manual, the Board proposes to build on this existing general provision to address this issue.

iv. Summary

As discussed above, the Board has carefully reviewed the court decisions and the 2016 Final Rule and affirms the elimination of the core area service requirement for CBSA-based FOMs. The Board has offered further explanation of the issues raised in the August 2019 Court of Appeals Decision. Specifically, several commenters have made a persuasive case that eliminating this requirement may enable FCUs to serve more low- or moderate-income individuals. Separately, as an independent basis to support this provision, the Board has considered supplemental data relating to CBSAs and concludes that this additional information would also support eliminating the requirement. These data show that a substantial majority of core areas in CBSAs receive service from community FCUs. In addition, the Board has identified several CBSAs in which low- or moderate-income individuals could receive greater access to financial services if FCUs are permitted to serve an FOM consisting of the non-core areas of those CBSAs. Further, and also as an independent basis for affirming this provision, the Board proposes to add a provision to the Chartering Manual under which the Board would retain clear discretion to require additional information, conduct an inquiry, and ultimately reject an initial application, expansion, or conversion, if the Board finds discrimination in the selection of a portion of a CSA or a CBSA, thus minimizing the likelihood of redlining. In this context, the Board notes that many FCUs may choose not to serve core areas because they lack the financial wherewithal, not for discriminatory reasons.[86] The Board believes that each consideration cited above is sufficient on its own to explain and justify the elimination of the core area service requirement, and when combined, provide even stronger justification for this provision. The Board solicits public comments generally on the issues concerning the CBSA core area service requirement. The Board would also be interested specifically in any comments on how the core area service requirement may affect an FCU's ability to serve low- and moderate-income segments of communities.

D. Limited Scope of This Rulemaking

As the Board explains above, this proposed rule has a limited scope. The Board is proposing to re-adopt the CSA presumptive WDLC option that it originally adopted in the 2016 Final Rule and is providing further explanation and support for its elimination of the core area service requirement for CBSAs in the 2016 Final Rule. The Board is also proposing a new provision in the Chartering Manual to enhance service to low- and moderate-income individuals for community FOMs based on CSAs and CBSAs. The Board seeks comments on those issues. The Board is not proposing to re-visit or change any other provisions of the 2016 Final Rule or the Chartering Manual. In particular, the Board is not re-visiting the following elements (among others) of the 2016 Final Rule: (1) The expansion of permissible rural districts up to one million people; (2) the option to add an adjacent area to a presumptive community; or (3) the elimination of the 2.5 million population cap on CBSAs as a whole.[87]

III. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities.[88] For purposes of this analysis, the NCUA considers small credit unions to be those having under $100 million in assets.[89] Although this proposed rule is anticipated to economically benefit FCUs that choose to charter, expand, or convert to a community charter, the NCUA certifies that it would not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemaking in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure, or recordkeeping requirement, referred to as information collection. The NCUA may not conduct or sponsor, and the respondent is not required to respond to an information collection unless it displays a valid Office of Management and Budget (OMB) control number.

The rule proposes to amend Chapter 2 of Appendix B to part 701 by adding Section V.A.8 to require applicants of community FOM applications, amendments, and expansions of CSAs and CBSAs to explain why they have selected their FOM and to demonstrate that the selection will serve low- and moderate-income segments of a community, as outlined by the new section V.A.8.

The current information collection requirements for the Chartering and Field of Membership Manual are approved under OMB control number 3133–0015. It is estimated that 20 respondents applying, amending, or expanding a community FOM would be affected by the proposed amendment. It is estimated that these respondents would need an additional two hours to prepare the necessary documentation to demonstrate its selection, for an increase of 40 burden hours.

Title of Information Collection: Chartering and Field of Membership Manual, Appendix B to part 701.

OMB Control Number: 3133–0015.

Estimated number of respondents: 8,155.

Estimated number of responses per respondent: 1.

Estimated total annual responses: 8,155.

Estimated total annual burden: 16,182.

Affected Public: Private Sector: Not-for-profit institutions.

The Board invites comment on (a) whether the collections of information

[84] Appendix B, Ch. 1, Section I.

[85] 12 U.S.C. 1751 note.

[86] Serving a large and densely populated core area may often require establishing a significant geographic footprint throughout the core, with significant expenditures for rent, overhead, and other expenses, which a nascent FCU may not have the resources to cover. But by the same token, densely populated cores will often be an attractive option for FCUs who have the required resources and seek to serve a large and diverse field of membership.

[87] In addition, the Board is not proposing to re-visit any of the non-community FOM changes that it made in the 2016 Final Rule.

[88] 5 U.S.C. 603(a).

[89] 80 FR 57512 (Sept. 24, 2015).

are necessary for the proper performance of the agency's function, including whether the information has practical utility; (b) the accuracy of estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information being collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments are a matter of public record. Comments regarding the information collection requirements of this rule should be sent to (1) Dawn Wolfgang, NCUA PRA Clearance Officer, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314, or Fax No. 703–519–8572, or Email at *PRAcomments@ncua.gov* and the (2) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov*.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles,

The NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. Primarily because this proposed rule would apply to FCUs exclusively, it would not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. The NCUA has determined that this proposed rule would not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[90]

[90] Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 701

Credit, 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, the Board proposes to amend 12 CFR part 701, Appendix B 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. Section V.A.2 of Chapter 2 of Appendix B to part 701 is revised to read as follows:

Appendix B to Part 701—Chartering and Field of Membership Manual

* * * * *

V.A.2—Definition of Well-Defined Local Community and Rural District

In addition to the documentation requirements in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies, as well as the business plan requirements set forth in this Chapter. An applicant must meet all of these requirements to obtain NCUA approval.

An applicant has the burden of demonstrating to NCUA that the proposed community area meets the statutory requirements of being: (1) Well-defined, and (2) a local community or rural district. The applicant also has the burden of demonstrating that with respect to the proposed community, it has the capacity to provide financial services to low- and moderate-income areas of the community. The agency will reject any application that fails to establish the criteria set forth above.

For an applicant seeking a community charter for a Statistical Area with multiple political jurisdictions with a population of 2.5 million people or more, the Office of Credit Union Resources and Expansion (CURE) shall: (1) Publish a notice in the **Federal Register** seeking comment from interested parties about the proposed community and (2) conduct a public hearing about this application.

''Well-defined'' means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (single, multiple, or portions of a county) or a political equivalent, school districts, or a clearly identifiable neighborhood.

The well-defined local community requirement is met if:

- Single Political Jurisdiction—the area to be served is a recognized Single Political Jurisdiction, *i.e.,* a city, county, or their political equivalent, or any single portion thereof.
- Statistical Area—A statistical area is all or an individual portion of a Combined Statistical Area (CSA) or a Core-Based Statistical Area (CBSA) designated by the U.S. Census Bureau, including a Metropolitan Statistical Area. To meet the well-defined local community requirement, the CSA or CBSA or a portion thereof, must be contiguous and have a population of 2.5 million or less people. An individual portion of a statistical area need not conform to internal boundaries within the area, such as metropolitan division boundaries within a Core-Based Statistical Area.
- Compelling Evidence of Common Interests or Interaction—In lieu of a statistical area as defined above, this option is available when a credit union seeks to initially charter a community credit union; to expand an existing community; or to convert to a community charter. Under this option, the credit union must demonstrate that the areas in question are contiguous and further demonstrate a sufficient level of common interests or interaction among area residents to qualify the area as a local community. For that purpose, an applicant must submit for NCUA approval a narrative, supported by appropriate documentation, establishing that the area's residents meet the requirements of a local community.

To assist a credit union in developing its narrative, Appendix 6 of this Manual identifies criteria a narrative should address, and which NCUA will consider in deciding a credit union's application to: Initially charter a community credit union; to expand an existing community, including by an adjacent area addition; or to convert to a community charter. In any case, the credit union must demonstrate, through its business and marketing plans, its ability and commitment to serve the entire community for which it seeks NCUA approval.

An area of any geographic size qualifies as a Rural District if:

- The proposed district has well-defined, contiguous geographic boundaries;
- The total population of the proposed district does not exceed 1,000,000.
- Either more than 50% of the proposed district's population resides in census blocks or other geographic units that are designated as rural by either the Consumer Financial Protection Bureau or the United States Census Bureau, OR the district has a population density of 100 persons or fewer per square mile; and
- The boundaries of the well-defined rural district do not exceed the outer boundaries of the states that are *immediately contiguous* to the state in which the credit union maintains its headquarters (*i.e.,* not to exceed the outer perimeter of the layer of states immediately surrounding the headquarters state).

The common bond affinity groups that apply to well-defined local communities also apply to Rural Districts.

The requirements in Chapter 2, Sections V.A.4 through V.G also apply to a credit union that serves a rural district.

■ 3. Amend Chapter 2 of Appendix B to part 701 by adding Section V.A.8 to read as follows:

V.A.8 Community Selection Requirements and Review

The NCUA will not approve an application for a community charter consisting of all or a portion of a CSA or a CBSA, including an initial application, amendment, or expansion, unless the applicant demonstrates in its business and marketing plan that (1) the credit union will serve a community that is contiguous and (2) the credit union will provide financial services to low- and moderate-income and underserved people, and that the credit union has not selected its service area in order to exclude low- and moderate-income and underserved people. Upon receipt of this material, the NCUA will evaluate the business and marketing plan to ensure that low- and moderate-income and underserved people will be served and that the credit union has not selected the service area in order to exclude such people. This requirement is in addition to the requirement to document in the business and marketing plan the realistic assumptions that support the credit union's viability and its plan to serve its entire FOM.

The NCUA may conduct such further inquiry or evaluation as it deems appropriate, as authorized by 12 U.S.C. 1754 and consistent with the principles of this Manual, other federal laws, and public policy. If the NCUA determines that the credit union's submission is inaccurate or unsupported, it may deny that application on those grounds, regardless of whether the application satisfies the other criteria for initial chartering, amendment, or expansion.

■ 4. Section V.B of Chapter 2 of Appendix B to part 701 is revised to read as follows:

V.B Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests and/or interact. The credit union must follow the requirements of Section V.A.4 and Section V.A.8 of this chapter.

A community credit union that is based on a Single Political Jurisdiction, a Statistical Area (*e.g.,* Core Based Statistical Area or Combined Statistical Area) or a rural district may expand its geographic boundaries to add a bordering area, provided the area is well defined and the credit union demonstrates that persons who live, work, worship, or attend school within the proposed expanded community (*i.e.,* on both sides of the boundary separating the existing community and the bordering area) have common interests and/or interact. Such a credit union applying to expand its geographic boundaries to add a bordering area must follow a streamlined version of the business plan requirements of Section V.A.4 of this chapter and the expanded community would be subject to the corresponding population limit—2.5 million in the case of a Single Political Jurisdiction, or a Statistical Area and 1 million in the case of a rural district. The streamlined business plan requirements for adding a bordering area are:

- Anticipated marginal financial impact on the credit union of adding the proposed bordering area, including the need for additional employees and fixed assets, and the associated costs;
- A description of the current and, if applicable, proposed office/branch structure specific to serving the proposed bordering area;
- A marketing plan addressing how the new community will be served for the 24-month period after the proposed expansion of a community charter, including detailing how the credit union will address the unique needs of any demographic groups in the proposed bordering community not presently served by the credit union and how the credit union will market to any new groups; and
- Details, terms and conditions of any new financial products, programs, and services to be introduced as part of this expansion.

[FR Doc. 2019–23680 Filed 11–6–19; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0863; Product Identifier 2019–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus SAS Model A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A320–251N, and A320–271N airplanes. This proposed AD was prompted by a report of marginal clearance between certain fuel sensor covers on both left-hand (LH) and right-hand (RH) wings. This proposed AD would require the replacement of certain fuel level sensor brackets, as specified in a European Union Aviation Safety Agency (EASA) AD, which will be incorporated by reference. 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 23, 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 *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this proposed AD that will be incorporated by reference (IBR), 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–2019–0863.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0863; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

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–2019–0863; Product Identifier 2019–NM–157–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 based on those comments.

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

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0197, dated August 14, 2019 (''EASA AD 2019–0197'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, and A320–271N airplanes. Model A320–215 airplanes are not on the U.S. Register; this AD therefore does not include those airplanes in the applicability.

This proposed AD was prompted by a report of marginal clearance between certain fuel sensor covers on rib 24 and the crown of stringer 15 on both LH and RH wings. A possible contact between the shield and the stringer, and/or possible motion between the stringer and the shield, can make the gap more susceptible to sparking in case of lightning strike. The FAA is proposing this AD to address this condition, which could create a source of ignition in a fuel tank vapor space, possibly resulting in a fire or explosion and consequent loss of the airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0197 describes procedures for the replacement of certain fuel level sensor brackets. 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 and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to 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 proposing this AD because the agency evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0197 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

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 2019–0197 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0197 in its entirety, through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed 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 2019–0197 that is required for compliance with EASA AD 2019–0197 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0863 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 776 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 7 work-hour × $85 per hour = Up to $595	Up to $609	Up to $1,204	Up to $934,304.

Authority for This Rulemaking

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

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

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

appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus SAS: Docket No. FAA–2019–0863; Product Identifier 2019–NM–157–AD.

(a) Comments Due Date

The FAA must receive comments by December 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A320–251N, and A320–271N airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0197, dated August 14, 2019 (''EASA AD 2019–0197'').

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by a report of marginal clearance between certain fuel sensor covers on rib 24 and the crown of stringer 15 on both left-hand (LH) and right-hand (RH) wings. A possible contact between the shield and the stringer, and/or possible motion between the stringer and the shield, can make the gap more susceptible to sparking in case of lightning strike. The FAA is issuing this AD to address this condition, which could create a source of ignition in a fuel tank vapor space, possibly resulting in a fire or explosion and consequent loss of the airplane.

(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, EASA AD 2019–0197.

(h) Exceptions to EASA AD 2019–0197

(1) Where EASA AD 2019–0197 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0197 does not apply to this AD.

(i) 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 (j)(2) 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* For any service information referenced in EASA AD 2019–0197 that contains RC procedures and tests: Except as required by paragraph (i)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

(1) For information about EASA AD 2019–0197, 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*. 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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0863.

(2) For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223.

Issued in Des Moines, Washington, on November 1, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24269 Filed 11–6–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0016; Product Identifier 2018–NM–168–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposal for all Airbus SAS Model A350–941 and –1041 airplanes. This action revises the notice of proposed rulemaking (NPRM) by including additional part numbers that are affected by the unsafe condition. The FAA is proposing this airworthiness directive (AD) to address the unsafe condition on these products. Since these actions would impose an additional burden over those in the NPRM, the

FAA is reopening the comment period to allow the public the chance to comment on these changes.

DATES: The comment period for the NPRM published in the **Federal Register** on February 22, 2019 (84 FR 5611), is reopened.

The FAA must receive comments on this SNPRM by December 23, 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 *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For the material identified in this SNPRM that will be incorporated by reference (IBR), contact the European Union Aviation Safety Agency (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 *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0016.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0016; 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 SNPRM, 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: Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

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–2019–0016; Product Identifier 2018–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 SNPRM. The FAA will consider all comments received by the closing date and may amend this SNPRM 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 the agency receives about this SNPRM.

Discussion

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on February 22, 2019 (84 FR 5611). The NPRM was prompted by reports of loss of retention of the regulator inlet filter retainer on certain crew oxygen cylinder assemblies. The NPRM proposed to require an operational check of the crew oxygen cylinder assembly, replacement of an affected assembly, and eventual replacement of all affected assemblies with redesigned serviceable assemblies.

Actions Since the NPRM Was Issued

Since the FAA issued the NPRM, the agency has determined that loose regulator inlet filter retainers also exist on redesigned oxygen cylinders having part number (P/N) 4441227–058–001. In the NPRM, P/N 4441227–058–001 was specified as the replacement part to be installed after an affected part was removed. This SNPRM expands the scope of the NPRM by including oxygen cylinders having P/N 4441227–058–001 as affected parts that need to be inspected and, depending on findings, replaced.

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0168, dated July 16, 2019 (''EASA AD 2019–0168'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for all Airbus SAS Model A350–941 and -1041 airplanes. The FAA is issuing this AD to address loss of retention of the regulator inlet filter retainer on certain crew oxygen cylinder assemblies. This condition could lead to particle ingestion into the regulator during ground handling, possibly resulting in ignition/fire during system ground operational testing following crew oxygen cylinder (re)installation on an airplane. See the MCAI for additional background information.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0168 describes procedures for an inspection of the crew oxygen cylinder assembly for any discrepancy (a loose part making a sound during agitation of the cylinder) and replacement of an affected crew oxygen cylinder assembly with a serviceable part.

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

Comments

The FAA gave the public the opportunity to participate in developing this proposed AD. The FAA considered the comments received. The Air Line Pilots Association, International (ALPA) expressed support for the NPRM.

Request To Clarify Mandatory Actions

Delta Air Lines (DAL) requested clarification regarding which actions described in Airbus All Operators Transmission (AOT) A35P010–17, Revision 00, dated December 20, 2017 (''Airbus AOT A35P010–17, Revision 00''), and the associated vendor service bulletins, are required for compliance with the requirements of the proposed AD (in the NPRM). The commenter stated that Airbus AOT A35P010–17, Revision 00, is not written in the traditional service bulletin format, and suggested that the intent of the proposed AD (in the NPRM) is for operators to comply with only section 4.2.2, Inspection Requirements, of Airbus AOT A35P010–17, Revision 00. The commenter reasoned that all other aspects and parts of Airbus AOT A35P010–17, Revision 00, are unrelated to the unsafe condition and are for operator reference and logistics information. Specifically, the commenter requested that paragraph (h) of the proposed AD (in the NPRM) be revised to include a paragraph (h)(3) which would state that ''Where the

EASA AD states accomplishment of a task 'in accordance with the instructions of the AOT'', an operator may use alternative approved procedures. The AOT and Vendor SB can be referred to for accepted procedures to comply with the mandated tasks.'' The commenter advised that the proposed AD (in the NPRM) would mandate procedures that are not related to airworthiness, such as returning affected parts to Rockwell Collins and reporting the inspection results to Airbus Customer Service.

The FAA agrees to clarify which actions described in the AOT would be required by this proposed AD. Since the NPRM was published, EASA has issued AD 2019–0168, and the FAA has revised this proposed AD to refer to EASA AD 2019–0168. EASA AD 2019–0168 refers to Airbus AOT A35P010–17, Revision 00; and Airbus AOT A35P010–17, Revision 01, dated April 11, 2019 (''AOT A35P010–17, Revision 01''). The FAA has revised paragraph (h) of this proposed AD to include paragraph (h)(3) to state that the language in paragraph (2) of EASA AD 2019–0168 that states ''the instructions of the AOT'' should be replaced with ''paragraph 4.2.2., Inspection Requirements, of the AOT.''

In regard to the reporting requirement, paragraph (i) of the proposed AD (in the NPRM) states that although EASA AD 2018–0245R1 specifies to submit certain information to the manufacturer that action would not be required. Because EASA AD 2018–0245R1 was superseded by EASA AD 2019–0168, the FAA has revised paragraph (i) of this proposed AD to refer to EASA AD 2019–0168. In addition, the FAA has added paragraph (j) to this proposed AD to clarify that returning affected parts to the manufacturer is not required, and redesignated the subsequent paragraphs accordingly.

The FAA does not agree with the commenter's request to revise paragraph (h) of this proposed AD to allow operators to use alternative approved procedures to comply with the proposed requirements. Any request for an Alternative Method of Compliance (AMOC) must be done in accordance with paragraph (k)(1) of this proposed AD. The FAA has not revised this proposed AD in regard to this issue.

Request To Refer to Vendor Service Bulletins

DAL requested that the NPRM be revised to include a reference to Rockwell Collins (formerly B/E Aerospace) Vendor Service Bulletin (VSB) 4441227–35–003, and to allow operators to use the applicable Rockwell Collins VSB for inspection procedures. The commenter noted that there is an error in Rockwell Collins VSB 4441227–35–003, because it refers to a modification Rockwell Collins VSB for instructions on how to replace an affected crew oxygen cylinder assembly, but that service information does not contain replacement instructions.

The FAA does not find it necessary to reference VSB 4441227–35–003 in this proposed AD because it is already referenced in Airbus AOT A35P010–17, Revision 01, for the required inspection. The FAA notes that EASA AD 2019–0168 refers to Airbus AOT A35P010–17, Revision 01, as the primary source of service information for operators to use for procedures to address the unsafe condition. AOT A35P010–17, Revision 01, includes updated inspection procedures that are acceptable for compliance.

The FAA acknowledges the commenter's observation that there is an error in certain revisions of Rockwell Collins VSB 4441227–35–003 regarding certain other Rockwell Collins VSB numbers. Airbus AOT A35P010–17, Revision 01, references Maintenance Planning (MP) Task A350–A–35–11–56–00001–520A–A for removal of affected crew oxygen cylinder assemblies and MP Task A350–A–35–11–56–00001–720A–A for installation of crew oxygen cylinder assemblies. Therefore, the Rockwell Collins VSBs are not required to accomplish actions involving removal and installation of crew oxygen cylinder assemblies. If needed, operators may request an AMOC for the required actions in this proposed AD, using the procedures specified in paragraph (k)(1) of this proposed AD. The FAA has not revised this proposed AD in regard to this issue.

Request To Allow Any Revision Level of Service Information

DAL stated that Airbus AOT A35P010–17, Revision 00, did not refer to specific revision levels for the Rockwell Collins VSBs. Therefore, it assumed that any approved version was acceptable for operators to use for inspection procedures.

The FAA infers that the commenter is requesting clarification regarding revision levels of the Rockwell Collins VSBs for inspection procedures. Since AOT A35P010–17, Revision 01, does not specify a revision level for the Rockwell Collins VSBs, any revision is acceptable for compliance with the applicable requirements of this proposed AD. The FAA has not revised this proposed AD in regard to this issue.

Request for Clarification of Terminology

DAL requested that the proposed AD (in the NPRM) be revised to state that operators should do an inspection for loose retainer assemblies in the affected crew oxygen cylinder assemblies instead of an operational check. The commenter noted that ''operational check'' is used in EASA AD 2018–0245R1 (which is the MCAI referred to in the NPRM) but ''inspection'' is used in Airbus AOT A35P010–17, Revision 00, and the associated Rockwell Collins VSBs.

The FAA agrees to clarify. The referenced terminology has been revised in EASA AD 2019–0168, which refers to an ''inspection'' instead of an ''operational check.'' This terminology is now consistent among EASA AD 2019–0168, this proposed AD, Airbus AOT A35P010–17, Revision 01, and the associated Rockwell Collins VSBs. The FAA has revised the ''Related Service Information under 1 CFR part 51'' section of this proposed AD to clarify this information.

Request for Clarification of Airplane Groups

DAL requested that the proposed AD (in the NPRM) be revised to include instructions to operators stating that by removing an affected crew oxygen cylinder assembly an airplane can move from Group 1 to Group 2 for the purposes of compliance with the proposed AD (in the NPRM). The commenter stated that EASA AD 2018–0245R1 (referred to as the MCAI in the NPRM) identified a Group 1 airplane as an airplane that has an affected crew oxygen cylinder assembly installed and that by removing an affected crew oxygen cylinder assembly the airplane would then be identified as a Group 2 airplane. The commenter stated that the only compliance method would be to ensure an affected crew oxygen cylinder assembly is not reinstalled on that airplane so it can remain a Group 2 airplane. The commenter stated that this could create confusion for operators regarding which proposed requirements specified in the proposed AD (in the NPRM) would apply to a given airplane. The commenter also stated that operators could become confused regarding what is required to maintain compliance with the requirements in the proposed AD (in the NPRM) and how to report compliance.

The FAA agrees to clarify. As stated previously, the FAA has revised this proposed AD to refer to EASA AD 2019–0168, which addresses this issue by removing the definitions of the airplane

groups and allowing the installation of an affected crew oxygen cylinder assembly on any airplane, provided it is a serviceable part as defined in EASA AD 2019–0168. The FAA has not revised this proposed AD in regard to this issue.

Proposed Requirements of This SNPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0168 described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this AD.

Certain changes described above expand the scope of the NPRM. As a result, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this SNPRM.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA 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. As a result, EASA AD 2019–0168 will be incorporated by reference in the FAA final rule. This proposed AD would, therefore, require compliance with the provisions specified in EASA AD 2019–0168, except for any differences identified as exceptions in the regulatory text of this proposed 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 2019–0168 that is required for compliance with EASA AD 2019–0168 will be available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0016 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this proposed AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
172 work-hours × $85 per hour = $14,620	$6,940	$21,560	$280,280

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

According to the manufacturer, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in our cost estimate.

Authority for This Rulemaking

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

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

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

Regulatory Findings

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

For the reasons discussed above, I certify 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):

Airbus SAS: Docket No. FAA–2019–0016; Product Identifier 2018–NM–168–AD.

(a) Comments Due Date

The FAA must receive comments by December 23, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 and -1041 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

(e) Reason

This AD was prompted by reports of loss of retention of the regulator inlet filter retainer on certain crew oxygen cylinder assemblies. The FAA is issuing this AD to address loss of retention of the regulator inlet filter retainer on certain crew oxygen cylinder assemblies. This condition could lead to particle ingestion into the regulator during ground handling, possibly resulting in ignition/fire during system ground operational testing following crew oxygen cylinder (re)installation on an airplane.

(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 2019–0168, dated July 16, 2019 (''EASA AD 2019–0168'').

(h) Exceptions to EASA AD 2019–0168

(1) Where EASA AD 2019–0168 refers to its effective date this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2019–0168 does not apply to this AD.

(3) Replace the language in paragraph (2) of EASA AD 2019–0168 that states ''the instructions of the AOT'' with ''paragraph 4.2.2., Inspection Requirements, of the AOT.''

(i) No Reporting Required

Although the service information referenced in EASA AD 2019–0168 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) No Return of Parts Required

Although the service information referenced in EASA AD 2019–0168 specifies to return affected parts to the manufacturer, this AD does not include that requirement.

(k) 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 (l)(2) 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 Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC)*: For any service information referenced in EASA AD 2019–0168 that contains RC procedures and tests: Except as required by paragraph (k)(2) of this AD, RC procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(l) Related Information

(1) For information about EASA AD 2019–0168, 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*. You may view this EASA AD 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. EASA AD 2019–0168 may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0016.

(2) For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218.

Issued in Des Moines, Washington, on September 27, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–21880 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0862; Product Identifier 2019–NM–121–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. This proposed AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 23, 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 *https://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Examining the AD Docket

You may examine the AD docket on the internet at *https://*

www.regulations.gov by searching for and locating Docket No. FAA–2019–0862; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@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–2019–0862; Product Identifier 2019–NM–121–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, without change, to *https://www.regulations.gov,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact the agency receives about this NPRM.

Discussion

The FAA issued AD 2014–14–04, Amendment 39–17899 (79 FR 44672, August 1, 2014) (''AD 2014–14–04''), for certain The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes. AD 2014–14–04 requires revising the maintenance program to incorporate airworthiness limitations. AD 2014–14–04 resulted from a re-evaluation of certain doors and flaps based on their fatigue-critical nature. The FAA issued AD 2014–14–04 to address fatigue cracking of the principal structural elements, which could adversely affect the structural integrity of the airplane.

AD 2014–14–04 referred to Subsection B, Airworthiness Limitations—Structural Inspections, of Section 9, Airworthiness Limitations (AWLs) and Certification Maintenance Requirements (CMRs), D622T001–9, Revision July 2011, and Revision February 2014, of the Boeing 767 Maintenance Planning Data Document as the appropriate sources of service information for revising the maintenance program to incorporate airworthiness limitations.

Since the FAA issued AD 2014–14–04, the FAA has received a report indicating that certain inspections were confusing or difficult to accomplish. During a subsequent review of the airworthiness limitations required by AD 2014–14–04, the airworthiness limitations for multiple structurally significant items (SSIs) were found that contain significant errors or omissions, resulting in inadequate damage tolerance rating (DTR) values. The FAA determined the existing maintenance program does not provide adequate probability of detection for foreseeable fatigue cracking of SSIs because there have been multiple improvements to Boeing's damage tolerance methodology since the last significant update of the Boeing Model 767 AWL and DTR documents.

Inadequate AWL and DTR values in the maintenance or inspection program that reduce the probability of detection for foreseeable fatigue cracking of SSIs, if not addressed, could result in the loss of limit load capability of an SSI as well as loss of continued safe flight and landing of the airplane.

Relationship Between Proposed AD and AD 2014–14–04

This NPRM does not propose to supersede AD 2014–14–04. Rather, we have determined that a stand-alone AD is more appropriate to address the changes in the existing maintenance or inspection program. This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Accomplishment of the proposed actions would then terminate all requirements of AD 2014–14–04.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019. This service information describes airworthiness limitations for structural inspections and structural safe life limits among other limitations.

The FAA also reviewed Boeing 767–200/300/300F/400ER Damage Tolerance Rating (DTR) Check Form Document, D622T001–DTR, dated June 2019. This service information includes the DTR check forms and the procedure for their use.

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

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This proposed AD also would require sending the inspection results to Boeing Commercial Airplanes.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this proposed AD.

Differences Between This Proposed AD and the Service Information

Instructions for wing tank sealant removal prior to certain inspections and instructions to ensure sealant location limits are met were added in the July 2018 revision of Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01. These actions are to be verified at the time of the threshold specified in the document, however many airplanes will not have wing tank entry inspections for up to 6 years after the release of Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019. The FAA has determined that a grace period should be provided for those instructions to do certain actions; the grace period for these actions to be accomplished is at the next wing tank entry, but not to exceed 6 years from the effective date of the AD. The FAA has included this grace period in paragraph (h)(1) of this proposed AD.

Repairs made to any horizontal stabilizer pivot fitting lug (SSI 55–10–I13A), where the lug bore has been oversized, will require further evaluation to determine the applicable inspection interval to be incorporated, as specified in paragraph (h)(2) of this proposed AD.

Both Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019; and Boeing 767–200/300/300F/400ER Damage Tolerance Rating (DTR) Check Form Document, D622T001–DTR, dated June 2019; state to report to Boeing within 10 days of the finding. For this proposed AD, the FAA will allow 10 days from airplane return to service as specified in paragraph (h)(3) of this proposed AD to submit the report.

These differences have been coordinated with Boeing.

Costs of Compliance

The FAA estimates that this proposed AD affects 615 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Reporting	1 work-hour × $85 per hour = $85	$0	$85	$52,275

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 proposed AD is 2120–0056. The paperwork cost associated with this proposed 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 proposed AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Forth 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 proposed AD is issued in accordance with authority delegated by the Executive Director, Aircraft Certification Service, as authorized by FAA Order 8000.51C. In accordance with that order, issuance of ADs is normally a function of the Compliance and Airworthiness Division, but during this transition period, the Executive Director has delegated the authority to issue ADs applicable to transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2019–0862; Product Identifier 2019–NM–121–AD.

(a) Comments Due Date

The FAA must receive comments by December 23, 2019.

(b) Affected ADs

This AD affects AD 2014–14–04, Amendment 39–17899 (79 FR 44672, August 1, 2014) (''AD 2014–14–04'').

(c) Applicability

This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category, line number 1 through 1183 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls; 52, Doors;

53, Fuselage; 54, Nacelles/pylons; 55, Stabilizers; 57, Wings.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations (AWLs) are necessary. The FAA is issuing this AD to address inadequate AWL and damage tolerance rating (DTR) values in the maintenance or inspection program that reduce the probability of detection for foreseeable fatigue cracking of structurally significant items (SSIs). This condition, if not addressed, could result in the loss of limit load capability of an SSI as well as loss of continued safe flight and landing of the airplane.

(f) Compliance

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

(g) Maintenance or Inspection Program Revision

Within 24 months after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019; and Boeing 767–200/300/300F/400ER Damage Tolerance Rating (DTR) Check Form Document, D622T001–DTR, dated June 2019. Except as specified in paragraph (h) of this AD, the initial compliance time for doing the tasks is at the time specified in Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019; and Boeing 767–200/300/300F/400ER Damage Tolerance Rating (DTR) Check Form Document, D622T001–DTR, dated June 2019; or within 24 months after the effective date of this AD; whichever occurs later.

(h) Exceptions

(1) Where Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019, specifies compliance times (''thresholds'') for wing tank sealant removal and ensuring sealant location limits are met, these actions must be accomplished within the compliance times specified in Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019; or at the next wing tank entry, but no later than 6 years after the effective date of this AD; whichever occurs later.

(2) For any horizontal stabilizer pivot fitting lug (SSI 55–10–I13A), on which a lug bore oversize repair has been accomplished, obtain revised inspection intervals in accordance with the procedures specified in paragraph (l) of this AD.

(3) Where Boeing 767–200/300/300F/400ER Airworthiness Limitations (AWLs), D622T001–9–01, dated June 2019; and Boeing 767–200/300/300F/400ER Damage Tolerance Rating (DTR) Check Form Document, D622T001–DTR, dated June 2019; specify to submit reports within 10 days, those reports may be submitted within 10 days after the airplane is returned to service.

(i) No Alternative Actions or Intervals

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

(j) Terminating Action for AD 2014–14–04

Accomplishing the actions required by this AD terminates all requirements of AD 2014–14–04.

(k) 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 as required by this AD; the nature and extent of confidentiality to be provided, if any. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

(l) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs for repairs and alterations approved previously for AD 2003–18–10, Amendment 39–13301 (68 FR 53503, September 11, 2003) (''AD 2003–18–10''), and AD 2014–14–04 are approved as AMOCs for the corresponding actions specified in this AD. All other AMOCs for AD 2003–18–10 and AD 2014–14–04 are not approved as AMOCs for this AD.

(5) Repairs done before the effective date of this AD that meet the conditions specified in paragraphs (l)(5)(i), (ii), and (iii) of this AD are acceptable methods of compliance for the repaired area where the inspections of the baseline structure cannot be accomplished.

(i) The repair was approved under both 14 CFR 25.571 and 14 CFR 26.43(d) by The Boeing Company ODA that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings.

(ii) The repair approval provides an inspection program (inspection threshold, method, and repetitive interval).

(iii) Operators revised their maintenance or inspection program, as applicable, to include the inspection program (inspection threshold, method, and repetitive interval) for the repair.

(m) Related Information

(1) For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3524; email: *wayne.lockett@faa.gov*.

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

Issued in Des Moines, Washington, on October 29, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–24245 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Chapter II

[Docket No. CPSC–2019–0020]

Performance Requirements for Residential Gas Furnaces and Boilers; Notice of Reopening of Comment Period

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Reopening of comment period.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) voted to publish an advance notice of

proposed rulemaking (ANPR) in the **Federal Register** on August 19, 2019, concerning residential gas furnaces and boilers. The ANPR invited the public to submit written comments during a comment period that would close 60 days after the date of publication of the ANPR in the **Federal Register**. In response to a request for an extension, the Commission is reopening the comment period.

DATES: Submit comments by January 6, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2019–0020, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *www.regulations.gov*. Follow the instructions for submitting comments. The Commission does not accept comments submitted by electronic mail (email), except through *www.regulations.gov*. The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Written Submissions: Submit written submissions by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to: *www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If furnished at all, such information should be submitted in accordance with the instructions for written submissions above.

Docket: For access to the docket to read background documents or comments received, go to: *www.regulations.gov,* and insert the docket number CPSC–2019–0020, into the ''Search'' box, and follow the prompts.

SUPPLEMENTARY INFORMATION:

On August 9, 2019, the Commission voted to publish an ANPR in the **Federal Register**, to develop a rule to address the risk of injury and death associated with CO production and leakage from residential gas furnaces and boilers. The ANPR was published on August 19, 2019, with a 60-day comment period that closed on October 18, 2019. 84 FR 42847. The Commission issued the ANPR under the authority of the Consumer Product Safety Act (CPSA). On October 14, 2019, the Air-Conditioning, Heating, & Refrigeration Institute (AHRI) requested an extension of the comment period for an additional 60 days to provide stakeholders adequate time to respond to the ANPR. AHRI states that member companies are currently developing comments to submit on the ANPR. AHRI also notes the CSA/ANSI Cross-Functional Working Group on CO Sensor Detectors report is an agenda item during the upcoming Joint Technical Committee meeting on October 29, 2019, and that AHRI members would like to understand the Joint Technical Committee's decision on the report and proposed actions before finalizing their comments.

The Commission has considered this request and is reopening the comment period for an additional 60 days until January 6, 2020.

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2019–24284 Filed 11–6–19; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131071–18]

RIN 1545–BP20

Eligible Terminated S Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking provides rules regarding the definition of an eligible terminated S corporation (ETSC). In addition, these proposed regulations provide rules relating to distributions of money by an ETSC after the post-termination transition period (PTTP). Finally, these proposed regulations revise current regulations to extend the treatment of distributions of money during the PTTP to all shareholders of the corporation and to update and clarify the allocation of current earnings and profits to distributions of money and other property. These proposed regulations would affect certain C corporations and the shareholders of such corporations.

DATES: Comments and requests for a public hearing must be received by December 23, 2019.

ADDRESSES: Submit electronic submissions via the Federal Rulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–131071–18) by following the online instructions for submitting comments. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment received to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG–131071–18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–131071–18), Courier's Desk, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: Concerning proposed regulations §§ 1.481–5, 1.481–6, 1.1377–2, and 1.1377–3, Margaret Burow or Michael Gould at (202) 317–5279; concerning proposed regulations §§ 1.1371–1 and 1.1371–2, Aglaia Ovtchinnikova at (202) 317–6975, Kevin M. Jacobs at (202) 317–5332, or Margaret Burow or Michael Gould at (202) 317–5279; concerning proposed regulation § 1.316–2, Aglaia Ovtchinnikova at (202) 317–6975 or Kevin M. Jacobs at (202) 317–5332; concerning submissions and the hearing, Regina Johnson at (202) 317–6901 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Overview

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 481 and 1377 of the Internal Revenue Code (Code) and proposed regulations under section 1371 of the Code. Section 13543(a) and (b) of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2054, 2155 (2017) (TCJA), amended the Code to add subsection (d) to section 481, and subsection (f) to section 1371. Both section 481(d) and section 1371(f) are effective as of December 22, 2017.

II. Summary of PTTP and ETSC Period

Generally, a distribution by a C corporation to its shareholders with respect to their stock ownership is treated as a taxable dividend to the extent of the corporation's earnings and profits. See sections 301(c) and 316(a). However, following the termination of an S corporation's election made under section 1362 (S election), section 1371(e) allows shareholders of the

resulting C corporation to benefit from the corporation's former status as an S corporation with respect to distributions of money during the corporation's PTTP, which is generally the one-year period after the S election terminates. Specifically, during the PTTP, a distribution of money by the C corporation is characterized as a distribution from the corporation's accumulated adjustments account (AAA), as defined in § 1.1368–2(a)(1). The receipt of such a distribution is tax-free to the extent of the recipient's basis in its stock with respect to which it received the distribution, and is taxed as gain from the sale of property to the extent the distribution exceeds the recipient's basis in that stock. If the corporation exhausts its AAA during the PTTP, then subsequent distributions are subject to treatment under section 301. Without section 1371(e), shareholders of the former S corporation would be precluded from receiving distributions allocable to AAA.

Section 1371(f) extends the period during which the shareholders of a C corporation can benefit from AAA generated during such corporation's former status as an S corporation (ETSC period) by allowing a C corporation's distribution of money to which section 301 would otherwise apply (qualified distribution) to be sourced, in whole or in part, from AAA. Specifically, section 1371(f) provides that (i) the distributing ETSC's AAA is allocated to a qualified distribution, and (ii) the qualified distribution is chargeable to accumulated earnings and profits (AE&P), in the same ratio as the amount of such AAA bears to the amount of such AE&P (clauses (i) and (ii), collectively, ETSC proration). In enacting section 1371(f), Congress determined that ''it is important to provide rules to ease the transition from S corporation to C corporation for the affected taxpayers'' because, based on TCJA revisions to the Code, ''taxpayers that previously elected to be taxed as S corporations may prefer instead to be taxed as C corporations.'' H. Rept. 115–409, at 245 115th Cong. 1st Sess., (Nov. 14, 2017) (House Report).

Explanation of Provisions

I. Requirements To Qualify for Section 1371(f) Treatment

If a C corporation satisfies the ETSC qualification requirements, section 1371(f) provides special treatment for qualified distributions made by an ETSC during the ETSC period, which begins with the expiration of the PTTP and ends when the corporation exhausts its AAA.

A. ETSC Qualification Requirements

1. In General

In order for section 1371(f) to apply, the distributing corporation must be an ETSC. In conjunction with the enactment of section 1371(f), Congress enacted section 481(d), which includes the definition of an ETSC. Specifically, a C corporation qualifies as an ETSC if the following three requirements are satisfied. First, the corporation was an S corporation on December 21, 2017. Second, during the two-year period beginning on December 22, 2017, the S corporation revoked its S election (revocation requirement). Third, the owners of the stock of the corporation are the same owners (and in identical proportions) on December 22, 2017, and the date that the corporation made a revocation of its S election (shareholder identity requirement).

2. Revocation Requirement

In contrast to the PTTP, which applies regardless of how an S corporation's election terminates, section 1371(f) applies only if the S election is revoked (section 1362(d)(1)), which, under section 1362(d)(1)(B), requires the consent of shareholders holding more than 50 percent of the corporation's shares in the aggregate. Section 1362(d)(1) and its underlying regulations provide the sole means for an S corporation to revoke its S election. Pursuant to § 1.1362–6(a)(3), a valid revocation requires an S corporation to submit a written statement that the corporation revokes its S election. That revocation statement must set forth the number of shares of stock (including non-voting stock) issued and outstanding at the time of the revocation and must be accompanied by a separate written statement of shareholder consent. See § 1.1362–6(a)(3)(i), (b).

Generally, a revocation made on or before the 15th day of the third month of a taxable year is effective on the first day of that year, and an election made after that date is effective on the first day of the following taxable year. See section 1362(d)(1)(C) and § 1.1362–2(a)(2)(i). However, if the revocation specifies a date for revocation that is on or after the day on which the revocation is made, the revocation becomes effective on that specified date. See section 1362(d)(1)(D) and § 1.1362–2(a)(2)(ii). Therefore, under the proposed regulations, the revocation requirement would be satisfied if the revocation of an S election is validly made during the two-year period beginning on December 22, 2017, even if the effective date for the revocation occurs after the conclusion of that two-period.

3. Shareholder Identity Requirement

For a former S corporation to qualify as an ETSC, the owners of its stock must be the same owners (and in identical proportions) on the following two dates: (1) December 22, 2017, and (2) the date on which the S corporation made a revocation of its S election. However, certain events should not affect the shareholder identity requirement because such events would not change in substance the identity of the subject shareholder. Specifically, these proposed regulations identify five categories of stock transfers that do not result in an ownership change for purposes of section 481(d)(2)(B): (1) Transfers of stock between a shareholder and that shareholder's trust treated as wholly owned by that shareholder under subpart E of subchapter J of chapter 1; (2) transfers of stock between a shareholder and an entity owned by the shareholder that is disregarded as separate from its owner under § 301.7701–2(c)(2)(i) of the Procedure and Administration Regulations; (3) an election by a shareholder trust to be treated as part of a decedent's estate under section 645 or the termination of an election under that section; (4) a change in the status of a shareholder trust from one type of eligible S corporation shareholder trust described in section 1361(c)(2)(A) to another type of eligible S corporation shareholder trust; and (5) a transaction that includes more than one of the events described in (1) through (4).

While specifying transaction categories provides certainty to taxpayers, the Treasury Department and the IRS request comments regarding whether a principle-based rule would be more effective, as well as suggestions as to the rule's proposed operative language.

B. Requirement for Corporation to Have AAA

Section 1371(f) provides that AAA is allocated to a qualified distribution based on the ratio of AAA to AE&P. Thus, if an ETSC has no AAA, section 1371(f) has no application. In addition, as evidenced by the fact that Congress enacted section 1371(f) to ease the transition from S corporation status to C corporation status, the ETSC period is intended to be transitory in nature. Consequently, the Treasury Department and the IRS have determined that such a transition would naturally conclude once the C corporation's AAA balance reaches zero. In other words, an ETSC has an ETSC period only if the ETSC

has a AAA balance greater than zero at the end of its PTTP, and the ETSC period ends immediately after the qualified distribution that causes the C corporation's AAA balance to reach zero.

C. Conclusion of PTTP; Multiple PTTPs

Section 1377(b)(1) provides that a PTTP occurs in the following three circumstances. First, a PTTP may occur during the period starting on the day after the last day of the corporation's last taxable year as an S corporation and ending on the later of (i) the day that is one year later or (ii) the due date for filing the return for such last year as an S corporation (including extensions). Second, a PTTP may occur during the 120-day period beginning on the date of any determination pursuant to an audit of a taxpayer that follows the termination of the corporation's election and adjusts a subchapter S item that arose during the S period (intervening audit PTTP). Third, a PTTP may occur during the 120-day period beginning on the date of a determination that the corporation's election under section 1362(a) had terminated for a previous taxable year.

Section 1371(f) applies to certain distributions ''after the post-termination transition period.'' The Treasury Department and the IRS received a comment regarding intervening audit PTTPs and, accordingly, considered whether the ETSC period continues following an intervening audit PTTP that occurs during the ETSC period. Based on the overall purpose of these proposed regulations to ease the transition from S corporation status to C corporation status, the Treasury Department and the IRS have determined that the ETSC period should resume immediately following the conclusion of an intervening audit PTTP, if the ETSC continues to have a AAA balance greater than zero.

II. Mechanics of Section 1371(f)

A. Shareholders Eligible To Receive Qualified Distributions

By its terms, section 1371(f) does not require the recipients of qualified distributions to have been shareholders of the S corporation at the time of revocation, and no part of the House Report indicates a Congressional intent to impose such a limitation (no-newcomer rule) on such distributions. The Treasury Department and the IRS received a comment requesting guidance to clarify which shareholders are eligible to receive distributions from a corporation's AAA during the ETSC period. A no-newcomer rule would be inconsistent with Congressional intent to ease the transition of former S corporations to full C corporation status because such a no-newcomer rule would impede an ETSC's ability to exhaust its AAA. A no-newcomer rule also would impose an administrative burden on ETSCs and create complexity by requiring ETSCs to report distributions disparately depending on the recipient. See House Report at 245. Additionally, a rule allowing newcomers would be more consistent with treating the AAA as a corporate-level account.

In the absence of a no-newcomer rule, shareholders that were shareholders on the date that the corporation's S election revocation was made would continue to receive qualified distributions, whether or not there are new shareholders or changes in the historical S corporation shareholders' proportionate interests on or after such date. Moreover, new shareholders, whether eligible S corporation shareholders or not, that acquire stock of an ETSC on or after the date that the revocation was made may receive qualified distributions, all or a portion of which may be sourced from AAA. Such outcomes would best implement the plain language of section 1371(f) and the policy objective of easing the transition of affected taxpayers from S corporation status to C corporation status. Accordingly, these proposed regulations do not impose a no-newcomer rule with respect to the ETSC period.

B. Implementation of ETSC Proration

As discussed in Part II of the Background, section 1371(f) provides that (i) the distributing ETSC's AAA is allocated to a qualified distribution, and (ii) such qualified distribution is chargeable to the ETSC's AE&P, based on the ETSC proration. These proposed regulations would implement this provision in a manner designed to facilitate the ETSC's prompt distribution of AAA and full transition to C corporation status, and thereby ''ease the transition from S corporation to C corporation for the affected taxpayers.'' House Report at 245. Grounded in that policy, these proposed regulations (i) specify the time at which amounts of AAA and AE&P are determined for purposes of the ETSC proration, (ii) clarify the AAA and AE&P ratios used to implement the ETSC proration, and (iii) describe in detail the method of characterizing qualified distributions.

1. When To Determine the Amounts of AAA and AE&P for Purposes of ETSC Proration

The Treasury Department and the IRS considered when to measure the AAA and AE&P for purposes of the ETSC proration. The Treasury Department and the IRS considered a ''Snapshot Approach,'' under which the amounts of AAA and AE&P would be determined on a specified date (historical AAA and historical AE&P, respectively), resulting in the same ETSC proration being applied to all qualified distributions. The Treasury Department and the IRS also considered a ''Dynamic Approach,'' under which the amounts of AAA and AE&P would be recalculated before each qualified distribution.

These proposed regulations adopt the Snapshot Approach, with a special additional rule to facilitate distributions of AAA when the ETSC's historical AE&P has been exhausted and the ETSC still has AAA. See Part II.C.1 of this Explanation of Provisions. The Snapshot Approach would provide affected taxpayers with an easier transition to full subchapter C status. Under this approach, ETSCs generally would be required to calculate AAA and AE&P for purposes of the ETSC proration only once, as opposed to numerous times under the Dynamic Approach. Also, the Dynamic Approach could significantly delay shareholder access to the ETSC's AAA. While the amount of an ETSC's AAA could never increase during the ETSC period (other than by reason of a redetermination of AAA), such ETSC's AE&P would increase as the amount of any undistributed current earnings and profits is carried forward to the next taxable year.

For the Snapshot Approach, the Treasury Department and the IRS considered two possible determination dates: (1) The beginning of the day for which the revocation of an election under section 1362(a) is effective pursuant to section 1362(d)(1), and (2) immediately after the end of the PTTP. Under these proposed regulations, the determination date would be the beginning of the day on which the revocation of an election under section 1362(a) is effective. Determining the amount of AAA on this date, which can be readily achieved by referencing the ETSC's final Form 1120S, would avoid the complexity of determining the proper amount of historical AAA in the event of an intervening audit PTTP for distributions made after the initial PTTP and before the intervening audit PTTP. In addition, the ETSC and its shareholders would have greater

certainty during the PTTP as to the tax characterization of distributions to be made during the ETSC period under this approach. Reference to this determination date also would facilitate the receipt of AAA by the ETSC's shareholders as quickly as possible by maximizing the amount of AAA factored into the ETSC proration. Since S corporations with no subchapter C history will have no AE&P as of the beginning of the effective date of the revocation, using this determination date also would minimize the AE&P that is factored into the ETSC proration, as compared to determining AE&P immediately after the end of the PTTP. As a result, the use of this determination date would facilitate the corporation's transition to full subchapter C status.

The Treasury Department and the IRS request comments regarding the proposed regulations' adoption of the Snapshot Approach, in particular with respect to the timing of determining an ETSC's historical AAA and historical AE&P amounts, and whether such amounts should be adjusted by certain transactions, as well as any potential alternative approaches for computing the ETSC proration. For example, the Treasury Department and the IRS acknowledge that not all ETSCs may favor the approach with respect to timing that these proposed regulations adopt. In particular, an ETSC that makes no distributions of AAA and operates at a loss during its PTTP may prefer to determine its AAA and AE&P ratios immediately after the end of the PTTP. Determining the ratios on this later date would result in a lower historical AE&P amount, and therefore the percentage of the qualified distribution that could be characterized as a distribution of AAA would be greater when compared to the approach adopted by these proposed regulations.

2. ETSC Proration Based on Ratios Composed of Historical AAA and Historical AE&P

Section 1371(f) provides that AAA is allocated to a qualified distribution, and such distribution is chargeable to AE&P, in the same ratio as the amount of such AAA bears to the amount of such AE&P. Therefore, section 1371(f) requires an allocation of two distinct pools of an ETSC's historical earnings with respect to a qualified distribution (that is, AAA and AE&P). In order to clarify the calculation of AAA and AE&P allocated to qualified distributions, these proposed regulations provide two ratios for purposes of characterizing the portion of a qualified distribution that is sourced from AAA (AAA ratio) and from AE&P (AE&P ratio).

The numerator and denominator of the AAA ratio and the AE&P ratio are comprised of two factors: The ETSC's historical AAA and its historical AE&P. An ETSC's AAA ratio would be the fraction of which the numerator is its historical AAA, and the denominator is the sum of its historical AAA and its historical AE&P. An ETSC's AE&P ratio would be the fraction of which the numerator is its historical AE&P, and the denominator is the sum of its historical AAA and its historical AE&P. Generally, the amount of a qualified distribution sourced from AAA would be determined by multiplying the amount of the qualified distribution by the ETSC's AAA ratio. A parallel computation would be undertaken to determine the amount that is sourced from AE&P. Part II.C of this Explanation of Provisions describes the rules relating to the application of the ETSC proration to qualified distributions in greater detail.

3. Coordinating ETSC Proration With Sections 301 and 316

In constructing the mechanics of the ETSC proration, the Treasury Department and the IRS sought to harmonize the rules set forth in section 1371(f) with the general section 301(c) characterization and section 316 allocation rules that govern distributions by a C corporation with respect to its stock. Generally, a distribution by a C corporation with respect to its stock is characterized as a dividend (as defined in section 316), then as a return of stock basis, and finally any remaining amount as gain from the sale or exchange of property. See sections 301(a) and (c). In defining a dividend, section 316 provides that ''every distribution is made out of earnings and profits to the extent thereof, and from the most recently accumulated earnings and profits.'' Section 316(a)(2) (flush language). Section 1.316–2(a) provides that ''[i]n determining the source of a distribution, consideration should be given first[] to the earnings and profits of the taxable year . . . .'' Section 1.316–2(b) further provides that, if distributions during the taxable year consist only of money and exceed the amount of the C corporation's current earnings and profits (CE&P) for the taxable year, CE&P is allocated proportionately to such distributions, while AE&P is allocated on a ''first-come-first-served'' basis.

Section 1371(f), however, provides special rules with respect to qualified distributions that depart from the general section 301(c) characterization and section 316 allocation rules. From the perspective of sections 301 and 316, 1371(f) is thus an exception to those provisions. See section 301(a) (providing an exception for provisions contained in chapter 1 of subtitle A of title 26 of the Code); section 316(a) (providing an exception for provisions contained in subtitle A of title 26 of the Code). Specifically, section 1371(f) provides that, instead of characterizing a qualified distribution as a dividend as defined in section 316, first AAA ''shall be allocated to such [qualified] distribution, and the [qualified] distribution shall be chargeable to [AE&P], in the same ratio as the amount of such [AAA] bears to the amount of such [AE&P].'' The allocation of AAA ahead of CE&P, and the allocation of AE&P to a distribution ahead of CE&P, depart from the general characterization rules of section 301 and the general section 316 allocation rules

The Treasury Department and the IRS are aware that this special AE&P allocation rule could impact the normal allocation of AE&P, as well as CE&P, to non-qualified distributions by an ETSC, if an ETSC makes non-qualified and qualified distributions during the same taxable year. For example, the following could result when an ETSC makes a non-qualified distribution followed by a qualified distribution during its taxable year. First, the non-qualified distribution could be allocated an amount of AE&P less than the amount that otherwise would be required under the general section 316 allocation rules, because section 1371(f) would require that a portion of the ETSC's AE&P be allocated instead to the ''later-in-time'' qualified distribution. Second, because section 1371(f) would cause the ''earlier-in-time'' non-qualified distribution to be allocated a reduced amount of AE&P, the non-qualified distribution could be characterized differently than it otherwise would have been characterized absent section 1371(f) (that is, a characterization described in section 301(c)(2) or section 301(c)(3), rather than section 301(c)(1)).

With regard to the predictable impacts on the treatment and characterization of non-qualified distributions that result from Congress' specific inclusion of AE&P in section 1371(f)'s AAA allocation methodology, the Treasury Department and the IRS have determined that the exceptions set forth in sections 301(a) and 316(a) naturally extend to such consequences as well. Based on the language of these Code sections, as well as Congress' objective to ease affected taxpayers' transition from S corporation status to C corporation status, the proposed regulations provide a special sourcing rule (Section 1371(f) Priority Rule) for

qualified distributions, as described in detail in Part II.C of this Explanation of Provisions.

C. Character and Effect of Distributions During the ETSC Period

The Section 1371(f) Priority Rule essentially provides that, during the ETSC period, the rules of the ETSC proration under section 1371(f) apply before the rules of section 301 and 316. Thus, under the Section 1371(f) Priority rule, the ETSC proration first applies to qualified distributions during the taxable year. Then, the rules of section 301 and 316, as incorporated into the Section 1371(f) Priority Rule, apply to any non-qualified distributions as well as to any qualified distributions or portions thereof that are not fully accounted for by the ETSC proration (*i.e.,* because the corporation's AAA or AE&P are exhausted during the year).

The Treasury Department and the IRS acknowledge that the application of the Section 1371(f) Priority Rule, as set forth in these proposed regulations, departs from the allocation and characterization rules under sections 301 and 316 with which taxpayers and practitioners are familiar. The departure is greatest when an ETSC has both historical AAA and historical AE&P and makes both qualified and non-qualified distributions during the same taxable year. For ETSCs with historical AAA but no historical AE&P, which the Treasury Department and the IRS believe will be the most common situation, the departure is less significant and is the same as the departure that section 1371(e) requires for distributions of AAA during the PTTP. Immediately following the end of the taxable year in which the ETSC period ends, which occurs when the ETSC's AAA balance is reduced to zero, the normal rules of section 301 and section 316 apply as usual to all distributions. These proposed regulations are expected to generally reduce the length of the ETSC period and thus reduce the time during which the departure from the normal rules of sections 301 and 316 occurs.

The following summary provides a reference to taxpayers and practitioners for applying the Section 1371(f) Priority Rule to qualified and non-qualified distributions made during the taxable years of the ETSC period, including the taxable year in which the ETSC period ends.

1. Determination of the AAA Ratio and the AE&P Ratio

The Section 1371(f) Priority Rule applies the ETSC proration to each qualified distribution. To determine the ETSC proration, the AAA ratio and the AE&P ratio must first be calculated. An ETSC's AAA ratio is the fraction of which the numerator is its historical AAA and the denominator is the sum of its historical AAA and historical AE&P. Likewise, an ETSC's AE&P ratio is the fraction of which the numerator is its historical AE&P, and the denominator is the sum of its historical AAA and historical AE&P.

In general, the AAA ratio and the AE&P ratio do not change over the course of the ETSC period. However, if the application of the AE&P ratio to a qualified distribution reduces the ETSC's AE&P to zero, and the ETSC's historical AAA has not been exhausted, then the AAA ratio is one and the AE&P ratio is zero for the remainder of the year and all subsequent taxable years of the ETSC period. Additionally, if the ETSC's AE&P (which includes its historical AE&P) is less than or equal to zero as of the beginning of a taxable year (for example, due to non-qualified distributions or losses incurred during the prior taxable year) and the ETSC's historical AAA has not been exhausted, then the AAA ratio is one and the AE&P ratio is zero for the year and all subsequent taxable years of the ETSC period. These mechanics are responsive to the exhaustion of the ETSC's historical AE&P, and therefore accelerate the distribution of AAA by permitting the entirety of all subsequent qualified distributions to be sourced from the ETSC's AAA.

2. Identification of Qualified and Non-Qualified Distributions During Taxable Year

Application of the Section 1371(f) Priority Rule depends, in part, upon whether a distribution by an ETSC is a qualified or non-qualified distribution. As a result, for each taxable year of an ETSC, each distribution must be characterized as a qualified distribution or a non-qualified distribution before determining the characterization of such distribution under the Section 1371(f) Priority Rule.

3. Characterization and Consequences of Qualified Distributions

For each taxable year of the ETSC period, including the taxable year in which the ETSC period ends, the characterization of each qualified distribution must be determined prior to the characterization of each non-qualified distribution. The portion of a qualified distribution that is sourced from AAA is equal to the lesser of (i) the product of the qualified distribution and the AAA ratio, and (ii) the ETSC's AAA immediately before the qualified distribution. Such AAA-sourced portion of the qualified distribution reduces both the ETSC's AAA and the shareholder's adjusted stock basis, applying the principles of section 301(c)(2). If the amount of that AAA-sourced portion exceeds the shareholder's stock basis, the excess is treated as gain from the sale or exchange of property, regardless of whether the corporation has CE&P or AE&P available. If the amount sourced from AAA equals the balance of the ETSC's AAA before the qualified distribution, all subsequent distributions by the ETSC are treated in the manner provided in section 301(c). If the amount sourced from AAA is less than that balance, then any remaining AAA is available to be allocated to later qualified distributions during the taxable year. If any AAA remains after all qualified distributions for the taxable year have been accounted for, it is carried forward to the next taxable year of the ETSC.

The portion of a qualified distribution that is charged to AE&P is equal to the lesser of (i) the product of the qualified distribution and the AE&P ratio, and (ii) the ETSC's AE&P immediately before the qualified distribution. The ETSC's AE&P is reduced by the charged amount in accordance with section 312(a)(1). The ETSC's AE&P is reduced by the portion of the qualified distribution chargeable to AE&P prior to the application of the rules of sections 301 and 316, as incorporated into the Section 1371(f) Priority Rule, to any non-qualified distribution, regardless of whether the non-qualified distribution occurred prior to the qualified distribution. The amount of the qualified distribution that is charged to the ETSC's AE&P is included in the gross income of the shareholder as a dividend under section 301(c)(1).

4. Application of ETSC Proration to Excess Qualified Distributions

Any portion of a qualified distribution that is not initially accounted for by the ETSC proration is referred to as an ''excess qualified distribution.'' An excess qualified distribution arises when the ETSC no longer has AAA, AE&P, or both after initially applying the ETSC proration. If the initial application of the ETSC proration to a qualified distribution does not fully account for the amount of the distribution and the ETSC continues to have AAA, the Section 1371(f) Priority Rule requires that the ETSC proration be reapplied to the excess qualified distribution as if the excess qualified distribution were a separate qualified distribution using a AAA ratio of one

and an AE&P ratio of zero. See Part II.C.1 of this Explanation of Provisions.

5. Characterization and Consequences of Non-Qualified Distributions and Excess Qualified Distributions

The Section 1371(f) Priority Rule requires non-qualified distributions and excess qualified distributions (to the extent not characterized as a distribution of AAA) to be treated in the manner described in section 301(c). The Section 1371(f) Priority Rule requires that such treatment take into account the treatment of each non-qualified distribution and each excess qualified distribution made by the ETSC during the same taxable year.

6. Requests for Comments

The Treasury Department and the IRS evaluated several other approaches to implementing section 1371(f) and the rules that would be needed to coordinate those approaches with the rules of sections 301 and 316 before settling on the approach adopted in the Section 1371(f) Priority Rule. The Treasury Department and the IRS request comments regarding the advantages and disadvantages of the Section 1371(f) Priority Rule as well as other proposals that would help ease the transition of S corporation status to C corporation status. The Treasury Department and the IRS also request comments regarding the effect of section 381(a) transactions in which an ETSC is either the transferor or the acquiring corporation (including certain triangular acquisitions) as well as the effect of an ETSC electing to file a consolidated return or joining a consolidated group. The Treasury Department and the IRS further request comments on the effect of subchapter C transactions (including section 302(a) redemptions, section 355 transactions, and section 368 reorganizations) and the effect of a deemed distribution (including forgiveness of shareholder debt) on the ETSC's AAA balance.

III. Amendment of § 1.316–2 To Clarify Allocation of CE&P to Non-Cash Distributions

Section 316(a) provides that a dividend is a distribution of property made by a corporation to its shareholders out of its CE&P or AE&P, or both. Pursuant to § 1.316–2(a), in determining the source of a distribution under section 316(a), a corporation must first source the distribution from its CE&P before sourcing such distribution from AE&P. If the corporation's CE&P is sufficient to cover ''all the distributions'' made during the taxable year, then the entirety of each distribution is taxable as a dividend pursuant to the first sentence of § 1.316–2(b). If a corporation's distributions during the taxable year consist ''only of money'' and exceed CE&P, each distribution is allocated its ratable share of CE&P pursuant to the second sentence of § 1.316–2(b).

The reference to distributions that ''consist only of money'' has been in the second sentence of § 1.316–2(b) since that regulation was adopted in 1955. Section 1.316–2 was adopted shortly after the enactment of the Internal Revenue Code of 1954 (1954 Code), which contained several provisions relating to distributions of noncash property. A number of these provisions have since changed. In particular, section 311 of the 1954 Code provided that a distributing corporation generally did not recognize any gain or loss on the distribution of noncash property, and section 312 of the 1954 Code provided that the distributing corporation generally reduced its earnings and profits by the adjusted basis of the property distributed. At the same time, section 301(b) of the 1954 Code provided that the amount of a distribution of noncash property to a shareholder depended on the type of shareholder. Individual shareholders were treated as receiving a distribution equal to the fair market value of the property, while corporate shareholders were generally treated as receiving a distribution equal to the lesser of the property's fair market value or the distributing corporation's adjusted basis in the asset distributed. In light of these provisions, the 1955 promulgation of § 1.316–2 illustrated the consequences of the allocation of CE&P in the simplest fact pattern—when the distributions consist only of money.

Under current law, however, a distributing corporation recognizes gain on a section 301 distribution of appreciated noncash property. See section 311. The amount of a distribution of noncash property for purposes of shareholder taxation equals the property's fair market value, irrespective of whether the shareholder is an individual or a corporation. Additionally, section 316(a)(2) makes no distinction between distributions in cash and distributions of other property under section 301. Section 317(a), which section 301 cross-references for purposes of defining property, includes money, securities, and any other property, except a distributing corporation's own stock. Accordingly, the Treasury Department and the IRS do not believe that the language in the second sentence of § 1.316–2(b) should be interpreted as implying that under current law the application of the pro rata allocation rule for CE&P is limited to distributions made only in money. Cf. GCM 36138 (Jan. 15, 1975) (noting that ''[section] 316(a)(2) makes no qualitative distinction between distributions in cash and other distributions of property under [section] 301,'' and ''[t]hus, there is no basis under [section] 316(a)(2) for limiting the application of the rules under [§]1.316–2(b) to distributions made solely in money''). Therefore, in order to clarify that the pro rata allocation of CE&P applies to all section 301 distributions made during the taxable year, whether in cash or in kind, the proposed regulations would remove the words ''consist only of money and'' from the second sentence of paragraph (b).

IV. Amendment of § 1.1377–2 To Allow for New Shareholders During the PTTP

The last sentence of § 1.1377–2(b) limits the special treatment provided under section 1371(e)(1) (that is, the PTTP) solely to those shareholders who were shareholders of the S corporation at the time of termination or revocation of its S election. Because the rules pertaining to the PTTP and to the ETSC period serve the similar objective of easing the transition from S corporation status to C corporation status, the Treasury Department and the IRS have determined that these rules regarding newcomers should be consistent. Therefore, based on the rationale for rejecting a no-newcomer rule for the ETSC period, as set forth in Part II.A of this Explanation of Provisions, the Treasury Department and the IRS have determined that a no-newcomer rule should also not apply to the PTTP. The Treasury Department and the IRS request comments regarding this determination.

Proposed Applicability Dates

The regulations are proposed to apply to taxable years beginning after the date of publication of the Treasury decision adopting these regulations as final regulations in the **Federal Register**. However, the proposed regulations provide corporations with the option to apply the final rules in §§ 1.316–2, 1.481–5, 1.1371–1, 1.1371–2, and 1.1377–2 in their entirety, to the extent applicable, to taxable years that began on or before the date of publication of a Treasury decision adopting these rules as final regulations in the **Federal Register** and with respect to which the period described in section 6511(a) has not expired. If the corporation makes the choice described in the previous sentence, all shareholders of the corporation must report consistently.

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.

I. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations under sections 481(d), 1371(f), and 1377 of the Code will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act. Notwithstanding this certification, the Treasury Department and the IRS invite comments on the impact that these proposed regulations would have on small entities.

These proposed regulations generally affect corporations, and their shareholders, that convert from being taxed as an S corporation to being taxed as a C corporation. The Treasury Department and the IRS acknowledge that there is a substantial number of small entities that are S corporations that could convert to being taxed as a C corporation. According to the 2013 Corporate Income Tax Returns Complete Report (*https://www.irs.gov/pub/irs-soi/13coccr.pdf*), approximately 83 percent of S corporations had gross receipts under $1,000,000. However, the proposed regulations under section 1371(f) are limited to corporations that:

(i) Revoke their S elections;

(ii) Make their revocations during a specified two-year period beginning on December 22, 2017;

(iii) Have positive AAA at the conclusion of their PTTP; and

(iv) Have the same shareholders (and in identical proportions) on December 22, 2017, and the date the S election revocation is made (shareholder identity requirement).

Because these proposed regulations apply only to those S corporations that satisfy the criteria above, only a small subset of S corporations will be affected.

The U.S. Department of Treasury, Internal Revenue Service, Data Book 2018 (Data Book) (*https://www.irs.gov/pub/irs-soi/18databk.pdf*) reports that the IRS received approximately 5.1 million S corporation income tax returns in 2018. According to the Compliance Data Warehouse (CDW), between January 1, 2018, and December 31, 2018, 4,850 S corporations terminated their S elections. Of the 4,850 terminated S corporations:

(i) 286 corporations had more than $35 million in gross receipts;

(ii) 81 corporations had between $25–$35 million in gross receipts;

(iii) 161 corporations had between $15–$25 million in gross receipts; and

(iv) 3,011 corporations had less than $15 million, but at least $1 in gross receipts.

In addition, of those 4,850 terminated S corporations:

(i) 694 corporations reported no gross receipts; and

(ii) The remaining 617 did not file a final return after terminating their S election.

A revocation is one of the three methods by which a corporation may terminate its S election under section 1362(d). Proposed §§ 1.481–5, 1371–1, and 1371–2 apply only to those corporations that revoke their S election. The CDW does not identify how many of the 4,850 terminations were revocations. In the unlikely scenario that all 4,850 terminations were revocations, approximately 0.0951 percent of the 5.1 million S corporations in existence in 2018 may be affected by these proposed regulations. Extrapolating from the first-year data (January 1, 2018, to December 31, 2018) to the second half of the two-year period (January 1, 2019, to December 21, 2019) during which these proposed regulations are effective, it is possible another 4,850 former S corporations could be affected by these proposed regulations. Thus, these proposed regulations might only affect a total of 9,700 corporations. Assuming that the IRS again receives 5.1 million S corporation income tax returns for the 2019 tax year, these proposed regulations may affect approximately 0.1902 percent of all S corporations in existence in 2018 and 2019. The exact number may be lower because not all terminations are revocations, and a revocation only satisfies one of several criteria that cause these proposed regulations to be applicable. For these proposed regulations to be applicable, the corporation must also have a positive AAA balance at the conclusion of its PTTP and satisfy the shareholder identity requirement. Therefore, the number of affected corporations is likely to be lower.

The other proposed regulation in this notice of proposed rulemaking, proposed § 1.1377–2(b), generally applies to a corporation that terminates its S election with a positive AAA balance, regardless of when or how the termination occurs (see section 1362(d)). As a result, the change made by proposed regulation § 1.1377–2(b) to allow newcomer shareholders will affect a greater number of terminating S corporations than proposed regulation §§ 1.481–5, 1.1371–1, and 1.1371–2. Nevertheless, the number of corporations that terminate their S election remains minimal. According to the CDW, there were 2,798 S corporation terminations in 2015; 2,960 in 2016; 3,125 in 2017; and 4,850 in 2018. When comparing the number of terminating S corporations to the number of S corporation income tax returns filed each year, only a small fraction of S corporations will be affected.

In addition, based on published information from the Conference Report accompanying the Act, H.R. Rep. No. 115–446, at 688 (2017), and Bureau of Economic Analysis aggregate data, which were adjusted to reflect the tax burden of small businesses, the projected net tax proceeds from sections 481(d), 1371(f), and 1377 are estimated to affect only a small fraction of the total number of S corporations.

The Treasury Department and the IRS have determined that no additional burden will be associated with these proposed regulations. In particular, the collection of information necessary to comply with these proposed regulations is already required to be collected by previously existing statutory and regulatory requirements. Additionally, these proposed regulations apply only if an S corporation revokes its S election between December 22, 2017 and December 21, 2019, fulfills the shareholder identity requirement, and has a positive AAA balance at the conclusion of its PTTP. The proposed removal of § 1.1377–2(b)'s last sentence would reduce a taxpayer's compliance burden by eliminating the need to track shareholders during the PTTP.

For the reasons explained above, the Treasury Department and the IRS have determined that the final regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f), the notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

II. Paperwork Reduction Act

These proposed regulations do not require collection of any new or additional information pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

The Treasury Department and the IRS intend that the information necessary to apply these proposed regulations will be collected with the following forms that have been previously reviewed and

approved by the Office of Management and Budget (OMB) under the PRA:

(i) Form 1120–S, U.S. Income Tax Return for an S Corporation (OMB Control Number 1545–0123);

(ii) Schedule K–1 (Form 1120–S), Shareholder's Share of Income, Deductions, Credits, etc. (OMB Control Number 1545–0123);

(iii) Form 1120, U.S. Corporation Income Tax Return (OMB Control Number 1545–0123);

(iv) Form 5452, Corporate Report of Nondividend Distributions (OMB Control Number 1545–0123); and

(v) Form 1099–DIV, Dividends and Distributions (OMB Control Number 1545–0110).

Section 1362(e) requires a corporation that revoked or terminated its S election to file a return for its last taxable year as an S corporation on Form 1120–S. This filing requirement includes an eligible terminated S corporation (ETSC). Section 6037(b) and the regulations thereunder require every S corporation to maintain certain information, such as its shareholders' names, addresses, and other identifying information throughout the taxable year, in order to furnish its shareholders with the information necessary to complete their return (in other words, Schedule K–1). Because sections 1366(a) and 1377(a)(1) allocate an S corporation's items of income and loss to shareholders on a per-share, per-day basis, every S corporation effectively tracks its shareholders, and their respective ownership percentages, on a daily basis. The information that every S corporation currently collects to comply with the existing requirements of sections 1366(a), 1377(a)(1), and 6037(b) will be used to determine whether a corporation satisfies the shareholder identity requirement of proposed § 1.481–5(b)(3).

Any corporation that qualifies as an ETSC will refer to Schedule M–2 of its last filed Form 1120–S to calculate each of its AAA and AE&P ratios, within the meaning of proposed § 1.1371–1(a)(2)(vii), to determine its historical AAA and historical AE&P amounts. If an ETSC enters a closing agreement pursuant to a subsequent audit, it will adjust its historical AAA and historical AE&P amounts accordingly.

At the beginning of a corporation's ETSC period, an ETSC will also refer to Schedule M–2 of its last filed Form 1120–S to determine the balance of its accumulated adjustments account (AAA) at the end of its last tax year as an S corporation. If an ETSC makes no cash distributions during its post-termination transition period (PTTP), within the meaning of section 1377(b)(1)(A), then it will start its ETSC period with a AAA balance equal to the amount reported as the AAA balance at the end of the tax year on Schedule M–2 of its last filed Form 1120–S. If an ETSC makes cash distributions during its PTTP, then it will start its ETSC period with a AAA balance equal to the difference between the amount reported as the AAA balance at the end of the tax year on Schedule M–2 of its last filed Form 1120–S and the amount of cash distributions that the ETSC made during its PTTP.

Every domestic C corporation must file an income tax return on Form 1120, and attach Form 5452 if it makes a nondividend distribution to its shareholders. In particular, the instructions for Form 5452 require any corporation that makes a distribution under section 1371(f) to file a Form 5452. In any tax year in which an ETSC makes a qualified distribution, it is required to attach Form 5452 and report its AAA balance, the amount of AE&P at the beginning of the tax year, the amount of CE&P for the current tax year, and the amounts paid during the calendar year from earnings and profits and from ''other than earnings and profits.'' The information collected through Form 5452 is sufficient for an ETSC to apply these proposed regulations. In particular, the information collected through Form 5452 is sufficient for an ETSC to determine its AAA balance both before and after each qualified distribution, as well as determine the impact that each qualified distribution has on its CE&P and AE&P.

With respect to shareholders of ETSC stock, an ETSC is required (like any C corporation that makes a distribution to its shareholders) to provide a statement to its non-corporate recipient shareholders that reports the amounts characterized as a dividend and nondividend distribution on Form 1099–DIV. Form 1099–DIV will inform an ETSC's shareholders of the amount that constitutes a dividend subject to section 301(c)(1) and the amount that constitutes a nondividend distribution. Distributions allocable to AAA will be reported to recipient shareholders as a nondividend distribution.

The Treasury Department and the IRS do not anticipate modifying the scope of the information gathered on the aforementioned forms.

Modest burden estimate revisions are anticipated for proposed regulations under § 1.1377–2. Specifically, the proposed removal of § 1.1377–2(b)'s last sentence would reduce a taxpayer's collection burden by eliminating the need to track shareholders during the PTTP. Changes to these burden estimates will be made in accordance with the PRA in the annual review procedure for information collections under OMB Control Number 1545–0123.

These proposed regulations are estimated to affect a total of 9,700 corporations, or 0.1902% of all S corporations in existence in 2018 and 2019. Regarding proposed regulations §§ 1.481–5, 1.481–6, 1.1371–2, and 1.1371–3, the exact number might be lower because the 9,700 is extrapolated from data and projections of S corporation terminations, not the subset revocations, and to qualify as an ETSC the corporation must also have a positive AAA balance at the conclusion of its PTTP and satisfy the shareholder identity requirement.

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 OMB.

III. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2019, that threshold is approximately $164 million. This rule does not include any mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

IV. Executive Order 13132: Federalism

Executive Order 13132 (entitled ''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 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.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble

under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed rules, and specifically on the issues identified in Part I.A.3; in Parts II.B.1 and II.C.6; and in Part IV of this Explanations of Provisions section. All comments will be made available at *http://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, then notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Margaret Burow and Michael Gould of the Office of Associate Chief Counsel (Passthroughs and Special Industries), and Aglaia Ovtchinnikova and Kevin M. Jacobs of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order for § 1.481–6 to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.481–6 is also issued under 26 U.S.C. 481.

* * * * *

§ 1.316–2 [Amended]

Par. 2. Section 1.316–2 is amended by removing ''consist only of money and'' from the second sentence of paragraph (b).

§ 1.481–5 [Redesignated as § 1.481–6]

Par. 3. Section 1.481–5 is redesignated as § 1.481–6.

Par. 4. Add new § 1.481–5 to read as follows:

§ 1.481–5 Eligible terminated S corporation.

(a) *Scope.* Section 481(d)(2) and this section provide rules relating to the qualification of a corporation as an eligible terminated S corporation (ETSC). Paragraph (b) of this section sets forth the requirements a corporation must meet to qualify as an ETSC. Paragraph (c) of this section describes certain transfers and other events that are disregarded for purposes of determining whether a corporation qualifies as an ETSC. Paragraph (d) of this section contains examples illustrating the rules of this section.

(b) *ETSC qualification.* For a C corporation to qualify as an ETSC, it must satisfy the following requirements:

(1) The corporation must have been an S corporation on December 21, 2017;

(2) During the 2-year period beginning on December 22, 2017, the corporation must have made a valid revocation of its S election under section 1362(d)(1) and the regulatory provisions in this part under section 1362 of the Code (Revocation); and

(3) Except as provided in paragraph (c) of this section, the owners of the shares of stock of the corporation must be the same (and in identical proportions) on both:

(i) December 22, 2017; and

(ii) The day on which the Revocation is made.

(c) *Certain disregarded events.* The following events are disregarded for purposes of determining whether the requirement in paragraph (b)(3) of this section is satisfied:

(1) Transfers of stock between a shareholder and that shareholder's trust treated as wholly owned by that shareholder under subpart E of subchapter J of chapter 1 of the Code;

(2) Transfers of stock between a shareholder and an entity owned by that shareholder which is disregarded as separate from its owner under § 301.7701–2(c)(2)(i) of this chapter;

(3) An election by a shareholder trust to be treated as part of a decedent's estate under section 645 or the termination of an election under that section;

(4) A change in the status of a shareholder trust from one type of eligible S corporation shareholder trust described in section 1361(c)(2)(A) to another type of eligible S corporation shareholder trust; for example, a trust to which the shares of stock were transferred pursuant to the terms of a will (testamentary trust) described in section 1361(c)(2)(A)(iii) which elects to become an electing small business trust described in section 1361(c)(2)(A)(v) and (e); and

(5) A transaction that includes more than one of the events described in this paragraph (c).

(d) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this paragraph (d), as of December 1, 2017, X is a calendar year S corporation with 100 shares of stock outstanding that is owned equally by unrelated individuals A and B. Pursuant to section 1362(d)(1) and §§ 1.1362–2 and 1.1362–6, X made a valid revocation of its S election on March 15, 2019, effective on January 1, 2019. At all times, X has a single class of stock outstanding. The examples describe all relevant transactions involving the X stock from December 1, 2017 until March 15, 2019.

(1) *Example 1*—(i) *Facts.* On June 5, 2018, A contributed 20 of its shares of X stock to Y, a wholly owned limited liability company that is disregarded as an entity separate from A pursuant to § 301.7701–2(c)(2)(i) of this chapter. On June 14, 2018, A contributed all of its interest in Y to Trust, which was a revocable trust treated as a wholly owned grantor trust of A pursuant to sections 671 and 676. On December 27, 2018, B sold 10 shares of its X stock to C, an unrelated person.

(ii) *Analysis.* X is an ETSC if it satisfies the requirements of paragraph (b) of this section.

(A) *S corporation.* X was an S corporation on December 21, 2017. Therefore, X satisfies the requirement of paragraph (b)(1) of this section.

(B) *Date of revocation.* X made a valid revocation of its S election pursuant to section 1362(d)(1) on March 15, 2019, which is within the 2-year period specified in paragraph (b)(2) of this section. Therefore, X satisfies the requirement of paragraph (b)(2) of this section.

(C) *Ownership.* For purposes of the requirement in paragraph (b)(3) of this section, the relevant dates are: December 22, 2017, and March 15, 2019 (the date X made a revocation of its S corporation status).

(*1*) *A's ownership interest.* As of December 22, 2017, A owned 50 shares of the outstanding shares of X stock. On June 5, 2018, A contributed 20 of its shares of X stock to Y (Transfer). On June 14, 2018, A contributed all of its interest in Y to Trust (Contribution). Both the Transfer and the Contribution are disregarded for purposes of determining whether the requirement of paragraph (b)(3) of this section is satisfied. See paragraphs (c)(2) and (1) of this section, respectively. Therefore, A owns 50 shares of the outstanding stock of X on March 15, 2019.

(*2*) *B's ownership interest.* As of December 22, 2017, B owned 50 shares of the outstanding shares of X stock. On December 27, 2018, B sold 10 shares to C. Therefore, B owns 40 shares of the outstanding stock of X on March 15, 2019.

(*3*) *C's ownership interest.* As of December 22, 2017, C owned no shares of X stock. On December 27, 2018, C purchased 10 shares from B. Therefore, C owns 10 shares of the outstanding stock of X on March 15, 2019.

(*4*) *Failure to satisfy the requirement in paragraph (b)(3) of this section.* As described in paragraphs (d)(1)(ii)(C)(*2*) and (*3*) of this section, B's and C's interest in X were not in the same proportions on December 22, 2017, and March 15, 2019. Therefore, X does not

satisfy the requirement of paragraph (b)(3) of this section and does not qualify as an ETSC.

(iii) *Restoration of interests prior to end of PTTP.* If C transferred its shares of X stock back to B on February 1, 2019, then on December 22, 2017, and March 15, 2019, A and B will have owned 50 shares of the outstanding stock of X. Therefore, X satisfies the requirement of paragraph (b)(3) of this section and qualifies as an ETSC.

(2) *Example 2*—(i) *Facts.* The facts are the same as in paragraph (d)(1)(i) of this section (the facts in *Example 1*), except that B sold 10 shares of its X stock to C on December 18, 2017, in addition to the sale of 10 shares of X stock on December 27, 2018.

(ii) *Analysis.* The analysis in paragraphs (d)(1)(ii)(A) and (B) of this section remains the same regarding the requirements of paragraphs (b)(1) and (2) of this section. With respect to the requirement of paragraph (b)(3) of this section, on December 22, 2017, A owned 50%, B owned 40%, and C owned 10% of the outstanding stock of X. As in paragraph (d)(1)(ii)(C)(*1*) of this section, the Transfer and the Contribution are disregarded for purposes of determining whether the requirement of paragraph (b)(3) of this section is satisfied. Therefore, on March 15, 2019, A owned 50% (50 shares), B owned 30% (30 shares), and C owned 20% (20 shares) of the outstanding shares of X. Even though A, B, and C owned shares of X on December 22, 2017, B's and C's proportionate ownership interest of X stock was not the same on December 22, 2017 and March 15, 2019. Therefore, X does not satisfy the requirement of paragraph (b)(3) of this section and does not qualify as an ETSC.

(3) *Example 3*—(i) *Facts.* The facts are the same as in paragraph (d)(1)(i) of this section (the facts in *Example 1*), except that X made a valid revocation of its S election on November 1, 2019, effective on January 1, 2020.

(ii) *Analysis.* The analysis in paragraphs (d)(1)(ii)(A) through (C) of this section remains the same regarding the requirements of paragraphs (b)(1) through (3) of this section, except that the relevant dates are: December 22, 2017, and November 1, 2019 (the date X made a revocation of its S corporation status). Although the effective date of X's revocation of its S election (January 1, 2020) occurs after the conclusion of the 2-year period specified in paragraph (b)(2) of this section, it is irrelevant for purposes of determining whether the requirements of paragraphs (b)(2) and (3) of this section are satisfied.

■ **Par. 5.** Newly redesignated § 1.481–6 is amended by revising the section heading and adding three sentences at the end of the paragraph to read as follows:

§ 1.481–6 Applicability date.

* * * The rules of § 1.481–5 generally apply to taxable years beginning after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**]. However, corporations may choose to apply the rules in §§ 1.316–2, 1.481–5, 1.1371–1, 1.1371–2, and 1.1377–2 in their entirety, to the extent applicable, to taxable years that began on or before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**] and with respect to which the period described in section 6511(a) has not expired. If the corporation makes the choice described in the previous sentence, all shareholders of the corporation must report consistently.

■ **Par. 6.** Sections 1.1371–1 and 1.1371–2 are added to read as follows:

§ 1.1371–1 Distributions of money by an eligible terminated S corporation.

(a) *Scope and definitions*—(1) *Scope.* This section provides rules relating to qualified distributions (as defined in paragraph (a)(2)(xii) of this section) and distributions to which section 301 applies during each taxable year of the ETSC period (as defined in paragraph (a)(2)(vii) of this section), including the taxable year in which the ETSC period ends. If the ETSC (as defined in paragraph (a)(2)(vi) of this section) does not make any qualified distributions during a taxable year, then no distribution by the ETSC is governed by section 1371(f) or this section. Paragraph (a)(2) of this section contains definitions that apply for purposes of this section. Paragraph (b) of this section contains rules regarding the characterization of a qualified distribution. Paragraph (c) of this section contains rules regarding the characterization of any excess qualified distribution (as defined in paragraph (a)(2)(viii) of this section) and non-qualified distribution (as defined in paragraph (a)(2)(xi) of this section) during each taxable year of the ETSC period, including the taxable year in which the ETSC period ends. Paragraph (d) of this section contains examples illustrating the rules of this section. Paragraph (e) of this section contains the applicability date of this section.

(2) *Definitions.* The following definitions apply for purposes of this section—

(i) *AAA.* The term *AAA* means the accumulated adjustments account, within the meaning of section 1368(e)(1)(A) and § 1.1368–2(a)(1).

(ii) *AAA ratio.* Except as provided in this paragraph (a)(2)(ii) or paragraph (b)(3)(iv) of this section, the term *AAA ratio* means the fraction of which the numerator is historical AAA and the denominator is the sum of historical AAA and historical AE&P. Notwithstanding the preceding sentence, if the AE&P of the ETSC is less than or equal to zero as of the beginning of a taxable year, then the AAA ratio is one for such year and all subsequent taxable years of the ETSC period.

(iii) *AE&P.* The term *AE&P* means earnings and profits described in section 316(a)(1).

(iv) *AE&P ratio.* Except as provided in this paragraph (a)(2)(iv) or paragraph (b)(3)(iv) of this section, the term *AE&P ratio* means the fraction of which the numerator is historical AE&P, and the denominator is the sum of historical AAA and historical AE&P. Notwithstanding the preceding sentence, if the AE&P of the ETSC is less than or equal to zero as of the beginning of a taxable year, then the AE&P ratio is zero for such year and all subsequent taxable years of the ETSC period.

(v) *CE&P.* The term *CE&P* means earnings and profits that are described in section 316(a)(2).

(vi) *ETSC.* The term *ETSC* means an eligible terminated S corporation, within the meaning of section 481(d) and § 1.481–5.

(vii) *ETSC period.* In general, the term *ETSC period* means any taxable year, or portion thereof, of an ETSC beginning on the first day after the post-termination period within the meaning of section 1377(b)(1)(A) and ending on the date on which the ETSC's AAA balance is zero. Additionally, an ETSC does not have an ETSC period if the ETSC's AAA balance is not greater than zero at the end of its post-termination transition period. See § 1.1371–2 for rules governing the impact of a post-termination period, within the meaning of section 1377(b)(1)(B), on the ETSC period.

(viii) *Excess qualified distribution.* The term *excess qualified distribution* means the portion of a qualified distribution that is not characterized pursuant to paragraph (b)(2) or (3) of this section.

(ix) *Historical AAA.* The term *historical AAA* means the AAA of the ETSC as of the beginning of the day on which the revocation of an election under section 1362(a) is effective pursuant to section 1362(d)(1).

(x) *Historical AE&P.* The term *historical AE&P* means the AE&P of the ETSC as of the beginning of the day on which the revocation of an election under section 1362(a) is effective pursuant to section 1362(d)(1). For purposes of the preceding sentence, if the ETSC's historical AE&P is less than zero, then the historical AE&P is treated as zero.

(xi) *Non-qualified distribution.* The term *non-qualified distribution* means a distribution to which section 301 applies, which is not a qualified distribution.

(xii) *Qualified distribution.* The term *qualified distribution* means a distribution of money by an ETSC

during the ETSC period to which, absent application of section 1371(f) and this section, section 301 would apply.

(b) *Characterization of qualified distribution*—(1) *In general.* Paragraph (b)(2) of this section provides rules regarding the determination of the amount of a qualified distribution that is sourced from AAA and the corollary effects of such a characterization. Paragraph (b)(3) of this section provides rules regarding the determination of the amount of a qualified distribution that is sourced from AE&P and the corollary effects of such a characterization. Paragraph (b)(4) of this section provides rules regarding the characterization of an excess qualified distribution as a separate qualified distribution. The rules in paragraphs (b)(2) through (4) of this section are applied before the application of paragraph (c) of this section.

(2) *Distribution of AAA*—(i) *Amount.* The portion of a qualified distribution that is sourced from the ETSC's AAA is equal to the lesser of:

(A) The product of the qualified distribution and the AAA ratio; and

(B) The ETSC's AAA immediately before the qualified distribution.

(ii) *Reduction or elimination of ETSC's AAA.* The ETSC's AAA is reduced by the amount of the distribution described in paragraph (b)(2)(i) of this section. If, with respect to a qualified distribution, the amount described in paragraph (b)(2)(i)(A) of this section equals or exceeds the amount described in paragraph (b)(2)(i)(B) of this section, then the rules in this paragraph (b) do not apply to any subsequent distributions by the ETSC. Instead, the subsequent distributions are treated in the manner provided in paragraph (c) of this section.

(iii) *Effect on the shareholder.* The amount described in paragraph (b)(2)(i) of this section is applied against and reduces the shareholder's adjusted basis of the shares of stock with respect to which the distribution is made under the principles of section 301(c)(2). If the application of the amount described in paragraph (b)(2)(i) of this section would result in a reduction of basis that exceeds the shareholder's adjusted basis of any share of stock with respect to which the distribution is made, such excess is treated as gain from the sale or exchange of property. The reduction of the shareholder's basis described in this paragraph (b)(2)(iii) with respect to a qualified distribution occurs prior to the application of paragraph (c) of this section to the excess qualified distribution, if any, with respect to such qualified distribution.

(3) *Distribution of AE&P*—(i) *Amount.* This paragraph (b)(3) applies if the ETSC's AE&P ratio is greater than zero. If this paragraph (b)(3) applies, the portion of a qualified distribution that is sourced from the ETSC's AE&P is equal to the lesser of:

(A) The product of the qualified distribution and the AE&P ratio; and

(B) The ETSC's AE&P immediately before the qualified distribution. For purposes of the preceding sentence, if the ETSC's AE&P immediately before the qualified distribution is less than zero, then the ETSC's AE&P is treated as zero.

(ii) *Effect on ETSC's AE&P.* The ETSC's AE&P is reduced, as described in section 312(a)(1), by the amount of the distribution described in paragraph (b)(3)(i) of this section. The AE&P reduction described in this paragraph occurs prior to the application of paragraph (c) of this section, even if a distribution to which paragraph (c) of this section applies (regarding excess qualified distributions and non-qualified distributions) occurs earlier in time than the qualified distribution to which this paragraph (b)(3)(ii) applies.

(iii) *Effect on the shareholder.* The amount of the qualified distribution that is sourced from the ETSC's AE&P described in paragraph (b)(3)(i) of this section is included in the gross income of the shareholder as a dividend under section 301(c)(1).

(iv) *Adjustment to the AAA ratio and the AE&P ratio.* After the application of paragraph (b)(3)(ii) of this section, if the ETSC's AE&P is zero and the ETSC's AAA is greater than zero, then the ETSC's AAA ratio is one and the ETSC's AE&P ratio is zero for all subsequent qualified distributions during:

(A) That taxable year; and

(B) All subsequent taxable years of the ETSC period.

(4) *Excess qualified distribution treated as a separate qualified distribution*—(i) *In general.* After the application of paragraph (b)(2)(ii) of this section with respect to a qualified distribution, if the ETSC has any remaining AAA, then any amount of excess qualified distribution, with respect to such qualified distribution, is treated as a separate qualified distribution and is analyzed pursuant to paragraph (b) of this section.

(ii) *No change in characterization of previously characterized portion of qualified distribution.* Paragraph (b)(4)(i) will not change the characterization of any portion of a qualified distribution that was previously characterized pursuant to paragraphs (b)(2) and (3) of this section and will reflect the application of paragraphs (b)(2) and (3) of this section to the portion of the qualified distribution previously characterized.

(c) *Characterization of excess qualified distribution and non-qualified distributions.* After application of paragraph (b) of this section, the excess qualified distributions, if any, and non-qualified distributions, if any, are treated in the manner provided in sections 301(c) and 316.

(d) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this paragraph (d), X is a calendar year S corporation with a single share of stock outstanding. A, an individual, purchased its share of X stock prior to December 22, 2017 and, except as otherwise indicated, never contributed any amounts to X's capital. A remained the sole shareholder of X when X made a valid revocation on March 15, 2018, pursuant to section 1362(d)(1) and § 1.1362–2 and 1.1362–6, of its S election and when that election became effective on January 1, 2018. X qualified as an ETSC pursuant to § 1.481–5(b) and its ETSC period began on January 1, 2019. Additionally, X did not make any distributions during its post-termination transition period, within the meaning of section 1377(b)(1)(A). Furthermore, A remains the sole shareholder of X at the time of the distribution(s) described.

(1) *Example 1: Historical AE&P is zero*—(i) *Facts.* At the beginning of January 1, 2018, X had AAA of $100 and AE&P of $0. During 2018, X had $300 of CE&P and made no distributions. At the beginning of January 1, 2019, X has AAA of $100 and AE&P of $300, and A's adjusted basis in its share of X stock is $460. During 2019, the only distribution that X makes is a $60 distribution of money to A on December 27. X's CE&P during 2019 is $150, without diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Calculation of AAA ratio and AE&P ratio.* Pursuant to paragraphs (a)(2)(ix) and (x) of this section, respectively, X's historical AAA and X's historical AE&P are determined as of the beginning of January 1, 2018, the beginning of the day on which the revocation of X's election under section 1362(a) is effective pursuant to section 1362(d)(1). Accordingly, X's historical AAA is $100 and X's historical AE&P is $0. Therefore, X's AAA ratio is 1 ($100/($100 + $0)), and X's AE&P ratio is zero ($0/($100 + $0)).

(B) *Characterization of distribution.* Pursuant to paragraph (a)(2)(xii) of this section, the $60 distribution on December 27, 2019, is a qualified distribution because it is a distribution of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section.

(C) *Analysis of qualified distribution*—(*1*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the qualified distribution that is sourced from

AAA is equal to the lesser of: The product of the qualified distribution and the AAA ratio ($60 × 1, or $60), and X's AAA immediately before the qualified distribution ($100). Therefore, $60 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $60 to $40. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $60 to $400.

(*2*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: The product of the qualified distribution and the AE&P ratio ($60 × 0, or $0), and X's AE&P immediately before the qualified distribution ($300). Therefore, $0 is sourced from AE&P.

(2) *Example 2: Qualified distributions with both historical AAA and historical AE&P*—(i) *Facts.* At the beginning of January 1, 2018, X had AAA of $200 and AE&P of $100. During 2018, X had $0 of CE&P and made no distributions. At the beginning of January 1, 2019, X has AAA of $200 and AE&P of $100, and A's adjusted basis in its share of X stock is $500. During 2019, X makes a $90 distribution of money on February 9 and a $150 distribution of money on June 5. X's CE&P during 2019 is $500, without diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Calculation of AAA ratio and AE&P ratio.* Pursuant to paragraphs (a)(2)(ix) and (x) of this section, respectively, X's historical AAA and X's historical AE&P are determined as of the beginning of January 1, 2018, the beginning of the day on which the revocation of X's election under section 1362(a) is effective pursuant to section 1362(d)(1). Accordingly, X's historical AAA is $200 and X's historical AE&P is $100. Therefore, X's AAA ratio is 0.67 ($200/($200 + $100)), and X's AE&P ratio is 0.33 ($100/($200 + $100)).

(B) *Characterization of distributions.* Pursuant to paragraph (a)(2)(xii) of this section, the $90 distribution on February 9, 2019, and the $150 distribution on June 5, 2019, are both qualified distributions because they are distributions of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section.

(C) *Analysis of qualified distributions*—(*1*) *February 9, 2019 distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the qualified distribution that is sourced from AAA is equal to the lesser of: The product of the qualified distribution and the AAA ratio ($90 × 0.67, or $60), and X's AAA immediately before the qualified distribution ($200). Therefore, $60 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $60 to $140. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $60 to $440.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: The product of the qualified distribution and the AE&P ratio ($90 × 0.33, or $30), and X's AE&P immediately before the qualified distribution ($100). Therefore, $30 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $30 to $70. Pursuant to paragraph (b)(3)(iii) of this section, the $30 distribution is characterized as a dividend.

(*2*) *June 5, 2019 distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the qualified distribution that is sourced from AAA is equal to the lesser of: The product of the qualified distribution and the AAA ratio ($150 × 0.67, or $100), and X's AAA immediately before the qualified distribution ($140). Therefore, $100 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $100 to $40. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $100 to $340.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: The product of the qualified distribution and the AE&P ratio ($150 × 0.33, or $50), and X's AE&P immediately before the qualified distribution ($70). Therefore, $50 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $50 to $20. Pursuant to paragraph (b)(3)(iii) of this section, the $50 distribution is characterized as a dividend.

(3) *Example 3: Limitation on amount characterized as AAA*—(i) *Facts.* At the beginning of January 1, 2018, X had AAA of $100 and AE&P of $300. During 2018, X had $280 of CE&P and made no distributions. At the beginning of January 1, 2019, X has AAA of $100 and AE&P of $580, and A's adjusted basis in its share of X stock is $450. During 2019, the only distribution that X makes is a $500 distribution of money to A on October 5. X's CE&P during 2019 is $150, without diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Calculation of AAA ratio and AE&P ratio.* Pursuant to paragraphs (a)(2)(ix) and (x) of this section, respectively, X's historical AAA and X's historical AE&P are determined as of the beginning of January 1, 2018, the beginning of the day on which the revocation of X's election under section 1362(a) is effective pursuant to section 1362(d)(1). Accordingly, X's historical AAA is $100 and X's historical AE&P is $300. Therefore, X's AAA ratio is 0.25 ($100/($100 + $300)), and X's AE&P ratio is 0.75 ($300/($100 + $300)).

(B) *Characterization of distribution.* Pursuant to paragraph (a)(2)(xii) of this section, the $500 distribution on October 5, 2019, is a qualified distribution because it is a distribution of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section.

(C) *Analysis of qualified distribution*—(*1*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the qualified distribution that is sourced from AAA is equal to the lesser of: The product of the qualified distribution and the AAA ratio ($500 × 0.25, or $125), and X's AAA immediately before the qualified distribution ($100). Therefore, $100 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $100 to $0. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $100 to $350.

(*2*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: The product of the qualified distribution and the AE&P ratio ($500 × 0.75, or $375), and X's AE&P immediately before the qualified distribution ($580). Therefore, $375 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $375 to $205. Pursuant to paragraph (b)(3)(iii) of this section, the $375 distribution is characterized as a dividend.

(D) *Effect of qualified distribution on ETSC period.* Pursuant to paragraph (a)(2)(vii) of this section, X's ETSC period ends because X's AAA balance is zero following the October 5, 2019 distribution.

(E) *Analysis of excess qualified distribution*—(*1*) *Amount of excess qualified distribution.* Pursuant to paragraph (a)(2)(viii) of this section, the amount of the excess qualified distribution is $25, the portion of the qualified distribution ($500) not characterized pursuant to paragraph (b)(2) or (3) of this section ($100 AAA distribution + $375 AE&P distribution).

(*2*) *Characterization of excess qualified distribution.* Paragraph (b)(4) of this section does not apply to the excess qualified distribution because X's AAA balance is zero after the application of paragraph (b)(2)(ii) of this section (see paragraph (d)(3)(ii)(C)(*1*) of this section). Pursuant to paragraph (c) of this section, section 301(c) applies to the excess qualified distribution. Pursuant to sections 301(c)(1) and 316, the $25 excess qualified distribution is sourced from CE&P.

(iii) *Subsequent contribution.* The facts are the same as paragraph (d)(3)(i) of this section, except that at the time of the October 5, 2019 distribution, A's adjusted basis in its X stock is $90. Further, on December 27, 2019, A contributes $100 to X in a transaction described in section 351(a). The analysis in paragraph (d)(3)(ii) of this section remains the same, except that, unlike the second to last sentence of paragraph (d)(3)(ii)(C)(*1*) of this section, A's basis in its X stock is reduced by $90 to $0 and pursuant to paragraph (b)(2)(iii) of this section, $10 is treated as gain from the sale or exchange of property. Additionally, as a result of the December 27, 2019 contribution of $100, A's basis in its X stock is increased by $100, so that at the end of 2019, A's basis in its X stock is $100.

(4) *Example 4: Limitation on the amount characterized as AE&P*—(i) *Facts.* At the beginning of January 1, 2018, X had AAA of $100 and AE&P of $100. During 2018, X had CE&P of $(75) and made no distributions. At the beginning of January 1, 2019, X has AAA of $100 and AE&P of $25, and A's adjusted basis in its share of X stock is $500. During 2019, the only distributions that X makes are a $100 distribution of money to A on July 9 and a $40 distribution of money to A on September 27. X's CE&P during 2019 is $20, without diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Calculation of AAA ratio and AE&P ratio.* Pursuant to paragraphs (a)(2)(ix) and (x) of this section, respectively, X's historical AAA and X's historical AE&P are determined as of the beginning of January 1, 2018, the beginning of the day on which the revocation of X's election under section 1362(a) is effective pursuant to section 1362(d)(1). Accordingly, X's historical AAA is $100 and X's historical AE&P is $100. Therefore, X's AAA ratio is 0.5 ($100/($100 + $100)), and X's AE&P ratio is 0.5 ($100/($100 + $100)).

(B) *Analysis of July 9, 2019 distribution*—(*1*) *Characterization of distribution.* Pursuant to paragraph (a)(2)(xii) of this section, the $100 distribution on July 9, 2019, is a qualified distribution because it is a distribution of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section.

(*2*) *Analysis of qualified distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the distribution that is sourced from AAA is equal to the lesser of: the product of the qualified distribution and the AAA ratio ($100 × 0.5, or $50), and X's AAA immediately before the qualified distribution ($100). Therefore, $50 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $50 to $50. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $50 to $450.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: the product of the qualified distribution and the AE&P ratio ($100 × 0.5, or $50), and X's AE&P immediately before the qualified distribution ($25). Therefore, $25 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $25 to $0. Pursuant to paragraph (b)(3)(iii) of this section, the $25 distribution is characterized as a dividend.

(*3*) *Recalculation of AAA and AE&P ratios.* Pursuant to paragraph (b)(3)(iv) of this section, because the July 9, 2019 distribution caused X's AE&P to be reduced to zero, the AAA ratio is one and the AE&P ratio is zero for all subsequent qualified distributions during the 2019 taxable year and subsequent taxable years of the ETSC period.

(*4*) *Excess qualified distribution*—(*i*) *Amount of excess qualified distribution.* Pursuant to paragraph (a)(2)(viii) of this section, the amount of the excess qualified distribution is $25, the amount of the qualified distribution ($100) not characterized pursuant to paragraph (b)(2) or (3) of this section ($50 AAA distribution + $25 AE&P distribution).

(*ii*) *Characterization of excess qualified distribution as a separate qualified distribution.* Pursuant to paragraph (b)(4) of this section, because X has AAA remaining after characterizing the qualified distribution (see paragraph (d)(4)(ii)(B)(*2*)(*i*) of this section), the $25 excess qualified distribution is treated as a separate qualified distribution and is analyzed pursuant to paragraph (b) of this section.

(iii) *Analysis of excess qualified distribution that is treated as a separate qualified distribution.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the distribution that is sourced from AAA is equal to the lesser of: the product of the excess qualified distribution and the AAA ratio ($25 × 1, or $25), and X's AAA immediately before the excess qualified distribution ($50). Therefore, $25 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $25 to $25. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $25 to $425. Pursuant to paragraph (b)(3)(i) of this section, because X's AE&P ratio is zero, paragraph (b)(3) of this section does not apply.

(C) *Analysis of September 27, 2020 distribution*—(*1*) *Characterization of the distribution.* Pursuant to paragraph (a)(2)(xii) of this section, the $40 distribution on September 27, 2020, is a qualified distribution because it is a distribution of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section.

(*2*) *Analysis of qualified distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the distribution that is sourced from AAA is equal to the lesser of: the product of the qualified distribution and the AAA ratio ($40 × 1, or $40), and X's AAA immediately before the qualified distribution ($25) (see paragraph (d)(4)(ii)(B)(*4*)(*iii*) of this section). Therefore, $25 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $25 to $0. Pursuant to paragraph (b)(2)(iii) of this section, A's basis in its X stock is reduced by $25 to $400.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, because X's AE&P ratio is zero, paragraph (b)(3) of this section does not apply.

(*3*) *Excess qualified distribution*—(*i*) *Amount of excess qualified distribution.* Pursuant to paragraph (a)(2)(viii) of this section, the amount of the excess qualified distribution is $15, the portion of the qualified distribution ($40) not characterized pursuant to paragraph (b)(2) or (3) of this section ($25 AAA distribution + $0 AE&P distribution).

(*ii*) *Excess qualified distribution not characterized as a separate qualified distribution.* Pursuant to paragraph (b)(4) of this section, because X has AAA of $0 after characterizing the qualified distribution (see paragraph (d)(4)(ii)(C)(*2*)(*i*) of this of this section), the $15 excess qualified distribution is not treated as a separate qualified distribution.

(iii) *Analysis of excess qualified distribution that is not treated as a separate qualified distribution.* Pursuant to paragraph (c) of this section, section 301(c) applies to the excess qualified distribution. Pursuant to sections 301(c)(1) and 316, the $15 excess qualified distribution is sourced from CE&P.

(5) *Example 5: Distributions include non-qualified distributions*—(i) *Facts.* At the beginning of January 1, 2018, X had AAA of $100 and AE&P of $100. During 2018, X had $0 of CE&P and made no distributions. At the beginning of January 1, 2019, X has AAA of $100 and AE&P of $100, and A's adjusted basis in its X stock is $200. During 2019, X makes a $100 distribution of money on June 14; a $300 distribution of property on November 9; and a $200 distribution of money on December 18. X's CE&P during 2019 is $160, without diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Calculation of AAA ratio and AE&P ratio.* Pursuant to paragraphs (a)(2)(ix) and (x) of this section, respectively, X's historical AAA is $100 and X's historical AE&P is $100. Therefore, X's AAA ratio is 0.5 ($100/($100 + $100)), and X's AE&P ratio is 0.5 ($100/($100 + $100)).

(B) *Characterization of distributions.* Pursuant to paragraph (a)(2)(xii) of this section, the $100 distribution on June 14, 2019, and the $200 distribution on December 18, 2019, are both qualified distributions because they are distributions of money by an ETSC during the ETSC period to which section 301 would apply absent the application of section 1371(f) and this section. Pursuant to paragraph (a)(2)(xi) of this section, the $300 distribution of property on November 9, 2019, is non-qualified distribution. Pursuant to paragraph (b)(1) of this section, the rules of paragraphs (b)(2) through (4) of this section apply to the qualified distributions before the rules of paragraph (c) of this section apply to the non-qualified distribution and any excess qualified distributions.

(C) *Analysis of qualified distributions*—(*1*) *June 14, 2019 distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the distribution that is sourced from AAA is equal to the lesser of: the product of the qualified distribution and the AAA ratio ($100 × 0.5, or $50), and X's AAA immediately before the qualified distribution ($100). Therefore, $50 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $50 to $50. Pursuant to paragraph (b)(2)(iii) of this section, on June 14, 2019, A's basis in its X stock is reduced by $50 to $150.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: the product of the qualified distribution and the AE&P ratio ($100 × 0.5, or $50), and X's AE&P immediately before the qualified distribution ($100). Therefore, $50 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $50 to $50. Pursuant to paragraph (b)(3)(iii) of this section, the $50 distribution is characterized as a dividend.

(*iii*) *Amount of excess qualified distribution.* The amount of the excess qualified distribution is $0, the amount of the qualified distribution ($100) not characterized pursuant to paragraph (b)(2) or (3) of this section ($50 AAA distribution + $50 AE&P distribution).

(*2*) *December 18, 2019 distribution*—(*i*) *Distribution of AAA.* Pursuant to paragraph (b)(2)(i) of this section, the portion of the distribution that is sourced from AAA is

equal to the lesser of: the product of the qualified distribution and the AAA ratio ($200 × 0.5, or $100), and X's AAA immediately before the qualified distribution ($50). Therefore, $50 is sourced from AAA. Pursuant to paragraph (b)(2)(ii) of this section, after the distribution, X's AAA is reduced by $50 to $0. Pursuant to paragraph (b)(2)(iii) of this section, A must determine its basis as of December 18, 2019, in order to determine the consequences of receiving the $50 AAA distribution. Because the non-qualified distribution on November 9, 2019, which precedes the December 18, 2019 qualified distribution, could have the effect of reducing A's basis, any effect on A's basis from that non-qualified distribution must be analyzed prior to determining the effect of the December 18, 2019 distribution of AAA on A's basis. See paragraphs (d)(5)(ii)(D)(*3*) and (*4*) of this section. Pursuant to paragraph (a)(2)(vii) of this section, X's ETSC period ends because X's AAA balance is zero following the December 18, 2019 distribution.

(*ii*) *Distribution of AE&P.* Pursuant to paragraph (b)(3)(i) of this section, the portion of the distribution that is sourced from AE&P is equal to the lesser of: the product of the qualified distribution and the AE&P ratio ($200 × 0.5, or $100), and X's AE&P immediately before the qualified distribution ($50). Therefore, $50 is sourced from AE&P. Pursuant to paragraph (b)(3)(ii) of this section, after the distribution, X's AE&P is reduced by $50 to $0. Pursuant to paragraph (b)(3)(iii) of this section, the $50 distribution is characterized as a dividend.

(*iii*) *Amount of excess qualified distribution.* The amount of the excess qualified distribution is $100, the amount of the qualified distribution ($200) not characterized pursuant to paragraph (b)(2) or (3) of this section ($50 AAA distribution + $50 AE&P distribution).

(D) *Analysis of non-qualified and excess qualified distributions*—(*1*) *In general.* The $300 non-qualified distribution on November 9, 2019, and the $100 excess qualified distribution on December 18, 2019, are treated in the manner provided in section 301(c).

(*2*) *Allocation of CE&P.* Pursuant to section 316 and § 1.316–2, X's CE&P is allocated proportionately among the excess qualified and the non-qualified distributions. Therefore, the portion of X's CE&P that is allocated to the November 9, 2019 distribution and the December 18, 2019 distribution is $120 ($160 X's CE&P x ($300 distribution/$400 total excess qualified and non-qualified distributions during 2019) and $40 ($160 X's CE&P x ($100 distribution/ $400 total excess qualified and non-qualified distributions during 2019), respectively.

(*3*) *November 9, 2019 distribution.* Pursuant to paragraph (d)(5)(ii)(D)(*2*) of this section, $120 of the $300 distribution is characterized as a distribution of CE&P. Pursuant to paragraph (d)(5)(ii)(C)(*2*)(*ii*) of this section, the amount of X's AE&P available to allocate the November 9, 2019 distribution is $0. Therefore the remaining $180 is characterized pursuant to section 301(c)(2) and (3). Pursuant to paragraph (d)(5)(ii)(C)(*1*)(*i*) of this section, A's basis in its X stock prior to the November 9, 2019 distribution is $150. Therefore, $150 is applied against basis pursuant to section 301(c)(2) (reducing A's basis to $0) and $30 is treated as gain from the sale or exchange of property pursuant to section 301(c)(3).

(*4*) *December 18, 2019 distribution*—(*i*) *Consequences of AAA distribution.* As of December 18, 2019, A's basis in its X stock is $0. See paragraph (d)(5)(ii)(D)(*3*) of this *section.* Pursuant to paragraph (d)(5)(ii)(C)(*2*)(*i*) of this section, $50 of the distribution is characterized as a distribution of AAA. Because the amount of the distribution of AAA ($50) exceeds A's basis in its X stock ($0), pursuant to paragraph (b)(2)(iii) of this section, on December 18, 2019, $50 is treated as gain from the sale or exchange of property.

(*ii*) *Characterization of excess qualified distribution.* Pursuant to paragraph (d)(5)(ii)(C)(*2*)(*iii*) of this section, $100 of the December 18, 2019 distribution is an excess qualified distribution. Paragraph (b)(4) of this section does not apply to the excess qualified distribution because X's AAA balance is zero after the application of paragraph (b)(2)(ii) of this section (see paragraph (d)(5)(ii)(C)(*2*)(*i*) of this section). Pursuant to paragraph (c) of this section, section 301(c) applies to the excess qualified distribution. Pursuant to paragraph (d)(5)(ii)(D)(*2*) of this section, $40 of the $100 excess qualified distribution is characterized as a distribution of CE&P. Pursuant to paragraph (d)(5)(ii)(D)(*3*) of this section, X's AE&P as the time of the December 18, 2019 distribution is $0. Therefore the remaining $60 is characterized pursuant to section 301(c)(2) and (3). Pursuant to paragraph (d)(5)(ii)(D)(*4*)(*i*) of this section, A's basis in its X stock prior to characterization of the excess qualified distribution is $0. Therefore, $60 is treated as gain from the sale or exchange of property pursuant to section 301(c)(3).

(e) *Applicability date.* This section generally applies to taxable years beginning after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**]. However, corporations may choose to apply the rules in §§ 1.316–2, 1.481–5, 1.1371–1, 1.1371–2, and 1.1377–2 in their entirety, to the extent applicable, to taxable years that began on or before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**] and with respect to which the period described in section 6511(a) has not expired. If the corporation makes the choice described in the previous sentence, all shareholders of the corporation must report consistently.

§ 1.1371–2 Impact of Audit PTTP on ETSC Period.

(a) *Definitions.* For purposes of this section, the definitions used in § 1.1371–1(a)(2) are applicable. Additionally, the following definitions apply for purposes of this section—

(1) *Audit PTTP.* The term *audit PTTP* means a post-termination transition period described in section 1377(b)(1)(B).

(2) *Initial PTTP.* The term *initial PTTP* means a post-termination transition period described in section 1377(b)(1)(A).

(3) *Intervening audit PTTP.* The term *intervening audit PTTP* means an audit PTTP arising during the ETSC period.

(b) *In general.* If an intervening audit PTTP arises, the ETSC period shall immediately stop. Immediately following the end of the intervening audit PTTP, the ETSC period will resume if the ETSC's AAA balance is greater than zero. Otherwise, any subsequent distributions by the ETSC are treated in the manner provided in section 301(c).

(c) *Examples.* The following examples illustrate the rules of this section. For purposes of the examples in this paragraph (c), X is a calendar year S corporation. A, an individual, purchased all of the outstanding shares of X in a single transaction at the same price per share prior to December 22, 2017, and was the sole shareholder of X at all times. Pursuant to section 1362(d)(1) and §§ 1.1362–2 and 1.1362–6, X made a valid revocation of its S election on March 15, 2019, that became effective on January 1, 2019. No amount distributed by X is an extraordinary dividend within the meaning of section 1059.

(1) *Example 1: No ETSC period following initial PTTP*—(i) *Facts.* At the beginning of January 1, 2019, X had AAA of $49,000 and AE&P of $2,000, and A's adjusted basis in its shares of X stock was $50,000. During 2019, the only distribution that X made was a $49,000 distribution of money to A on March 13, 2019. X's CE&P during 2019 was $0, without regard to any diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Distribution during initial PTTP.* Pursuant to sections 1371(e) and 1377(b)(1)(A), the $49,000 distribution of money on March 13, 2019, is characterized as a distribution of AAA because it was made during the initial PTTP.

(B) *Effect on corporation.* Pursuant to § 1.1368–2(a)(3)(iii), X's AAA is reduced by $49,000 to $0. Following the initial PTTP, even if X satisfies the requirements of section 481(d)(2) and § 1.481–5(b) to be an ETSC, X does not have an ETSC period because its AAA balance is zero at the end of its initial PTTP. Therefore, section 1371(f) and § 1.1371–1 will not apply to any subsequent distributions by X.

(C) *Effect on shareholder.* Pursuant to section 1371(e)(1), A reduces its basis in its X stock by $49,000 to $1,000.

(2) *Example 2: Intervening audit PTTP*—(i) *Facts.* The facts are the same as the facts in paragraph (c)(1) of this section. On May 20, 2020, which is after X's initial PTTP, the IRS begins an audit of X's 2018 return. During the audit it is agreed that X overstated its

advertising expense deduction by $10,000. On July 6, 2020, A signs a closing agreement whereby X's overstatement results in an additional tax on A's 2018 individual return. As a result, at the beginning of January 1, 2019, X had AAA of $59,000 ($49,000 + $10,000) and AE&P of $2,000. Additionally, at the beginning of January 1, 2019, A's adjusted basis in its shares of X stock was $60,000 ($50,000 + $10,000). During 2020, the only distribution X makes is a $6,000 distribution of money to A on September 1, 2020. X's CE&P during 2020 was $0, without regard to any diminution by reason of any distributions made during the taxable year.

(ii) *Analysis*—(A) *Analysis of March 15, 2019 distribution.* The treatment of the March 15, 2019, distribution is the same as described in paragraph (c)(1)(ii)(A) of this section, because the amount of the distribution ($49,000) does not exceed X's AAA balance at the beginning of January 1, 2019 ($59,000), and so the entirety of the $49,000 distribution is properly characterized as a distribution of AAA.

(*1*) *Effect on corporation.* As described in paragraph (c)(1)(ii)(B) of this section, X's AAA ($59,000 at the beginning of January 1, 2019) is reduced by $49,000 to $10,000. At the conclusion of X's initial PTTP (ending on December 31, 2019), X's AAA balance is $10,000. Pursuant to § 1.1371–1(a)(2)(vii), X has an ETSC period. Therefore, section 1371(f) and § 1.1371–1 will apply to any subsequent qualified distributions by X.

(*2*) *Effect on shareholder.* As described in paragraph (c)(1)(ii)(C) of this section, A reduces its basis in its X stock ($60,000 at the beginning of January 1, 2019) by $49,000 to $11,000.

(B) *Intervening audit PTTP.* Pursuant to section 1377(b)(1)(B), X enters an intervening audit PTTP that begins on July 6, 2020, and ends on November 2, 2020. The application of section 1371(f) and the regulatory provisions in this part under section 1371 of the Code to distributions during the intervening audit PTTP is stopped. Instead, sections 1371(e) and 1377(b)(1)(B), and the regulatory provisions in this part under sections 1371 and 1377 of the Code, apply for the duration of the intervening audit PTTP. During the intervening audit PTTP, the only distribution X made is a $6,000 distribution of money to A on September 1, 2020. Pursuant to sections 1371(e) and 1377(b)(1)(B), the $6,000 distribution is characterized as a distribution of AAA because it was made during the intervening audit PTTP.

(*1*) *Effect on corporation.* Pursuant to § 1.1368–2(a)(3)(iii), X's AAA is reduced by $6,000 to $4,000. Beginning on November 3, 2020, pursuant to § 1.1371–1(a)(2)(vii), X's ETSC period resumes (after the intervening audit PTTP's conclusion) because its AAA balance is greater than zero.

(*2*) *Effect on shareholder.* Pursuant to section 1371(e)(1), A reduces its basis in its X stock by $6,000 to $5,000.

(C) *ETSC period.* Beginning on November 3, 2020, X's ETSC period resumes, and distributions of money are subject to section 1371(f) and the regulatory provisions in this part under section 1371 of the Code until X's AAA balance is zero. For purposes of calculating each of X's AAA and AE&P ratios, X's historical AAA is $59,000 (at the beginning of January 1, 2019, which includes the $10,000 increase as a result of the July 6, 2020, closing agreement).

(d) *Applicability date.* This section generally applies to taxable years beginning after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**]. However, corporations may choose to apply the rules in §§ 1.316–2, 1.481–5, 1.1371–1, 1.1371–2, and 1.1377–2 in their entirety, to the extent applicable, to taxable years that began on or before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**] and with respect to which the period described in section 6511(a) has not expired. If the corporation makes the choice described in the previous sentence, all shareholders of the corporation must report consistently.

§ 1.1377–2 [Amended]

■ **Par. 7.** Section 1.1377–2 is amended by removing the last sentence of paragraph (b).

■ **Par. 8.** Section 1.1377–3 is amended by:

■ a. Removing ''and 1.1377–2 apply'' and adding ''applies'' in its place; and

■ b. Adding three sentences at the end of the paragraph.

The addition reads as follows:

§ 1.1377–3 Effective dates.

* * * Section 1.1377–2 generally applies to taxable years beginning after [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**], however, corporations may choose to apply the rules in §§ 1.316–2, 1.481–5, 1.1371–1, 1.1371–2, and 1.1377–2 in their entirety, to the extent applicable, to taxable years that began on or before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**] and with respect to which the period described in section 6511(a) has not expired. If the corporation makes the choice described in the previous sentence, all shareholders of the corporation must report consistently. For taxable years beginning on or before [DATE OF PUBLICATION OF THE FINAL RULES IN THE **Federal Register**], see § 1.1377–2(b) as contained in 26 CFR part 1, revised April 1, 2019.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019–24098 Filed 11–4–19; 4:15 pm]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0785]

RIN 1625–AA11

Regulated Navigation Areas; Harbor Entrances Along the Coast of Northern California

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish Regulated Navigation Areas (RNAs) at the harbor bar entrances to Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay. The proposed regulation would create additional safety requirements for recreational and small commercial vessels operating in these areas during periods of hazardous conditions, such as high wind or breaking surf, as well as establish clear procedures for restricting and closing these harbor bar entrances in the event of unsafe conditions. The proposed regulation is necessary to enhance mariner and vessel safety when crossing the bars exceeds parameters, typically when breaking seas are projected to be 20-foot or greater. The proposed rulemaking would prohibit vessels from entering these areas during unsafe conditions unless authorized by the local Captain of the Port or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 9, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0785 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Andres Ayure, Coast Guard District 11 Waterways Office; telephone 510–437–2982, email *Andres.A.Ayure@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

NPRM Notice of Proposed Rulemaking
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security

FR Federal Register
LA–LB Los Angeles-Long Beach
OCMI Officer in Charge of Marine Inspection
OMB Office of Management and Budget
NTSB National Transportation Safety Board
PWSA Ports and Waterways Safety Act
RNA Regulated Navigation Area
U.S.C. United States Code
§ Section

II. Background, Purpose, and Legal Basis

Since 1998, Captain of the Port (COTP) San Francisco and COTP Los Angeles-Long Beach (LA–LB) have issued various navigation safety advisories and created numerous emergency safety zones to mitigate risk to mariners and vessels transiting the Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor entrances during unsafe conditions. These emergency safety zones included policies and procedures for closing the bar to vessel traffic as well as vessel escort policies and provided parameters and procedures for waiver requests. For example, in October 2017, COTP San Francisco published a temporary final rule to establish temporary safety zones in the navigable waters of the Humboldt Bay Entrance Channel in Eureka, CA; the Noyo River Entrance Channel in Fort Bragg, CA; and the Crescent City Harbor Entrance in Crescent City, CA to enhance navigation safety during unsafe conditions (82 FR 53418). The use of emergency safety zones to accomplish the required risk mitigation does not provide consistency or predictability of Coast Guard actions to mariners. The RNAs proposed here would define the parameters and implementation procedures for restricting access to the applicable areas during unsafe conditions for various types and classes of vessels.

The current mariner rules of the road and use of emergency safety zones governing maritime traffic operating in the vicinity of the Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances are insufficient to enhance the safety of mariners and vessels operating in those areas. Bars along the northern California coast experience severe wave, sea, and current conditions that have contributed to numerous marine casualties. Various Coast Guard and National Transportation Safety Board (NTSB) casualty investigations have identified a need for specific regulations to mitigate these risks to enhance the safety of mariners and vessels operating in the vicinity of bars. One example is the NTSB Safety Recommendation M–05–009, available at: *https://www.ntsb.gov/investigations/AccidentReports/_layouts/ntsb.recsearch/Recommendation.aspx?Rec=M-05-009*.

On October 17, 2005, in a written response to NTSB Safety Recommendation M–05–009, the Coast Guard articulated its intention to develop written policies for transiting west coast bars and inlets. In July 2010, Coast Guard District Thirteen published a final rule, 74 FR 59098, amended by 75 FR 41988, to mitigate bar transit risks that addressed NTSB Safety Recommendations M–05–009 and M–05–010. Coast Guard District Eleven is proposing a similar rule to streamline safety regulations and provide predictability for local mariners regarding the conditions for the Coast Guard to regulate navigation in the vicinity of Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances based on weather, sea, tide, and river conditions.

The Coast Guard solicited public input on the potential establishment of RNAs at these locations through the **Federal Register** prior to publication of this NPRM (83 FR 5592, Feb. 8, 2018). The comment period closed on March 12, 2018. Coast Guard District Eleven received a request for an extension of the comment period, and after reviewing it, reopened the public comment period to extend to March 30, 2018 (83 FR 11649). In addition to the **Federal Register** notices, an extensive public outreach plan was completed by Coast Guard COTP LA–LB and COTP San Francisco, and a press release was issued to engage all mariner stakeholders in the local communities. Coast Guard District Eleven recognizes the need to provide ample opportunity for public discussion of bar crossing safety measures and seeks to acquire mariner feedback on the proposed regulatory text.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231) and Department of Homeland Security (DHS) Delegation No. 0170.1(70). This authority has been re-delegated by the Commandant to District Commanders in accordance with 33 CFR 1.05–1(e). In addition, without this rule the COTP can issue COTP Orders under the Ports and Waterways Safety Act (PWSA) 46 U.S.C. 70002 to direct only a specific vessel, facility, or individual in order to: restrict or stop vessel operations; require specific actions to be taken; deny a vessel further entry to port until a deficiency is corrected; or detain a vessel in port. COTP Orders cannot be issued to ''all vessels'' or a class of vessels, facilities or individuals. Where a group or class of entities is targeted, a safety zone or RNA is more appropriate. Due to this limitation, this rule is being established to restrict all vessels, when the COTP determines that the on scene conditions are unsafe. Authority to activate the proposed RNA at Morro Bay Harbor is delegated from the District Commander to COTP LA–LB. The authority to activate the proposed RNA at Crescent City Harbor, Humboldt Bay, and Noyo River is delegated to COTP San Francisco. The Designated Representative for enforcement of the proposed RNA at Crescent City Harbor, Humboldt Bay, and Noyo River would be designated by COTP San Francisco to Commander, Sector Humboldt Bay.

III. Discussion of Comments

A total of six comments were received from the published Request for Comments. We considered four comments in drafting this proposed rule; two comments were outside the scope of the notice or appeared to be based on a misunderstanding of the intent of the Request for Comments.

One commenter stated that the Government should not regulate when mariners can navigate a specific area. The Coast Guard has maintained a narrow scope for the enactment of the proposed regulation in order to minimize potential impact on navigation. The Coast Guard's goal is to provide advance notice, consistency, and predictability for local mariners during periods of extreme weather and sea conditions (*i.e.,* unsafe conditions). The Coast Guard seeks clear communication with local mariners and views this proposed regulation as a tool to improve public safety, predictability, advance notice, and transparency.

One comment questioned the ability of the Coast Guard to determine when the bars are safe for seasoned mariners to transit versus the judgment of professional mariners themselves. The Coast Guard drafted the proposed RNAs as a formalization of existing best-practices already used by prudent mariners at bar entrances along the Pacific Coast during extreme weather and sea conditions. The proposed regulation differentiates between a bar restriction and bar closure based on set environmental conditions as observed by the COTP, who under 33 CFR 6.04–5, retains ultimate authority to restrict entrance to the harbor bars in order to avoid damage or injury to a vessel or waterfront facility. To account for the various levels of mariner knowledge and familiarity with each bar, the draft regulation also proposes progressive standards for recreational and professional mariners. In addition, the proposed regulatory text establishes

safety standards for operating in the RNAs during periods of unsafe conditions and provides the opportunity for preapproved bar crossing plans to implement supplemental safety and accessibility measures for mariners. Unsafe conditions in this proposed rule are typically expected to be at least 20-foot breaking seas. The bar should be reopened at the discretion of each COTP, typically when breaking seas are less than 20-foot and when the local Coast Guard station is able to launch the 47-foot motor life boat to respond to search and rescue cases. Finally, the proposed regulation establishes waiver procedures for vessels requiring access to safe harbor during a bar restriction or closure. We welcome further discussion on the proposed text, as the primary focus of this NPRM is to provide an opportunity for public comment to inform potential revisions of the proposed RNA.

One commenter stated that such RNAs would be redundant because the Coast Guard currently closes the entrances to all craft during unsafe periods. The Coast Guard believes the commenter is referring to the use of emergency safety zones. While emergency safety zones reduce the risk for all vessels, they do not provide advance notice, consistency, or predictability of Coast Guard actions affecting mariners, or additional safety requirements, such as implementing bar crossing plans for small passenger and commercial fishing vessels to mitigate risks inherent to transits of the harbor bars. The proposed RNA negates the need to establish emergency safety zones, and defines the parameters and enforcement procedures for restricting access to the applicable areas during unsafe conditions and defines safety requirements for small passenger and commercial fishing vessels operating within the proposed RNAs. This regulation would improve consistency of enforcement and communication with the maritime public.

The Coast Guard received one comment suggesting that the Coast Guard discuss possible penalties or actions the Coast Guard will take for violations of the proposed regulation. The Coast Guard incorporated a reference to 46 U.S.C. 70036, which provides penalties for all persons in violation. Per 46 U.S.C. 70036, the current civil penalty shall not exceed $25,000 per violation. Each day of a continuing violation shall constitute a separate violation.

The Coast Guard utilized the comments received to draft the proposed RNA text to be minimally disruptive to the local community and mariners utilizing Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay Harbor bar entrances outlined in this NPRM, while acknowledging the limits of Coast Guard rescue assets and the need for additional safety measures. In the sections below, we outline a comprehensive proposed regulation of RNAs for public comment.

IV. Discussion of Proposed Rule

The Coast Guard is proposing to establish RNAs at the harbor bar entrances to Crescent City Harbor, Humboldt Bay, Noyo River, and Morro Bay. The proposed regulation would create additional safety requirements for recreational and small commercial vessels operating in these areas during periods of hazardous conditions, such as high wind or breaking surf, as well as establish clear procedures for restricting and closing these harbor bar entrances in the event of hazardous conditions. The proposed regulation is necessary to enhance mariner and vessel safety when crossing the bars exceeds parameters, typically when breaking seas are projected to be 20-foot or greater. The COTP or a designated representative would determine whether an unsafe condition exists for restricting or closing the bar entrances, meaning that the wave height within an RNA is equal to or greater than the maximum wave height as defined by the formula L/10 + F = W. In the formula ''L'' is the overall length of a vessel, ''F'' is the minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water and ''W'' is the maximum wave height in feet. The COTP will also utilize their professional maritime experience and knowledge of local environmental conditions in making their determination. Factors that will be considered include, but are not limited to: Size and type of vessel, sea state, winds, wave period, and tidal currents. The proposed rulemaking would also prohibit vessels from entering these areas during hazardous conditions unless authorized by Commander, District Eleven, the local Captain of the Port, or a designated representative.

In the proposed rule, the operation of recreational and uninspected passenger vessels in the RNA is prohibited during bar restrictions and bar closures unless specifically authorized by the COTP or a designated representative. The operator of any recreational or uninspected passenger vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of the recreational vessel are wearing lifejackets, and that lifejackets are readily accessible for/to all persons located in any enclosed area of the vessel.

The proposed rule would also prohibit small passenger vessels and commercial fishing vessels from crossing the bars located in the RNAs during a bar closure, unless specifically authorized by the COTP or a designated representative.

The master or operator of any small passenger vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of the small passenger vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of the vessel. The aforementioned requirement may be waived if the operator of the small passenger vessel pre-establishes a bar crossing plan with the Coast Guard OCMI with responsibility for the bar they intend to cross that will include outlining a communication plan and safety equipment to be set out during the crossing. Operators intending to cross the Crescent City Harbor, Humboldt Bay, and Noyo River bars should contact Coast Guard Sector San Francisco and operators intending to cross the Morro Bay Harbor entrance should contact Coast Guard Sector Los Angeles-Long Beach.

The master or operator of any commercial fishing vessel operating in an activated RNA shall ensure that all persons located in any unenclosed areas of commercial fishing vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of the vessel.

For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

A similar RNA program has been tested and used along the Northern Pacific Coast with limited burden to local mariners while improving vessel safety during unsafe conditions. The Coast Guard believes that implementing a standard protocol along the Pacific Coast will improve our service to the maritime community and minimize the unpredictability of emergency safety zones. Conditions that exceed operating parameters for the Coast Guard's primary rescue asset, the 47-foot motor lifeboat with an operating limit of 20-foot breaking seas, will be the threshold for COTP activation of the proposed RNA. In addition, the proposed RNA will provide predictability of closures, improve vessel transit plans during extreme weather conditions, and strengthen communications between the

Coast Guard and the maritime community. The regulatory text we are proposing appears at the end of this document.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) 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: (1) The proposed regulation does not require vessel operators affected by the regulation to purchase additional equipment; (2) the restriction and/or closure of the bars are temporary and will only occur when necessary due to unsafe conditions; (3) the maritime public will be advised of bar restrictions and/or closures via one or more of the following methods: Broadcast Notice to Mariners, local government partners, bar warning lights and/or publication in the Local Notice to Mariners; and (4) vessels may be allowed to enter the proposed RNA when a bar restriction and/or closure is in place on a case-by-case basis with permission of the COTP or a designated representative.

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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: Owners and operators of waterfront facilities, commercial vessels, and pleasure craft engaged in recreational activities and sightseeing, if these facilities or vessels are in the vicinity of the RNA at times when the RNA has been activated. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The proposed regulation does not require vessel operators affected by the regulation to purchase additional equipment; (2) the restriction and/or closure of the bars are temporary and will only occur when necessary due to unsafe conditions; (3) the maritime public will be advised of bar restrictions and/or closures via one or more of the following methods: Broadcast Notice to Mariners, local government partners, bar warning lights and publication in the Local Notice to Mariners; and (4) vessels may be allowed to enter the proposed RNA when a bar restriction or closure is in place on a case-by-case basis with permission of the COTP or a designated representative.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves RNAs that would prohibit the transit of maritime traffic in times of unsafe conditions. Normally such actions are categorically excluded from further review under L60[a] in Table 3–

1 of U.S. Coast Guard Environmental Planning Implementing Procedures. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, visit *http://www.regulations.gov/privacyNotice*.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.1196 to read as follows:

§ 165.1196 Regulated Navigation Areas; Harbor Entrances along the Coast of Northern California.

(a) *Regulated navigation areas.* Each of the following areas is a regulated navigation area (RNA):

(1) Humboldt Bay Entrance Channel: The navigable waters shoreward of a line drawn from Humboldt Bay Entrance Light 4 to Humboldt Bay Entrance Light 3, in Eureka, CA.

(2) Noyo River Entrance Channel: The navigable waters of the Noyo River Entrance Channel as defined by the area contained seaward of the Line of Demarcation, with the northern boundary of the line originating in approximate position 39°25′41″ N, 123°48′37″ W and extending 4 nautical miles at bearing 290° T, and the southern boundary of the line originating in approximate position 39°25′38″ N, 123°48′36″ W and extending 4 nautical miles at 281° T, in Fort Bragg, CA.

(3) Crescent City Harbor Entrance Channel: The navigable waters of the Crescent City Harbor Entrance Channel, as defined by the area contained seaward of the line originating in approximate position 41°44′36″ N, 124°11′18″ W bearing 237° T and extending out to 1 nautical mile from the Line of Demarcation, in Crescent City, CA.

(4) Estero-Morro Bay Harbor Entrance Channel: The navigable waters of the Morro Bay Harbor Entrance Channel, as defined by the area contained seaward of the Line of Demarcation, with the northern boundary of the line originating from the seaward extremity of the Morro Bay East Breakwater to the Morro Bay West Breakwater Light 35°21′46″ N, 120°52′11″ W in Morro Bay, CA.

(b) *Definitions.* For purposes of this section:

(1) *Bar closure* means that the operation of any vessel within an RNA established in paragraph (a) of this section has been prohibited by the Coast Guard.

(2) *Bar crossing plan* (also known as a Go/No-Go plan) means a plan, developed by local industry, in coordination with Coast Guard, for a bar within an RNA established in paragraph (a) of this section and adopted by the master or operator of a small passenger vessel or commercial fishing vessel to guide his or her vessel's operations on and in the vicinity of that bar.

(3) *Bar restriction* means that operation of a recreational, uninspected passenger, small passenger, and commercial fishing vessel within an RNA established in paragraph (a) of this section has been prohibited by the Coast Guard.

(4) *Commercial fishing industry vessel* means a fishing vessel, fish tender vessel, or a fish processing vessel.

(5) *COTP designated representative* means any Coast Guard commissioned, warrant, civilian or petty officer that has been authorized by the Captain of the Port (COTP) to act on his or her behalf in the enforcement of the RNA.

(6) *Fish processing vessel* means a vessel that commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling.

(7) *Fish tender vessel* means a vessel that commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or a fish processing facility.

(8) *Fishing vessel* means a vessel that commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

(9) *Operator* means a person who is an owner, a demise charterer, or other contractor, who conducts the operation of, or who is responsible for the operation of a vessel.

(10) *Readily accessible* means equipment that is taking out of stowage and is available within the same space as any person for immediate use during an emergency.

(11) *Recreational vessel* means any vessel manufactured or used primarily for non-commercial use or leased, rented, or chartered to another for non-commercial use. It does not include a vessel engaged in carrying paying passengers.

(12) *Small passenger vessel* means a vessel inspected under 46 CFR subchapter T or 46 CFR subchapter K.

(13) *Uninspected passenger vessel* means an uninspected vessel—

(i) Of at least 100 gross tons;

(A) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; or

(ii) Of less than 100 gross tons;

(A) Carrying not more than six passengers, including at least one passenger-for-hire; or

(B) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

(14) *Unsafe condition* exists when the wave height within an RNA identified in paragraph (a) of this section is equal to or greater than the maximum wave height determined by the formula L/10 + F = W where:

L = Overall length of a vessel measured in feet in a straight horizontal line along and parallel with the centerline between the intersections of this line with the vertical planes of the stem and stern profiles excluding deckhouses and equipment.

F = The minimum freeboard when measured in feet from the lowest point along the upper strake edge to the surface of the water.

W = Maximum wave height in feet to the nearest highest whole number.

(c) Regulations.

(1)(i) *Bar restrictions.* The COTP or a designated representative will determine when to restrict passage for recreational and uninspected passenger vessels across the bars located in the RNAs established in paragraph (a) of this section. In making this determination, the COTP or a designated representative will determine whether an unsafe condition exists for such vessels as defined in paragraph (b) of this section. Additionally, the COTP or a designated representative will use his or her professional maritime experience and knowledge of local environmental conditions in making his or her determination. Factors that will be considered include, but are not limited to: Size and type of vessel, sea state, winds, wave period, and tidal currents. When a bar is restricted, the operation of recreational and uninspected passenger vessels in the RNA established in paragraph (a) of this section in which the restricted bar is located is prohibited unless specifically authorized by the COTP or a designated representative.

(ii) *Bar closure.* The bars located in the RNAs established in paragraph (a) of this section will be closed to all vessels whenever environmental conditions exceed the operational limitations of the relevant Coast Guard Search and Rescue resources as determined by the COTP. When a bar is closed, the operation of any vessel in the RNA established in paragraph (a) of this section in which the closed bar is located is prohibited unless specifically authorized by the COTP or a designated representative. For bars having deep draft vessel access, the COTP will consult with the local pilots association, when practicable, prior to closing the affected bar.

(iii) The Coast Guard will notify the public of bar restrictions and bar closures via a Broadcast Notice to Mariners on VHF–FM Channel 16 and 22A. Additionally, Coast Guard personnel may be on-scene to advise the public of any bar restrictions or closures. In some locations, the Coast Guard may use bar warning lights to provide a visual indication of unsafe conditions to the public. Monitoring cameras and associated websites may also provide mariners with additional information in some locations.

(2) *Safety requirements for recreational vessels.* The operator of any recreational vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the recreational vessel are wearing lifejackets; and that lifejackets are readily accessible for/to all persons located in any enclosed area of the recreational vessel:

(A) When crossing the bar and a bar restriction exists or

(B) Whenever the recreational vessel is being towed or escorted across the bar.

(3) *Safety requirements for uninspected passenger vessels (UPVs).* (i) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of their vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of their vessel uninspected passenger vessel:

(A) When crossing the bar and a bar restriction exists or

(B) Whenever the uninspected passenger vessel is being towed or escorted across the bar.

(ii) The master or operator of any uninspected passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(3)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons onboard the vessel and

(D) Vessel destination.

(4) *Safety Requirements for Small Passenger Vessels (SPV).* (i) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of the small passenger vessel are wearing lifejackets and that lifejackets are readily accessible for/to all persons located in any enclosed areas of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever their vessel is being towed or escorted across the bar.

(ii) Small passenger vessels with bar crossing plans that have been reviewed by and accepted by the Officer in Charge of Marine Inspection (OCMI) are exempt from the safety requirements described in paragraph (c)(4)(i) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section so long as when crossing the bar the master or operator ensures that all persons on their vessel wear lifejackets in accordance with their bar crossing plan. If the vessel's bar crossing plan does not specify the conditions when the persons on their vessel shall wear lifejackets, however, then the master or operator shall comply with the safety requirements provided in paragraph (c)(4)(i) of this section in its entirety.

(iii) The master or operator of any small passenger vessel operating in an RNA established in paragraph (a) of this section during the conditions described in paragraph (c)(4)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(5) Safety Requirements for Commercial Fishing Vessels (CFV).

(i) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section shall ensure that all persons located in any unenclosed areas of commercial fishing vessel are wearing lifejackets or immersion suits and that lifejackets or immersion suits are readily accessible for/to all persons located in any enclosed spaces of the vessel:

(A) Whenever crossing the bar and a bar restriction exists or

(B) Whenever the commercial fishing vessel is being towed or escorted across the bar.

(ii) The master or operator of any commercial fishing vessel operating in an RNA described in paragraph (a) of this section during the conditions described in paragraph (c)(5)(i)(A) of this section shall contact the Coast Guard on VHF–FM Channel 16 prior to crossing the bar. The master or operator shall report the following:

(A) Vessel name,

(B) Vessel location or position,

(C) Number of persons on board the vessel and

(D) Vessel destination.

(6) *Penalties.* All persons and vessels within the RNAs described in paragraph (a) of this section shall comply with orders of Coast Guard personnel. Coast Guard personnel includes commissioned, warrant, petty officers, and civilians of the United States Coast Guard. Any person who fails to comply with this regulation is subject to civil penalty in accordance with 46 U.S.C. 70036.

Dated: October 21, 2019.

Peter W. Gautier,

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

[FR Doc. 2019–23968 Filed 11–6–19; 8:45 am]

BILLING CODE 9110–04–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2020–1; Order No. 5291]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Nine). This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 20, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Proposal Nine
III. Notice and Comment
IV. Ordering Paragraphs

I. Introduction

On October 31, 2019, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.[1] The Petition identifies the proposed analytical changes filed in this docket as Proposal Nine.

II. Proposal Nine

Background. Proposal Nine relates to methodological changes for estimating facility-related costs. Petition, Proposal Nine at 1. The cost models were last presented in Docket No. ACR2018, Library References USPS–FY–18–NP15 and USPS–FY18–NP16, respectively. *Id.* The Postal Service acknowledges that because the extensive underlying data collection, analysis, and synthesis supporting this proposal ran relatively late into the year, the review is unlikely to be completed in time for FY 2019 Annual Compliance Report (ACR) preparation. *Id.* However, the Postal Service hopes to be able to incorporate the proposal into the ACR for FY 2020. *Id.*

The current methodology is based on data from a Facility Space Usage Study (FSUS) conducted in 1999 and presented in Docket No. R2005–1. *Id.* Since then, the Office of the Inspector General for the Postal Service recommended updating the FSUS. *Id.* The Postal Service's updated FSUS is the basis for Proposal Nine. *Id.*

Proposal and rationale. The Postal Service notes that it recognized the need for a new FSUS since many facility changes have occurred since the old study. *Id.* at 2. In the interim, several types of equipment used to process mail in 1999 no longer exist (*e.g.,* the multi-line optical character reader input sub system, the mail processing bar code sorter output sub system, among others) while new processing equipment has been introduced (*e.g.,* the automated flat-sorting machine model 100 and the automated package processing system). *Id.* Additionally, mail processing operations have been consolidated, bin capacity has increased over time, and network distribution centers have been activated in the meantime. *Id.*

Not only have extensive changes taken place in the mail processing network since 1999, but the Postal Service's delivery network has changed as well. *Id.* Due to the deployment of the Flats Sequencing System to some plants, flat mail pieces at some delivery units are sorted into delivery point sequence order. *Id.* Automated delivery unit sorters have also been deployed to some postal facilities for parcel sortation to the carrier route level. *Id.* at 2–3.

The Postal Service states that while it has updated its cost analysis annually to reflect the use of facility space, these adjustments were merely approximations. *Id.* at 3. The new FSUS provides a more comprehensive approach to estimating space proportions. *Id.*

The FSUS update process began with a data collection phase using sample statistics from 11 mail processing strata and 6 retail facility and delivery strata. *Id.* The sample statistics were then used to inflate the space data into population estimates using the ''combined ratio'' estimation. *Id.* This methodology was used to de-average the total electronic Facility Management System building gross square footage for postal managed buildings into space categories representing each operation and function. *Id.*

The Petition includes an updated facility file version from the FY 2018 ACD (attached as USPS–FY18–8) to the Postal Service's Annual Compliance Review in Docket No. ACR2019. *Id.* at 4. The proposed new version is presented as Excel file ''FACILITY19.PROP9.xlsx'' (Facility File Workbook). *Id.* The Postal Service has modified the Facility File Workbook to remove redundant or outdated worksheets and includes the following 16 worksheets:

- Worksheet List Worksheet
- FSUS Results Worksheet
- MODS Data Worksheet
- Adjust FSUS Results Worksheet
- Rent Per Sq Ft Worksheet
- Change Factors Worksheet
- FSUS Facility Data Worksheet
- Equip Footprint Worksheet
- Equip Adjust Worksheet
- Remove Worksheet
- Deploy Worksheet
- Space Change Worksheet
- CRA Inputs Worksheet
- Outputs to CRA Worksheet
- POBox-Caller Service Split Worksheet
- Component Variability Worksheet

Id. at 4–12.

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Nine), October 31, 2019 (Petition). The Postal Service filed a notice of filing of non-public materials relating to Proposal Nine. Notice of Filing of USPS–RM2020–1/1 and USPS–RM2020–1/NP1 and Application for Nonpublic Treatment, October 31, 2019.

Impact. The Postal Service summarizes the impact of Proposal Nine to product volume-variable and product-specific costs for FY 2018 in a table attached to the Petition. *Id.* at 14. It also provides a comprehensive version under seal. *Id.* at 12.

III. Notice and Comment

The Commission establishes Docket No. RM2020–1 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission's website at *http://www.prc.gov*. Interested persons may submit comments on the Petition and Proposal Nine no later than December 20, 2019. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2020–1 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Nine), filed October 31, 2019.
2. Comments by interested persons in this proceeding are due no later than December 20, 2019.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Katalin K. Clendenin to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–24307 Filed 11–6–19; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2018–0096, Notice No. 1]

RIN 2130–AC72

State Highway-Rail Grade Crossing Action Plans

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is issuing this proposed rule in response to a mandate from the Fixing America's Surface Transportation Act to issue a rule requiring 40 States and the District of Columbia to develop and implement highway-rail grade crossing action plans. This proposed rule would also require the ten States previously required to develop highway-rail grade crossing action plans by the Rail Safety Improvement Act of 2008 and FRA's implementing regulation to update their plans and to submit reports to FRA describing actions they have taken to implement them.

DATES: Written comments must be received by January 6, 2020. FRA will consider comments received after that date to the extent practicable.

ADDRESSES: You may submit comments on Docket No. FRA–2018–0096 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments;
- *Mail:* Docket Management Facility, U.S. DOT, 1200 New Jersey Avenue SE, W12–140, Washington, DC 20590;
- *Hand Delivery:* The Docket Management Facility is located in Room W12–140, West

Building Ground Floor, U.S. DOT, 1200 New Jersey Avenue SE, Washington, DC 20590, and open between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or

- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC72). All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket or visit the Docket Management Facility described above.

FOR FURTHER INFORMATION CONTACT: Debra Chappell, Transportation Specialist, Highway-Rail Crossing and Trespasser Programs Division, Office of Safety Analysis, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6018); or Kathryn Gresham, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE, Washington, DC 20590 (telephone: 202–493–6063).

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

This proposed rule would revise FRA's existing regulation on State highway-rail grade crossing action plans (49 CFR 234.11) to require 40 States and the District of Columbia to develop and implement FRA-approved highway-rail grade crossing action plans. The proposed rule would also require the ten States previously required to develop highway-rail grade crossing action plans by the Rail Safety Improvement Act of 2008 (RSIA) and FRA's implementing regulation at 49 CFR 234.11 to update their plans and to submit reports describing the actions they have taken to implement their plans. FRA seeks comment on all aspects of this proposal.

This rulemaking responds to the Fixing America's Surface Transportation Act (Pub. L. 114–94) (FAST Act) mandate that the FRA Administrator promulgate a regulation requiring States to develop, implement (and update, if applicable) State highway-rail grade crossing action plans. *See* section 11401 of the FAST Act. In the RSIA, Congress directed the Secretary of Transportation to identify the ten States that had the most highway-rail grade crossing collisions, on average, over the previous three years, and require those States to develop grade crossing action plans for the Secretary of Transportation's approval. *See* section 202 of the RSIA. RSIA required the action plans to ''identify specific solutions for improving'' grade crossing safety and to ''focus on crossings that have experienced multiple accidents or are at high risk'' for accidents. Using FRA's database of reported highway-rail grade crossing accidents/incidents that occurred at public and private grade crossings, FRA determined the

following ten States had the most reported highway-rail grade crossing accidents/incidents at public and private grade crossings during the three-year period from 2006 through 2008: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas. Therefore, on June 28, 2010, FRA issued a final rule (2010 final rule) requiring these ten States to develop highway-rail grade crossing action plans and submit them to FRA for approval (based on the Secretary of Transportation's delegation of authority to the Federal Railroad Administrator in 49 CFR 1.89). *See* 75 FR 36551 (June 28, 2010) (codified at 49 CFR 234.11).

Section 11401 of the FAST Act tasks the FRA Administrator with promulgating a regulation requiring these ten States to update the highway-rail grade crossing action plans they previously submitted to FRA under 49 CFR 234.11. This statutory mandate also directs FRA to include a regulatory provision that requires each of these ten States to submit reports to FRA describing: (a) What the State did to implement its previous highway-rail grade crossing action plan; and (b) how the State will continue to reduce highway-rail grade crossing safety risks. As for the other 40 States and the District of Columbia, the FAST Act mandate also requires the FRA Administrator to promulgate a regulation requiring them to develop and implement State highway-rail grade crossing action plans. *See* FAST Act section 11401(b)(1)(B).

The FAST Act mandate contains specific requirements for the contents of the highway-rail grade crossing action plans. As set forth in section 11401(b)(2) of the FAST Act, each highway-rail grade crossing safety plan must identify highway-rail grade crossings that: (a) Have experienced recent highway-rail grade crossing accidents or incidents; (b) have experienced multiple highway-rail grade crossing accidents or incidents; or (c) are at high-risk for accidents or incidents. Section 11401(b)(2) of the FAST Act further provides that each highway-rail grade crossing action plan must identify specific strategies for improving safety at highway-rail grade crossings, including highway-rail grade crossing closures or grade separations. Each State highway-rail grade crossing action plan must also designate a State official responsible for managing implementation of the plan. *See* FAST Act section 11401(b)(2).

The FAST Act mandate also contains requirements related to FRA's review and approval of State highway-rail grade crossing action plans, as well as requirements related to the publication of FRA-approved plans. For example, when FRA approves a State's highway-rail grade crossing action plan, section 11401(b)(4) of the FAST Act requires FRA to make the approved plan publicly available on an ''official internet website.''

If a State submits a highway-rail grade crossing action plan FRA deems incomplete or deficient, section 11401(b)(6) of the FAST Act requires FRA to notify the State of the specific areas in which the plan is deficient. In addition, section 11401(b)(6) requires States to correct any identified deficiencies and resubmit their corrected plans to FRA within 60 days from FRA's notification of the deficiency. If a State fails to meet this 60-day deadline for correcting deficiencies identified by FRA, section 1401(b)(8) of the FAST Act requires FRA to post a notice on an ''official internet website'' that the State has an incomplete or deficient highway-rail grade crossing action plan.

FRA personnel, including FRA regional grade crossing managers, inspectors, and specialists and experts from FRA's Highway-Rail Crossing and Trespasser Programs Division, will be available to assist States with developing, implementing, and updating their highway-rail grade crossing action plans. For example, as further explained in the Section-by-Section Analysis below, FRA will provide highway-rail grade crossing accident/incident data to States upon request. FRA will also assist State agencies who wish to use FRA's Office of Safety Analysis website to generate customized reports of highway-rail grade crossing accident/incident data.

Under 23 U.S.C 148, to receive certain highway funds, States are required to implement highway safety improvement programs, which implement their (continually updated) strategic highway safety plans, a component of which is ''improvements to rail-highway grade crossings'' 23 U.S.C. 148(d)(1)(B)(vii). Further, highway funding (23 U.S.C. 130) is available to fund States' development of rail-highway grade crossing plans (FAST Act Sec 11401(b)(5)) and the Secretary may also condition rail improvement grants to States (49 U.S.C. 229) on the existence of the plans.

II. Section-by-Section Analysis

Section 234.1 Scope

This section discusses the scope of part 234. FRA proposes to revise paragraph (a)(3) to reflect the revised requirements contained in 49 CFR 234.11 as a result of the FAST Act mandate and indicate that these revised requirements are within the scope of this part.

Section 234.11 State Highway-Rail Grade Crossing Action Plans

Currently, paragraph (a) indicates the purpose of this section is to reduce ''collisions'' at highway-rail grade crossings in the ten States that have had the most highway-rail grade crossing collisions from 2006–2008 (the ''initial ten States''). FRA proposes to revise paragraph (a) to explain that the purpose of this section is to reduce ''accidents'' at highway-rail grade crossings ''nationwide by requiring States and the District of Columbia to develop or update highway-rail grade crossing action plans and implement them.'' (FRA proposes to replace the term, ''collisions,'' with the term, ''accidents,'' for consistency with the language of Section 11401(b) of the FAST Act.) As proposed, this paragraph would continue to make clear, as the existing language does, that this section would not restrict any other entity from adopting a highway-rail grade crossing action plan, nor would it restrict any State or the District of Columbia from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this regulation. For purposes of this section, unless otherwise stated, the term ''State'' refers to any one of the 50 States in the United States of America or the District of Columbia; at the same time, FRA may also separately identify the District of Columbia for clarity.

Proposed paragraph (b) would require 40 States and the District of Columbia to develop individual State highway-rail grade crossing action plans that address each of the required elements listed in paragraph (e) and to submit their individual plans to FRA for review and approval no later than one year after the final rule effective date.

FRA proposes to require States and the District of Columbia to submit their highway-rail grade crossing action plans electronically through FRA's website in Portable Document Format (PDF). FRA intends to provide a secure document submission site for States and the District of Columbia to use to upload their highway-rail grade crossing action plans for FRA review and approval.

Existing paragraph (c) of this section outlines the requirements for a State highway-rail grade crossing action plan and requires the initial ten States to submit their plans to FRA by August 27, 2011. As noted above, this existing requirement for the initial ten States to develop and submit State highway-rail grade crossing action plans for FRA

review and approval on or before August 27, 2011, was derived from the RSIA. In response to the mandate of Section 11401 of the FAST Act, FRA proposes to revise this section to require each of the initial ten States to update its existing State highway-rail grade crossing action plan and to provide a report on the State's efforts to implement its existing plan.

Proposed paragraph (c)(1) would require each of the initial ten States to update its existing State highway-rail grade crossing action plan to address each of the required elements listed in paragraph (e) (the same required elements that new State highway-rail grade crossing action plans would be required to address) no later than one year after the final rule's effective date. This list in paragraph (e) incorporates many of the same elements that the initial ten States were required to address in their existing plans. Paragraph (c)(1) would also require each of the initial ten States to submit its updated highway-rail grade crossing action plan to FRA for review and approval.

Paragraph (c)(2) would also require each of the initial ten States to submit a report to FRA describing how the State implemented the highway-rail grade crossing action plan that it previously submitted to FRA under 49 CFR 234.11. Each of these initial ten States would also be required by paragraph (c)(2) to describe in its report how the State will continue to reduce highway-rail grade crossing safety risks. These proposed requirements are derived from section 11401(b)(1) of the FAST Act. FRA envisions that this report, which should address each proposed initiative/solution contained in the State's highway-rail grade crossing action plan previously submitted to FRA under 49 CFR 234.11, could simply be submitted as an appendix to the State's updated plan. FRA intends to use these implementation reports when preparing the report to Congress required by section 11401(c) of the FAST Act addressing the progress these initial ten States have made in implementing their previously submitted action plans.

In paragraph (d)(1), FRA proposes to require each of the initial ten States to submit its updated highway-rail grade crossing action plan and implementation report electronically in PDF form. FRA intends to provide a secure document submission site for these States to use to upload their updated highway-rail grade crossing action plans and implementation reports for FRA review. Paragraph (d)(2) identifies the ten States that would be required to update their existing State highway-rail grade crossing action plans and submit implementation reports to FRA.

Paragraph (e) contains a proposed list of required elements for new and updated State highway-rail grade crossing action plans. These elements are derived from section 11401(b)(2) of the FAST Act. Section 11401(b)(2) of the FAST Act mandates that each State highway-rail grade crossing action plan ''identify highway-rail grade crossings that have experienced recent highway-rail grade crossing accidents or incidents or multiple highway-rail grade crossing accidents or incidents, or are at high-risk for accidents or incidents.'' As reflected in paragraph (e)(1), FRA proposes to interpret ''recent highway-rail grade crossing accidents or incidents'' as highway-rail grade crossing accidents or incidents that have occurred within the previous 3 years. FRA proposes to interpret ''multiple highway-rail grade crossing accidents or incidents'' as more than one highway-rail grade crossing accident or incident that occurred within the previous 5 years. This five-year timeframe is consistent with the five-year timeframe used by the initial ten States when they prepared their state highway-rail grade crossing action plans pursuant to existing § 234.11. FRA is not, however, proposing to adopt an official definition or interpretation of the phrase ''at high-risk for accidents or incidents.'' FRA intends to give States the flexibility to define this category of highway-rail grade crossings for themselves. In sum, paragraph (e)(1) would require States to identify highway-rail grade crossings that: Have experienced at least one accident or incident within the previous three years; have experienced more than one accident or incident within the previous five years; or are otherwise ''at high-risk for accidents or incidents, as defined by the State or the District of Columbia.'' FRA expects that States would explain how they have defined ''high risk for accidents or incidents'' if they assert in their State action plans that they have one or more highway-rail grade crossings that fall within this category.

Paragraph (e)(2) would require States to identify the data sources used to categorize the highway-rail grade crossings in paragraph (e)(1). To help States identify highway-rail grade crossings that have experienced recent accidents or incidents (*i.e.,* at least one grade crossing accident or incident within the previous three years), have experienced multiple accidents or incidents (*i.e.,* more than one accident or incident within the previous five years), or are at high-risk for accidents or incidents, FRA will provide highway-rail grade crossing accident/incident data to States upon request. FRA will also assist State agencies electing to use FRA's Office of Safety Analysis website to generate customized reports of highway-rail grade crossing accident/incident data. However, if the State highway-rail grade crossing action plan identifies highway-rail grade crossings that are at ''high-risk for accidents or incidents,'' FRA expects that the State will explain the criteria it used to classify highway-rail grade crossings as ''high-risk for accidents or incidents,'' in addition to discussing the data sources it used to identify this category of crossings.

Paragraph (e)(3) would require States to discuss specific strategies for improving safety at the highway-rail grade crossings identified in paragraph (e)(1) over a five-year period. FRA anticipates States will explain the causal factors that contribute to highway-rail grade crossing safety risks at the grade crossings identified in their action plans, including, if applicable, risks posed by highway-rail grade crossings that are frequently blocked by idling trains. Also, as indicated in the proposed rule text, FRA encourages States to consider crossing closures and grade separations as potential strategies for improving grade crossing safety. Paragraph (e)(4) would require States to provide an implementation timeline for the strategies that will be used to improve safety at the highway-rail grade crossings identified in paragraph (e)(1). Section 11401(b) of the FAST Act did not dictate a specific period of time that State highway-rail grade crossing action plans should cover. However, existing paragraph (c) of this section required the original ten States to develop highway-rail grade crossing action plans that covered a five-year period. Therefore, for the sake of consistency, FRA proposes that the plans for the remaining 40 States and the District of Columbia cover a period of at least five years. Based on FRA's previous experience working with the initial ten States, a period of at least five years seems appropriate because many of the strategies that may be included in these plans (*e.g.,* crossing closures and grade separations) could take up to five years to implement. However, FRA solicits comment on the time period that should be covered by highway-rail grade crossing plans prepared by the remaining 40 States and the District of Columbia.

Paragraph (e)(5) proposes to require each State and the District of Columbia to designate an official responsible for managing implementation of the State

highway-rail grade crossing action plan. FRA is planning to create a secure document submission site that can be used to upload highway-rail grade crossing action plans. The official designated under this paragraph would be given primary user access to the secure document submission site, as well as the authority to grant access to secondary users. Accordingly, FRA envisions that the designated official will need to register with FRA to gain primary user access to the secure document submission site.

As reflected in paragraph (f) of this section, FRA proposes to require States and the District of Columbia to provide the following contact information for their designated officials, so they can be invited to set up primary user accounts: The name and title of the designated State official; the business mailing address for the designated State official; the email address for the designated State official; and the daytime business telephone number for the designated State official. Also, paragraph (f)(2) of this section would require each State and the District of Columbia to notify FRA if a new official is subsequently designated to manage implementation of its highway-rail grade crossing action plan and to provide contact information for the new designated official.

Paragraph (g) sets forth FRA's proposed review and approval process for highway-rail grade crossing action plans. FRA is soliciting comments on the proposed timeframes for each stage of the proposed review and approval process. These proposed timeframes include: (1) The 60-day period that would be allotted for FRA's preliminary review of each State action plan, and (2) the 60-day period that would be allotted for States with action plans deemed incomplete or deficient to correct their plans and submit corrected plans to FRA for review.

In particular, FRA is soliciting comment on the best way to implement these 60-day timeframes, which are specified in sections 11401(b)(6) and (b)(7) of the FAST Act. For instance, FRA is concerned that the proposed 60-day review period may not be adequate in the event most State action plans are submitted to FRA for review at approximately the same time. Accordingly, FRA is soliciting comment on whether the final rule should contain staggered deadlines for the submission of State action plans, and if so, what criteria for staggering should be used.

FRA is proposing a two-stage review process for new, updated, and corrected highway-rail grade crossing action plans. As reflected in paragraph (g)(1), FRA proposes to update its website to reflect receipt of each new, updated, or corrected highway-rail grade crossing action plan.

To avoid delaying implementation of needed grade crossing safety improvements for agency review of each highway-rail grade crossing action plan, FRA proposes in paragraph (g)(2)(A) to conduct a preliminary review of each new, updated, and corrected highway-rail grade crossing action plan within sixty (60) days of receipt. During this preliminary review, FRA would determine if the elements prescribed in paragraph (e) of this section are included in the plan.

As reflected in paragraph (g)(2)(B), each new, updated, or corrected State highway-rail grade crossing action plan would be considered conditionally approved unless FRA notifies the designated official described in paragraph (e)(5) within 60 days of the date of receipt that the plan is incomplete or deficient. However, as reflected in paragraph (g)(2)(C), FRA proposes to reserve the right to conduct a more comprehensive review of each new, updated, or corrected State highway-rail grade crossing action plan during the 120-day period following receipt of the plan to determine if the elements prescribed in paragraph (e) of this section have been sufficiently addressed and discussed in the plan. During this 120-day review period, FRA will provide email notification to the State or District of Columbia's designated official if FRA determines that a new, updated, or corrected State highway-rail grade crossing action plan is incomplete or deficient. FRA requests comment on these proposed approval timelines and procedures and specifically, whether such a two-stage approval process is necessary if staggered submission deadlines were to be adopted.

In response to the FAST Act's mandate to make public each approved plan and certain other information regarding submitted plans, FRA proposes to post a table on its website that would reflect the review/approval status of each highway-rail grade crossing action plan submitted to FRA. In the table, FRA proposes to post information about the date(s) on which it receives an action plan submitted by a State or the District of Columbia, the date of automatic conditional approval (if applicable), the date(s) on which FRA notifies the State or District of Columbia that the plan is deficient or incomplete (if applicable), the date on which the corrected action plan is received by FRA (if applicable), and the date on which FRA notifies the State or District of Columbia that the action plan has been fully approved. This full FRA approval date would be the specific date FRA provides email notification to the State or District of Columbia that FRA has fully approved the action plan.

Paragraph (g)(3) specifically addresses highway-rail grade crossing action plans that FRA determines to be incomplete or deficient. As reflected in paragraph (g)(3)(A), FRA proposes to provide email notification to the State or the District of Columbia's designated official of the specific areas in which the highway-rail grade crossing action plan is incomplete or deficient.

In paragraph (g)(3)(B), FRA proposes to allow States and the District of Columbia to complete, correct, and resubmit within 60 days any highway-rail grade crossing action plan that is deemed incomplete or deficient. This 60-day timeframe is derived from section 11401(b)(7) of the FAST Act, which directs States to complete their grade crossing action plans and correct deficiencies identified within 60 days of the date of FRA notification.

As reflected in paragraph (g)(4)(A), after FRA has completed its review and approves a new, updated, or corrected State highway-rail grade crossing action plan, FRA proposes to notify the State's designated official described in paragraph (e)(5) of this section by email that the highway-rail grade crossing action plan has been fully approved.

Paragraph (g)(4)(B) states that FRA proposes to make each fully-approved highway-rail grade crossing action plan publicly available for online viewing. This provision is intended to comply with section 11401(b)(4) of the FAST Act, which requires the FRA Administrator to make each approved State highway-rail grade crossing action plan publicly available on ''an official internet website.'' To make fully-approved plans publicly available for online viewing, FRA proposes to post each fully-approved plan on its website. In addition, to avoid confusion, the Federal Highway Administration will remove the original State Action Plans submitted by the initial ten States from its website.

Paragraph (g)(4)(C) would also require each State and the District of Columbia to implement its highway-rail grade crossing action plan upon full approval.

Under 23 U.S.C. 148, to receive certain highway funds, States are required to implement highway safety improvement programs, which implement their (continually updated) strategic highway safety plans, a component of which is ''improvements to rail-highway grade crossings'' 23 U.S.C. 148(d)(1)(B)(vii). Highway funding (23 U.S.C. 130) is available to

fund States' development of highway-rail grade crossing plans under this proposed rule. In addition, as stated in paragraph (h), the Secretary of Transportation may condition the awarding of rail improvement grants to States (49 U.S.C. 229) on the State's or District of Columbia's submission of an FRA-approved State highway-rail grade crossing action plan under this section.

III. Regulatory Impact and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This NPRM is a non-significant regulatory action and has been evaluated in accordance with existing policies and procedures under Executive Order 12866 and DOT Order 2100.6. 44 FR 11034, Feb. 26, 1979; 58 FR 51,735; *https://www.transportation.gov/regulations/2018-dot-rulemaking-order*.

The purpose of the NPRM is to reduce accidents at highway-rail grade crossings nationwide. The NPRM would require each State and the District of Columbia to submit or re-submit to FRA a highway-rail grade crossing action plan (Plan). The proposed rule would also require each of the 10 States [1] who previously created an FRA-approved Plan to submit a report to FRA that describes how the State implemented its existing Plan and how the State will continue to reduce highway-rail grade crossing safety risks.[2]

Costs

The NPRM specifically lists the required elements for Plans.[3] To minimize the compliance costs, the NPRM would afford each State the flexibility to develop or update a Plan based upon the individual State's hazard assessment.

Section 11401(a) of the FAST Act required FRA to develop and distribute a model State highway-rail grade crossing action plan (Model Plan). In conjunction with the Federal Highway Administration (FHWA), FRA developed a ''*Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices Guide*.'' FRA shared this guide with States via letters that included the data requirements as discussed in Section 11401 of the Fast Act. The guide is currently available on the Department of Transportation's website.[4] Previous State action plans from the 2010 final rule are also currently available to the public on DOT's website.[5] After issuing a final rule arising from this NPRM, FRA will provide States with assistance in developing their Plans. FRA anticipates that assistance will help to reduce the compliance burden.

Table ES.1 shows the costs associated with the NPRM. The largest costs for the 10 States that have already developed an FRA-approved Plan are: Updating and Submitting a Plan to FRA ($350,000 (PV [6], 7%) and $364,000 (PV, 3%)) and submitting a report to FRA that describes how each State implemented its previously submitted Plan and how the State will continue to reduce highway-rail grade crossing safety risks ($57,000 (PV, 7%) and $59,000 (PV, 3%)), and resubmitting (if necessary) a Plan should FRA determine the State's updated Plan submission to be incomplete or deficient ($17,000 (PV, 7%) and $18,000 (PV, 3%)). Collectively, the largest costs for the other 40 States and DC are: Developing and submitting a Plan to FRA ($1.0 million (PV, 7%) and $1.1 million (PV, 3%)); and resubmitting (if necessary) a Plan should FRA determine the State's previous Plan submission to be incomplete or deficient ($38,000 (PV, 7%) and $40,000 (PV, 3%)).

As shown in Table ES.1, the NPRM would result in a total cost of $1.5 million (PV, 7%), and $1.6 million (PV, 3%).

TABLE ES–1: COST SUMMARY, DISCOUNTED AT 7% AND 3% (2017 DOLLARS) [7]

Costs	States updating existing plan		States creating new plan		All states	
	7%	3%	7%	3%	7%	3%
Develop or Update Plan	$350,000	$364,000	$1,070,000	$1,111,000	$1,420,000	$1,475,000
Submitting Report to FRA	57,000	59,000	.....	.....	57,000	59,000
Resubmit Plan	17,000	18,000	38,000	40,000	55,000	57,000
Total Cost	424,000	441,000	1,108,000	1,151,000	1,532,000	1,591,000
Annualized	60,000	52,000	158,000	135,000	218,000	187,000

FRA assumes that all costs would be incurred in the first year of analysis. The costs that are derived from the analysis do not include the costs of voluntary changes in investments or operations that States would make after implementing their Plans.

Benefits

This analysis found that the NPRM would have a positive impact in mitigating highway-rail grade crossing accidents. FRA expects it would take a few years for the States to see benefits associated with the implementing of their Plans. Also, without periodic updates, Plans may lose their effectiveness over time. Therefore, this analysis concluded that Plans would only have a positive impact towards reducing accidents in year 4 to year 8 after States develop their Plans.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and Executive

[1] For purposes of this section, unless otherwise stated, the term ''State'' refers to any one of the 50 States in the United States of America or Washington, DC.

[2] This analysis covers a 10-year period immediately following the potential implementation date of the NPRM, where all costs and benefits are measured in 2017 dollars.

[3] U.S. Department of Transportation, Federal Railroad Administration, RIN 2130–AC72, Section 234.11(e) *Required elements for State highway-rail grade crossing action plans.*

[4] United States Department of Transportation, Federal Railroad Administration, ''Highway-Railway Grade Crossing Action Plan and Project Prioritization Noteworthy Practices Guide.'' Report Number FHWA–SA–16–075. November 2016. *https://www.fra.dot.gov/Elib/Document/16793*.

[5] U.S. Department of Transportation, Federal Highway Administration, Rail-Highway Crossing (Section 130) Programs, ''State Grade Crossing Action Plans'' *https://safety.fhwa.dot.gov/hsip/xings/*.

[6] To compare benefits and costs that occur at different points in time, this analysis calculates the present value (PV) of all monetary factors on an annual basis. PV provides a way of converting future costs and benefits into equivalent dollars today. Consequently, it permits comparisons of benefit/cost streams that involve different time paths. The formula used to calculate these flows is: $1 \div (1 + r)^t$, where ''r'' is the discount rate and ''t'' is the number of years ahead. Discount rates of 0.03 and 0.07 are used.

[7] Numbers rounded to the nearest 1,000.

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

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

FRA identified 51 entities (the 50 States and the District of Columbia) that would be affected by this proposed rule. The proposed rule would not impact any other entity—public or private. Each of the 50 States and the District of Columbia have a population greater than 50,000. Therefore, the proposed rule would not directly regulate any small entities. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), the FRA Administrator hereby certifies that this proposed rule would not have a significant impact on a substantial number of small entities. FRA requests comments on all aspects of this certification.

C. Federalism

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local governments early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. FRA has determined that the proposed rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this proposed rule, which complies with a statutory mandate, will not have federalism implications that impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply, and preparation of a federalism summary impact statement for this proposed rule is not required.

D. Paperwork Reduction Act

FRA is submitting the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the new information collection requirements is noted below, and the estimated burden times to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours [8]	Total annual burden dollar cost equivalent
234.11—State Highway-Rail Grade Crossing Action Plans—Development and submission of New Plans (40 States + DC).	40 States + District of Columbia.	3.5 plans + 10 plans + 7 plans.	700 hours + 550 hours + 200 hours.	9,350	$572,220
—State Highway-Rail Grade Crossing Action Plans—Development and submission of updated plans for listed States in Section 234.11e with FRA Previously Approved Plans (10 States).	10 States	1.5 plans + 1.5 plans + 2 plans.	1,100 hours + 640 hours + 225 hours.	3,060	187,272
—State Highway-Rail Grade Crossing Action Plan Implementation Reports (10 listed States in Section 234.11e).	10 States	1.5 reports + 1.5 reports + 2 reports.	160 hours + 120 hours + 40 hours.	500	30,600

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours [8]	Total annual burden dollar cost equivalent
—Notification to FRA by State or District of Columbia (DC) of another official to assume responsibilities described in paragraph (e)(6) of this Section.	50 States + District of Columbia.	4 notifications	5 minutes	.33	20
—FRA review and approval of State Highway-Rail Grade Crossing Action Plans: Disapproved plans needing revision (40 States + DC).	40 States + District of Columbia.	1 plan + 3 plans + 2 plans.	105 hours + 60 hours + 24 hours.	333	20,380
—FRA review and approval of State Highway-Rail Grade Crossing Action Plans: Disapproved plans needing revision (10 listed States in Section 234.11e).	10 States	.5 plan + .5 plan + .5 plan.	55 hours + 32 hours + 11 hours.	148	9,058
Total	N/A	42 (plans/reports/notifications).	N/A	13,391	819,550

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Under 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

For information or a copy of the paperwork package submitted to OMB, contact Ms. Hodan Wells, Information Clearance Officer, at 202–493–0440, or Ms. Kimberly Toone, Records Management Officer, Office of Railroad Safety, Federal Railroad Administration, at 202–493–6132.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Ms. Hodan Wells or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE, 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Ms. Wells at *Hodan.Wells@dot.gov* or Ms. Toone at *Kim.Toone@dot.gov*.

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal. FRA will be seeking an OMB reinstatement of a previously approved control number under OMB No. 2130–0589 that was discontinued because all requirements had been fulfilled under an earlier rulemaking.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

E. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This proposed rule is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

F. Environmental Assessment

FRA has evaluated this proposed rule under its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999). In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this proposed regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

G. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995

[8] As noted in the Regulatory Impact Analysis (RIA) accompanying this proposed rule, the States/DC will incur the costs for this proposed rule's requirements in the first year. However, since FRA is requesting a two-year approval from OMB for the information collection associated with this proposed rule, FRA has divided by two the number of burden responses, burden hours, and dollar equivalent cost to obtain the average annual burden once the proposed/final rule goes into effect. Also, please note that the dollar equivalent cost for the estimated burden hours is based on Bureau of Labor Statistics (BLS) data for the average hourly wage for State employees responsible for submitting a State Highway-Rail Grade Action Plan/updated plans/implementation reports and amounts to $61.20 per hour. Please see the RIA for this proposed rule for more details.

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

H. Energy Impact

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

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

I. 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, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

List of Subjects in 49 CFR Part 234

Highway safety, Penalties, Railroad safety, Reporting and recordkeeping requirements, State and local governments.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—[AMENDED]

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20152, 20160, 21301, 21304, 21311, 22501 note; Pub. L. 114–94, Div. A, Sec. 11401; and 49 CFR 1.89.

■ 2. In § 234.1, revise paragraph (a)(3) to read as follows:

§ 234.1 Scope.

(a) * * *

(3) Requirements for certain identified States to update their existing State highway-rail grade crossing action plans and submit reports about the implementation of their existing plans and for the remaining States and the District of Columbia to develop State highway-rail grade crossing action plans;

* * * * *

■ 3. Section 234.11 is revised to read as follows:

§ 234.11 State highway-rail grade crossing action plans.

(a) *Purpose.* The purpose of this section is to reduce accidents at highway-rail grade crossings nationwide by requiring States and the District of Columbia to develop or update highway-rail grade crossing action plans and implement them. This section does not restrict any other entity from adopting a highway-rail grade crossing action plan. This section also does not restrict any State or the District of Columbia from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *New action plans.* (1) Except for the 10 States identified in paragraph (d)(2) of this section, each State and the District of Columbia shall develop a State highway-rail grade crossing action plan that addresses each of the required elements listed in paragraph (e) of this section and submit such plan to FRA for review and approval not later than [DATE 426 DAYS FROM DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) Each State and the District of Columbia shall submit its highway-rail grade crossing action plan electronically through FRA's website in Portable Document Format (PDF).

(c) *Updated action plan and implementation report.* (1) Each of the 10 States listed in paragraph (d)(2) of this section shall develop and submit an updated State highway-rail grade crossing action plan that addresses each of the required elements listed in paragraph (e) of this section to FRA for review and approval, not later than [DATE 426 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**].

(2) Each of the 10 States listed in paragraph (d)(2) of this section shall also develop and submit to FRA, not later than [DATE 426 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], a report describing:

(i) How the State implemented the State highway-rail grade crossing action plan that it previously submitted to FRA for review and approval; and

(ii) How the State will continue to reduce highway-rail grade crossing safety risks.

(d) *Electronic submission of updated action plan and implementation report.* (1) Each of the 10 States listed in paragraph (d)(2) of this section shall submit its updated highway-rail grade crossing action plan and implementation report electronically through FRA's website in PDF form.

(2) The requirements of paragraph (c) of this section and this paragraph (d) apply to the following States: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas.

(e) *Required elements for State highway-rail grade crossing action plans.* Each State highway-rail grade crossing action plan described in paragraphs (b) and (c) of this section shall:

(1) Identify highway-rail grade crossings that:

(i) Have experienced at least one accident or incident within the previous 3 years;

(ii) Have experienced more than one accident or incident within the previous 5 years; or

(iii) Are at high-risk for accidents or incidents as defined by the State or the District of Columbia in the action plan;

(2) Identify data sources used to categorize the highway-rail grade crossings in paragraph (e)(1) of this section;

(3) Discuss specific strategies, including highway-rail grade crossing closures or grade separations, to improve safety at those crossings over a period of at least five years;

(4) Provide an implementation timeline for the strategies discussed in paragraph (d)(2) of this section; and

(5) Designate an official responsible for managing implementation of the State highway-rail grade crossing action plan.

(f) *Electronic submission.* (1) When the State or the District of Columbia submits its highway-rail grade crossing action plan or updated action plan and implementation report electronically through FRA's website, the State or the District of Columbia shall provide the following information to FRA for the designated official described in paragraph (e)(5) of this section:

(i) The name and title of the designated official;

(ii) The business mailing address for the designated official;

(iii) The email address for the designated official; and

(iv) The daytime business telephone phone for the designated official.

(2) If the State or the District of Columbia designates another official to assume the responsibilities described in paragraph (e)(5) of this section, the State or the District of Columbia shall contact FRA and provide the information listed in paragraph (f)(1) of this section for the new designated official.

(g) *Review and approval.* (1) FRA will update its website to reflect receipt of each new, updated, or corrected highway-rail grade crossing action plan submitted pursuant to this section.

(2)(i) Within sixty (60) days of receipt of each new, updated, or corrected highway-rail grade crossing action plan, FRA will conduct a preliminary review of the action plan to determine if the elements prescribed in paragraph (e) of this section are included in the plan.

(ii) Each new, updated, or corrected State highway-rail grade crossing action plan shall be considered conditionally approved for purposes of this section unless FRA notifies the designated official described in paragraph (e)(5) of this section within sixty (60) days of receipt that the highway-rail grade crossing action plan is incomplete or deficient.

(iii) FRA reserves the right to conduct a more comprehensive review of each new, updated, or corrected State highway-rail grade crossing action plan within 120 days of receipt.

(3) If FRA determines that the new, updated, or corrected highway-rail grade crossing action plan is incomplete or deficient:

(i) FRA will provide email notification to the designated official described in paragraph (e)(5) of this section of the specific areas in which the plan is deficient and allow the State or the District of Columbia to complete the plan and correct the deficiencies identified.

(ii) Within 60 days of the date of FRA's email notification that the highway-rail grade crossing action plan is incomplete or deficient, the State or District of Columbia shall correct all deficiencies and submit the corrected State highway-rail grade crossing action plan to FRA for approval. The State or District of Columbia shall submit its corrected highway-rail grade crossing action plan electronically through FRA's website in PDF form.

(4)(i) When a new, updated, or corrected State highway-rail grade crossing action plan is fully approved, FRA will provide email notification to the designated official described in paragraph (e)(5) of this section.

(ii) FRA will make each fully-approved State highway-rail grade crossing action plan publicly available for online viewing.

(iii) Each State and the District of Columbia shall implement its fully-approved highway-rail grade crossing action plan.

(h) The Secretary of Transportation may condition the awarding of any grants under 49 U.S.C. ch. 244 on the State's or District of Columbia's submission of an FRA-approved State highway-rail grade crossing action plan under this section.

Issued in Washington, DC.

Ronald L. Batory,

Administrator, Federal Railroad Administration.

[FR Doc. 2019–24197 Filed 11–6–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 191101–0073]

RIN 0648–BH59

International Fisheries; Eastern Pacific Tuna Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS seeks comments on this proposed rule issued under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA) and the Tuna Conventions Act. The proposed rule would revise the management regime for fishing vessels that target tunas and other highly migratory fish species (HMS) in the area of overlapping jurisdiction in the Pacific Ocean between the Inter-American Tropical Tuna Commission (IATTC) and the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC). The proposed rule would apply all regulations implementing IATTC resolutions in the area of overlapping jurisdiction. Under this proposed rule, regulations implementing WCPFC decisions on catch and fishing effort limits, bycatch mitigation measures, and associated reporting requirements would no longer apply in the area of overlapping jurisdiction. However, regulations implementing WCPFC management measures related to monitoring, control, and surveillance would continue to apply in the area of overlapping jurisdiction. NMFS is undertaking this action based on an evaluation of the management regime in the area of overlapping jurisdiction, in order to satisfy the obligations of the United States as member of the IATTC and the WCPFC, pursuant to the authority of the WCPFCIA and the Tuna Conventions Act.

DATES: Comments on the proposed rule must be submitted by November 22, 2019.

ADDRESSES: You may submit comments on the proposed rule and the regulatory impact review (RIR) prepared for the proposed rule, identified by NOAA–NMFS–2018–0049, by either of the following methods:

• *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2018-0049,*

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

—OR—

• *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

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

An initial regulatory flexibility analysis (IRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Copies of the RIR and the environmental assessment (EA) prepared for the proposed rule are available at *www.regulations.gov* or may be obtained via mail from Michael D. Tosatto, Regional Administrator, NMFS PIRO.

FOR FURTHER INFORMATION CONTACT: Alex Kahl, NMFS PIRO, 808–725–5031.

SUPPLEMENTARY INFORMATION:

Background

The United States is a member of both IATTC and WCPFC. NMFS implements decisions of WCPFC under the authority of the WCPFCIA (16 U.S.C. 6901 *et seq.*), and decisions of IATTC under the authority of the Tuna Conventions Act (16 U.S.C. 951 *et seq.*). The convention areas for the IATTC (IATTC Area) and WCPFC (WCPFC Area) overlap in the Pacific Ocean waters within an area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude (''overlap area''). Historically, regulations implementing the conservation measures adopted by both IATTC (50 CFR 300, subpart C) and WCPFC (50 CFR 300, subpart O) applied to U.S. vessels fishing for highly migratory species (HMS) in the overlap area. In 2012, IATTC and WCPFC adopted decisions allowing each member belonging to both commissions to decide, for a period of not less than 3 years, whether IATTC or WCPFC conservation and management measures would apply to its vessels when they fish in the overlap area.

In accordance with WCPFC and IATTC decisions regarding the overlap area,[1] NMFS undertook a rulemaking regarding management of the overlap area. After issuing a proposed rule for public review and comment, NMFS issued a final rule on April 26, 2016 (81 FR 24501 (Apr. 26, 2016), effective May 26, 2016; hereafter ''2016 final rule''), stating that except for IATTC Regional Vessel Register (RVR) regulations at 50 CFR 300.22(b), all other regulations implementing IATTC decisions at 50 CFR 300, subpart C would no longer apply in the overlap area. The IATTC RVR regulations continued to apply in the overlap area for compliance with U.S. obligations under the Agreement on the International Dolphin Conservation Program (AIDCP). Under the 2016 final rule, regulations implementing WCPFC conservation and management measures applied in the overlap area. In the preamble to the 2016 final rule, NMFS indicated that it may reevaluate the location of fishing effort in the eastern Pacific Ocean (EPO) and western and central Pacific Ocean (WCPO) in three years to consider revising the management regime for the overlap area.

Accordingly, in June 2018, NMFS revisited this decision and published an advance notice of proposed rulemaking (ANPR) (83 FR. 27305; June 12, 2018) seeking public input about whether conservation and management measures adopted by WCPFC or IATTC should apply in the overlap area. NMFS received ten comments in response to the ANPR (all from the U.S. purse seine industry), unanimously supporting application of IATTC measures rather than WCPFC measures in the overlap area. The commenters generally stated there would be more fishing opportunities under IATTC measures than under WCPFC measures, maintaining that WCPFC measures result in more constraining fishery closures than IATTC measures, and that the escalating cost of fishing days in foreign exclusive economic zones (EEZ) in the WCPFC Area, makes high seas within the overlap area an increasingly attractive fishing ground.

NMFS' analyses (EA and RIR) of the comparative economic effects and environmental effects of the application of WCPFC measures or IATTC measures in the overlap area concludes that application of IATTC measures would likely result in greater net benefits to the nation. These greater net benefits arise from more fishing opportunity and greater operational certainty provided by the option of annually choosing one of the IATTC's two 72-day purse seine closure periods instead of the WCPFC purse seine fishing effort limits and fish aggregating device (FAD) closure periods currently applicable to the overlap area under NMFS regulations at 50 CFR 300.223. Under the current WCPFC-derived regulations, FAD fishing is prohibited in the overlap area for five months of the year (one three-month closure in the entire overlap area, and an additional two-month closure on the high seas of the overlap area), and there is uncertainty regarding when the fishing effort limits would be reached, which would result in a fishery closure for the remainder of the year. More fishing opportunity and operational certainty would be particularly beneficial during El Niño events, when tropical tuna are more likely to be found in the EPO. Any potential increase in fishing activity would provide net benefits while continuing to meet IATTC objectives of conserving target stocks and minimizing impacts to protected species and their environments. Accordingly, NMFS is issuing this proposed rule to apply IATTC measures in the overlap area instead of WCPFC measures, except as described herein.

During development of the 2016 final rule, NMFS stated that, rather than applying IATTC measures to an individual vessel or gear type and WCPFC measures to another vessel or gear type, NMFS would apply WCPFC's management measures to the entire U.S. fleet in the overlap area because the WCPFC and the IATTC each separately develop a comprehensive and self-contained package of management

[1] IATTC Recommendation C–12–11, ''IATTC–WCPFC Overlap Area,'' and the WCPFC decision documented in ''Summary Report of the Ninth Regular Session of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean,'' Manila, Philippines, 2–6 December, 2012, paragraph 80.

measures to address similar conservation objectives. As noted during the development of the 2016 final rule, if one set of management measures were applied to some vessels while another set of management measures were applied to other vessels, overall management efforts would fail to address the conservation objectives of either organization (80 FR 80742; December 28, 2015). This proposed rule would follow the same approach as the 2016 final rule by applying to all vessels, thus maintaining uniformity in management of the overlap area for the U.S. fleet as a whole, rather than applying on an individual vessel-basis, or gear type.

When deciding which regulations to apply in the overlap area, NMFS considered whether all WCPFC-derived regulations should no longer apply in the overlap area, or whether certain WCPFC-regulations should remain in effect. The WCPFC and IATTC decisions addressing the overlap area broadly indicate that a member of both commissions, such as the United States, is to apply the ''conservation and management measures'' of one commission in the overlap area. Because these decisions do not address specific conservation and management measures, a Contracting Party's decision to implement one commission's conservation and management measures over the other could have compliance implications where legal obligations arise under treaty. In other words, as a Contracting Party to the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPF Convention) and the Antigua Convention, the United States is obligated to implement provisions required under both the WCPF Convention and the Antigua Convention. The WCPF Convention and the Antigua Convention created the WCPFC and the IATTC, respectively, and decisions of each commission are subject to their terms.

NMFS believes that while WCPFC and IATTC decisions addressing the overlap area can provide members with discretion to choose which conservation and management decisions to apply, it cannot relieve a Contracting Party of its existing treaty obligations. Accordingly, when deciding to apply IATTC measures to the overlap area, NMFS considered whether all WCPFC measures should no longer apply in the overlap area, or whether certain WCPFC management measures should remain in effect in order for the United States to continue to meet its obligations under that WCPF Convention. NMFS proposes that regulations implementing WCPFC measures for the conservation and management of highly migratory fish stocks, such as purse seine fishing restrictions, longline fishing restrictions, and bycatch mitigation measures would no longer apply in the overlap area, and that WCPFC management measures related to monitoring, control, and surveillance (MCS) would continue to apply, as explained in more detail below. NMFS currently implements, and would continue to implement, the MCS measures pursuant to its obligations under the WCPF Convention.

Historically, U.S. vessels have not frequently fished for HMS in the overlap area, but the two gear types that have fished in the overlap area in recent years are troll vessels that target South Pacific albacore and purse seine vessels that target tropical tuna species. The majority of the South Pacific albacore troll fishery occurs in the WCPFC Area outside the overlap area (*i.e.,* west of 150° W), and some albacore troll fishing occurs in the overlap area. U.S. purse seine vessel activity in and around the overlap area has increased since the 2016 final rule went into effect. These fisheries are described in more detail in the Classification section.

Proposed Action

This proposed rule would change the definition of ''IATTC Convention Area'' at 50 CFR 300.21 to include the overlap area, so that all regulations at 50 CFR part 300, subpart C would apply in the overlap area. The requirements under the Marine Mammal Protection Act and AIDCP, including observer requirements at 50 CFR 216.24(e), which currently apply in the overlap area, would also continue to apply under the proposed rule. As stated above, pursuant to the requirements of the AIDCP, vessels fishing in the overlap area are currently required to comply with the regulations for inclusion in the IATTC RVR. However, under the regulations at 50 CFR 300.22(b)(1), once per year, a vessel that is permitted and authorized under an alternative international tuna purse seine fisheries management regime in the Pacific Ocean (*e.g.,* WCPFC) may exercise an option to fish with purse seine gear to target tuna in the IATTC Area without its well volume counting towards the U.S. capacity limit in the IATTC Area for a fishing trip that does not exceed 90 days in duration. A total of 32 such trips are allowed each calendar year. Thus, vessels currently fishing in the overlap area are familiar with and subject to the regulations implementing IATTC decisions when fishing in the IATTC Area. The following regulations at 50 CFR part 300, subpart O, which implement WCPFC conservation and management measures for stock management and bycatch matters, would no longer apply in the overlap area:

- Purse seine fishing effort limits (50 CFR 200.223(a));
- Purse seine FAD restrictions (50 CFR 300.223(b));
- Purse seine catch retention requirements (50 CFR 300.223(d));
- Purse seine sea turtle bycatch mitigation requirements (50 CFR 300.223(f));
- Whale shark bycatch mitigation requirements (50 CFR 300.223(g)–(h));
- Longline bigeye tuna catch limits (50 CFR 300.224(a)); and
- Oceanic whitetip and silky shark interaction mitigation (50 CFR 300.226).

All other regulations implementing the WCPF Convention and WCPFC decisions would continue to apply in the overlap area. Table 1 shows the regulations that would apply in the overlap area, and is organized to illustrate regulations implementing WCPFC decisions that are comparable to regulations implementing IATTC decisions, or to indicate where no comparable regulations exist. A detailed comparison of these regulations is provided in the sections that follow.

TABLE 1—COMPARISON OF REGULATIONS IMPLEMENTING WCPFC DECISIONS AND IATTC DECISIONS AND WHETHER THEY WOULD APPLY IN THE OVERLAP AREA UNDER THE PROPOSED RULE

50 CFR 300 subpart O (implementing WCPFC decisions)	Applies in overlap area under proposed rule?	Similar regulations at 50 CFR 300 subpart C or 50 CFR 216 (implementing IATTC decisions)	Applies in overlap area under proposed rule?
§ 300.223(a) Purse seine fishing effort limits	No	§ 300.25(e) Purse seine closures	Yes.
§ 300.223(b) Purse seine fish aggregating devices.	No	§ 300.28 Purse seine FAD restrictions	Yes.

TABLE 1—COMPARISON OF REGULATIONS IMPLEMENTING WCPFC DECISIONS AND IATTC DECISIONS AND WHETHER THEY WOULD APPLY IN THE OVERLAP AREA UNDER THE PROPOSED RULE—Continued

50 CFR 300 subpart O (implementing WCPFC decisions)	Applies in overlap area under proposed rule?	Similar regulations at 50 CFR 300 subpart C or 50 CFR 216 (implementing IATTC decisions)	Applies in overlap area under proposed rule?
§ 300.223(d) Purse seine catch retention	No	§ 300.27(a) Tuna retention requirements for purse seine vessels.	Yes.
§ 300.223(f) Purse seine sea turtle mitigation	No	§ 300.27(c) Purse seine sea turtle handling and release.	Yes.
§ 300.223(g)–(h) Purse seine whale shark mitigation.	No	§ 300.27(g)–(h) Purse seine whale shark restrictions for purse seine vessels.	Yes.
§ 300.224 Longline fishing restrictions	No	§ 300.25(a) Longline tuna catch limits	Yes.
§ 300.226 Oceanic whitetip shark and silky shark	No	§ 300.27(d) Oceanic whitetip shark restrictions; § 300.27(e)–(f) Silky shark restrictions.	Yes.
No comparable requirements	NA ***	§ 300.25(f) Restrictions on fishing in proximity to data buoys.	Yes.
No comparable requirements	NA	§ 300.25(g) Pacific bluefin tuna catch limits	Yes.
No comparable requirements	NA	§ 300.27(b) Release requirements for non-tuna species on purse seine vessels.	Yes.
No comparable requirements	NA	§ 300.27(i)–(j) Mobulid ray restrictions	Yes.
No comparable requirements	NA	§ 300.27(k) Shark handling and release requirements for purse seine vessels.	Yes.
No comparable requirements	NA	§ 300.27(l) Shark line prohibition for longline vessels.	Yes.
§ 300.212 WCPFC vessel permit endorsements	Yes	§ 300.22(b) IATTC vessel register requirements	Yes.
§ 300.213 Vessel information requirements for fishing in foreign EEZs.	Yes	No comparable requirements	NA.
§ 300.214 Compliance with Laws of Other Nations.	Yes	No comparable requirements	NA.
§ 300.215 Observers	Yes	§ 216.24(e) Purse seine observers **	Yes.
§ 300.216 Transshipping, bunkering and net sharing.	Yes	§ 300.25(c) Purse seine transshipment requirements.	Yes.
§ 300.217 Vessel identification	Yes	§ 300.22(b)(3)(ii) IMO numbers	Yes.
§ 300.218 Reporting and recordkeeping requirements.	Yes *	§ 300.22 Recordkeeping and reporting requirements.	Yes.
§ 300.219 Vessel monitoring system	Yes	§ 300.26 Vessel Monitoring System	Yes.
§ 300.221 Facilitation of enforcement and inspection.	Yes	No comparable requirements	NA.
§ 300.223(e) Purse seine observer coverage	Yes	§ 216.24(e) Purse seine observers **	Yes.
No comparable requirements	NA	§ 216.24 Requirements for U.S. purse seine vessels fishing under the requirements of the AIDCP (*e.g.,* vessel and operator permit requirements, requirements for fishing on dolphins, *etc.*) **.	Yes.

* The whale shark reporting requirements at 50 CFR 300.218(g) would no longer apply in the overlap area.
** These regulations also implement provisions of the Marine Mammal Protection Act and the Agreement on the International Dolphin Conservation Program, and are not located at 50 CFR part 300, subpart C, but instead are located at 50 CFR part 216, subpart C.
*** NA indicates ''not applicable.''
Note: Titles of regulation sections have been modified in some instances to include additional descriptive information.

Purse Seine Fishing Effort Restrictions

Under this proposed rule, regulations implementing WCPFC decisions for purse seine fishing effort would no longer apply in the overlap area, while regulations implementing IATTC decisions for purse seine fishing effort would go into effect in the overlap area.

Beginning in 2009, NMFS implemented annual limits on purse seine fishing effort on the high seas and in the U.S. EEZ in the WCPFC Area between 20° N latitude and 20° S latitude (50 CFR 300.223(a)). Under this proposed rule, such purse seine fishing effort limits set forth in WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include purse seine effort controls that would henceforth apply in the overlap area (50 CFR 300.25(e)). These regulations specify that any U.S. purse seine vessel must observe a 72-day closure period during each of the calendar years 2019 and 2020.

FAD Management Measures

NMFS has implemented WCPFC FAD management measures ((50 CFR 300.223(b)). These include specific time periods during which purse seine vessels are prohibited from setting on FADs in the WCPFC Area in the area between 20° N latitude and 20° S latitude. Currently, the prohibition periods are from July 1 through September 30 in each calendar year for the entire WCPFC Area and on the high seas from November 1 through December 31 in each calendar year. There is also a limit of 350 drifting active FADs per each U.S. purse seine vessel fishing in the WCPFC Area. Under the proposed rule, these regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include FAD management measures that would apply in the overlap area (50 CFR 300.28). These FAD management measures detailed at 50 CFR 300.28 include the following: (1) FAD identification requirements that require a unique code to be marked on the radio or satellite

buoy or the FAD; (2) U.S. vessel owners and operators of purse-seine vessels of well volume 1,200 m^3 or more must not have more than 450 active FADs; (3) U.S. vessel owners and operators of purse-seine vessels for vessels of volume 426–1,199 m^3 must not have more than 300 active FADs; (4) U.S. vessel owners and operators of purse-seine vessels of well volume 13–425 m^3 must not have more than 120 active FADs; (5) U.S. vessel owners and operators of purse-seine vessels of well volume 0–212 m^3 must not have more than 70 active FADs; (6) U.S. vessel owners, operators, and crew of purse seine vessels of class size 4–6 must not deploy a FAD during 15 days prior to the start of the vessel's selected purse seine closure period at 50 CFR 300.25(e)(1); (7) 15-days prior to the start of the vessel's selected closure period at 50 CFR 300.25(e)(1), vessel owners, operators, and crew of purse seine vessels of class size 6 must remove from the water a number of FADs equal to the number of FADs set upon by the vessel during the same 15 day period; (8) if the FAD design includes a raft, and if mesh netting is used as part of the structure, the mesh netting shall have a mesh size less than 7 centimeters and the mesh net must be tightly wrapped such that no netting hangs below the FAD when deployed; and (9) any netting used in the subsurface structure of the FAD must be tightly tied into bundles or have stretched mesh size less than 7 centimeters in a panel that is weighted on the lower end with at least enough weight to keep the netting taut in the water column.

Catch Retention and Incidental Catch Release Requirements

NMFS has implemented tuna catch retention requirements for purse seine vessels in the WCPFC Area. An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea any bigeye tuna, yellowfin tuna, or skipjack tuna, except in the following circumstances as follows: Fish that are unfit for human consumption, including but not limited to fish that are spoiled, pulverized, severed, or partially consumed at the time they are brought on board, may be discarded; if at the end of a fishing trip there is insufficient well space to accommodate all the fish captured in a given purse seine set, fish captured in that set may be discarded, provided that no additional purse seine sets are made during the fishing trip; and fish may be discarded if necessitated by the occurrence of a serious malfunction of equipment. Under this proposed rule, the regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include incidental catch and tuna retention requirements for purse seine vessels that would now apply in the overlap area (50 CFR 300.27(a)–(b)). The incidental catch release requirements for non-tuna species would apply to all purse seine vessels. Tuna retention requirements would apply to class size 4–6 purse seine fishing vessels and would require that bigeye, skipjack, and yellowfin tuna caught using purse seine gear be retained on board and landed, except for fish deemed unfit for human consumption for reasons other than size or if there is insufficient well capacity to accommodate the entire catch on the last set of a trip. All purse seine vessels would also be required to release all billfish, ray (not including mobulid ray, as described in more detail below), dorado, and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

Sea Turtle Interaction Mitigation Requirements

NMFS has implemented specific sea turtle handling requirements for U.S. purse seine vessels fishing in the WCPFC Area (50 CFR 300.223(f)). These include possession and use of specific handling gear as well as specific handling requirements. Under this proposed rule, the regulations that implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include requirements for purse seine vessel interactions with sea turtles (50 CFR 300.27(c)). The regulations implementing IATTC measures specify special handling and release requirements when a sea turtle is spotted in the purse seine net, entangled in the net, or brought on board the vessel alive.

Whale Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements to mitigate interactions between U.S. purse seine vessels and whale sharks in the WCPFC Area. These include a prohibition on setting on whale sharks and requirements for when whale sharks are encircled in purse seine nets (50 CFR 300.223(g)–(h)). Under this proposed rule, these regulations to implement WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include requirements to mitigate interactions between purse seine vessels and whale sharks (50 CFR 300.27(g)–(h)). These regulations implementing IATTC measures require owners, operators, and crew to not set or attempt to set a purse seine on or around a whale shark if the animal is sighted prior to the commencement of the set or the attempted set. If a whale shark is encircled in the purse seine net, the crew, operator, and owner would be required to release it as soon as possible, and must ensure that all reasonable steps are taken to ensure its safe release without towing the whale shark out of the purse seine net (*e.g.,* using towing ropes).

Longline Bigeye Tuna Catch Limits

NMFS has implemented a specific bigeye tuna catch limit for U.S. longline vessels fishing in the WCPFC Area. The limit is 3,554 metric tons of bigeye tuna per calendar year (50 CFR 300.224(a)). Under this proposed rule, the regulations implementing these WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include an annual catch limit for longline-caught bigeye tuna that would apply in the overlap area (50 CFR 300.25(a)). The annual limit is 750 metric tons of bigeye tuna for vessels over 24 meters in overall length. The regulations implementing IATTC measures include a number of requirements that are triggered if and when the annual limit is reached, including restrictions on transshipment by longline vessels in the IATTC Area without a valid permit, and restrictions on using longline gear inside and outside of the IATTC Area on the same trip.

Oceanic Whitetip Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements regarding interactions with oceanic whitetip shark for all U.S. commercial fishing vessels fishing for HMS in the WCPFC Area (50 CFR 300.226). These requirements include a prohibition on the retention, transshipment, storage or landing of oceanic whitetip shark, and specific requirements for releasing oceanic whitetip shark that are caught by vessels. Under this proposed rule, these regulations implementing WCPFC

conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include similar requirements for oceanic whitetip shark that would apply in the overlap area (50 CFR 300.27(d)). These regulations implementing IATTC measures prohibit the crew, operator, or owner from retaining on board, transshipping, landing, storing, selling, or offering for sale any part or whole carcass of an oceanic whitetip shark and require the release of all oceanic whitetip shark (unharmed to the extent practicable) when brought alongside the vessel.

Silky Shark Interaction Mitigation Requirements

NMFS has implemented specific requirements regarding interactions with silky sharks for all U.S. commercial fishing vessels fishing for HMS in the WCPFC Area (50 CFR 300.226). These requirements include a prohibition on the retention, transshipment, storage or landing of silky sharks, and specific requirements for releasing silky sharks that are caught by vessels. Under this proposed rule, these regulations implementing WCPFC conservation and management measures would no longer apply in the overlap area. However, regulations implementing IATTC conservation and management measures include similar requirements for silky sharks that would apply in the overlap area (50 CFR 300 300.27(e)–(f)). These regulations implementing IATTC measures prohibit the crew, operator, and owner of a commercial purse seine fishing vessel from retaining on board, transshipping, storing, or landing any part or whole carcass of a silky shark caught by the vessel. Additionally, longline vessel crews, operators, and owners are required to limit the retained catch of silky shark to a maximum of 20 percent in weight of the total catch during each fishing trip.

Restrictions on Fishing in Proximity to Data Buoys

Although the WCPFC has adopted a decision for the conservation and management of data buoys, which NMFS may implement through regulations, NMFS regulations regarding fishing on data buoys do not currently apply in the overlap area. Under this proposed rule, regulations implementing IATTC management measures for fishing on data buoys would go into effect in the overlap area (50 CFR 300.25(f)). Except when the fishing vessel is operated as part of a scientific research program, a longline or purse seine fishing vessel may not be used to fish for highly migratory species within one nautical mile of an anchored data buoy in the IATTC Area. A fishing vessel, or any fishing gear, equipment, or watercraft deployed by such a fishing vessel, cannot be used to interact with, or engage in conduct that could impair the function of, a data buoy.

Pacific Bluefin Tuna Catch Limits

There are currently no regulations implementing WCPFC decisions on Pacific bluefin tuna. Under this proposed rule, NMFS regulations implementing IATTC decisions on Pacific bluefin tuna would go into effect in the overlap area (50 CFR 300.25(g)). These regulations implementing IATTC measures impose biennial, annual and per trip catch limits to the U.S. commercial fishery for Pacific bluefin tuna. These regulations also require a purse seine vessel owner or operator to provide a pre-trip notification to NMFS 24 hours in advance of departing on the fishing trip during specific periods, as notified by NMFS.

Mobulid Ray Restrictions

There are no NMFS regulations implementing WCPFC decisions on mobulid rays that apply in the overlap area. Under this proposed rule, NMFS regulations implementing IATTC decisions on mobulid rays would go into effect in the overlap area (50 CFR 300.27(i)–(j). These regulations implementing IATTC measures prohibit the crew, operator, and owner of a U.S. commercial fishing vessel from retaining on board, transshipping, storing, landing, selling, or offering for sale any part or whole carcass of a mobulid ray, except in the case of any mobulid ray caught on an observed purse seine vessel if that mobulid ray is not seen during fishing operations and is delivered into the vessel hold. Specific handling and release requirements also apply.

Shark Handling and Release Requirements for Purse Seine Vessels

There are no NMFS regulations implementing WCPFC handling and release requirements for sharks other than the regulations on whale shark, oceanic whitetip shark, and silky shark that currently apply in the overlap area and that are described above. Under this proposed rule, regulations implementing IATTC decisions for general shark handling and release requirements would go into effect (50 CFR 300.27(k)) in the overlap area. The crew, operator, and owner of a U.S. commercial purse seine fishing vessel would be required to promptly release any shark (unharmed to the extent practicable, and whether live or dead) caught in the IATTC Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow release procedures specified in the regulations implementing the IATTC measures. A specific shark line prohibition for longline vessels would also go into effect and would prohibit any U.S. longline vessel used to fish for tuna or swordfish from using any shark line in the overlap area (50 CFR 300.27(l)).

Reporting and Recordkeeping Requirements

Regulations for reporting and recordkeeping implementing the WCPF Convention and WCPFC decisions and that currently apply in the overlap area would continue to apply under the proposed rule, except for the requirement to report on purse seine interactions with whale sharks—that requirement is connected to the regulations implementing the WCPFC decision on whale sharks that would no longer apply. Regulations for reporting and recordkeeping that implement IATTC decisions would go into effect under the proposed rule and apply in the overlap area. These regulations are described in detail below.

The requirement to report on purse seine interactions with whale sharks implementing a WCPFC decision and specified at 50 CFR 300.218(h), would no longer apply in the overlap area. However, a corresponding whale shark reporting requirement implementing a IATTC decision would apply in the overlap area (50 CFR 300.22(a)(2)).

Reporting and recordkeeping regulations implementing the WCPF Convention and decisions that would continue to apply in the overlap area include catch and effort reporting requirements (50 CFR 300.218(a)), transshipment reporting requirements (50 CFR 300.218(b)), transshipment notification requirements (50 CFR 300.218(c)), reporting requirements for discards of bigeye, yellowfin, or skipjack tuna from purse seine vessels (50 CFR 300.218(e)), reporting requirements for purse seine net sharing (50 CFR 300.218(f)), and reports of daily purse seine fishing effort (50 CFR 300.218(g)). Additional reporting and recordkeeping requirements implementing IATTC decisions would also apply in the overlap area. This includes specific logbook reporting requirements (50 CFR 300.22(a)), reporting FAD-related data from purse seine vessels (50 CFR 300.22(a)(3)(i))

and reporting on active FADs (50 CFR 300.22(a)(3)(ii)).

WCPFC Record of Fishing Vessels and IATTC Regional Vessel Register Requirements

Requirements implementing the WCPF Convention and WCPFC decisions for inclusion on the WCPFC Record of Fishing Vessels would continue to apply in the overlap area under the proposed rule. These requirements include providing certain information to obtain an endorsement on a permit under the regulations implementing the High Seas Fishing Compliance Act (50 CFR 300, subpart R) and requirements to provide certain information when fishing only in foreign EEZs (50 CFR 300.212 and 50 CFR 300.213). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the IATTC RVR requirements at 50 CFR 300.22(b) and would continue to be subject to those requirements.

Vessel Identification Requirements

Requirements implementing the WCPF Convention and WCPFC decisions for vessel identification would continue to apply in the overlap area. These include specific vessel marking requirements and requirements to obtain International Maritime Organization (IMO) numbers (50 CFR 300.217). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the IMO number requirements as part of the IATTC RVR requirements at 50 CFR 300.22(b) and would continue to be subject to these requirements. The IMO number requirements at 50 CFR 300.217 and 50 CFR 300.22(b) are essentially the same in that they both are applicable to vessels that are 100 gross register tons or greater and have provisions for exemptions.

Observers

Requirements implementing the WCPF Convention and WCPFC decisions regarding observers would continue to apply in the overlap area. These requirements include pre-trip notification requirements for vessels that are required to carry observers to monitor at-sea transshipments (50 CFR 300.215(b)), specific provisions for accommodating observers on vessels (50 CFR 300.215(c)), at-sea transshipment observer coverage requirements (50 CFR 300.215(d)), and purse seine observer coverage requirements (50 CFR 300.223(e)). Additionally, as mentioned above, in order to comply with the provisions of the AIDCP, vessels fishing in the overlap area are already required to comply with the observer provisions set forth at 50 CFR 216.24(e), and these provisions would continue to apply under the proposed rule. These requirements include specific provisions for how research and observation duties are to be carried out, specific requirements regarding marine mammals, and specific provisions for accommodating observers. Currently, vessels fishing in the overlap area are required to comply with the observer provisions of regulations implementing the WCPF Convention and decisions and regulations implementing requirements arising under the IATTC and AIDCP. In some cases, this requires a vessel to carry an observer that is designated as a cross-endorsed observer pursuant to a Memorandum of Cooperation between the WCPFC and the IATTC that allows such observers to meet the observer requirements of both organizations, or to carry two separate observers—one to carry out responsibilities arising under the WCPFC and another to carry out responsibilities arising under the IATTC and AIDCP. The existing observer coverage requirements for the overlap area would not change under this proposed rule.

Transshipment and Net Sharing

Requirements implementing the WCPF Convention and WCPFC decisions regarding transshipment and net sharing would continue to apply in the overlap area. These include prohibitions on at-sea transshipment and bunkering for purse seine vessels (50 CFR 300.216(b)(1)), requirements for at-sea transshipment observer coverage (50 CFR 300.216(b)(2)), general restrictions on transshipment and bunkering for all vessels engaged in commercial fishing of HMS in the WCPFC Area (50 CFR 300.216(b)(3)), and restrictions regarding net sharing (50 CFR 300.216(c)) that allow net sharing only between purse seine vessels in limited circumstances. Regulations that implement IATTC decisions for transshipment would go into effect under this proposed rule and would also apply in the overlap area. These IATTC regulations include prohibitions on at-sea transshipment for purse seine vessels (50 CFR 300.25(c)). The transshipment regulations implementing IATTC decisions are identical to one component of the transshipment regulations implementing the WCPF Convention and WCPFC decision, and thus application of both the WCPFC and IATTC transshipment prohibition to purse seine vessels operating in the overlap area would not subject these vessels to additional or contradictory requirements.

Vessel Monitoring System (VMS)

Requirements implementing the WCPF Convention and WCPFC decisions regarding VMS would continue to apply in the overlap area under this proposed rule (50 CFR 300.219) and would apply to commercial fishing vessels of all sizes. Requirements implementing IATTC decisions regarding VMS would also go into effect under this proposed rule and would apply in the overlap area (50 CFR 300.26). The requirements to implement IATTC decisions apply only to commercial fishing vessels 24 meters or more in overall length. Given that the requirements implementing the WCPF Convention and WCPFC decisions already apply and would continue to apply to vessels of all sizes under this proposed rule, this proposed rule would add no new VMS requirements, and all U.S. commercial fishing vessels fishing for HMS in the overlap area would still be required to continuously operate the VMS at all times, with certain exceptions.

Other MCS Measures

Requirements implementing the WCPF Convention and WCPFC decisions regarding compliance with laws of other nations (50 CFR 300.214) and facilitation of enforcement and inspection (50 CFR 300.221) would continue to apply in the overlap area under this proposed rule. The regulations implementing IATTC decisions do not include specific provisions regarding compliance with laws of other nations or facilitation of enforcement and inspection.

Classification

The Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the WCPFCIA, the Tuna Conventions Act, and other applicable laws, subject to further consideration after public comment.

Administrative Procedure Act

Section 304(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) provides for a 15-day comment period for these types of fishery rules. NMFS finds ''good cause'' under the Administrative Procedure Act that a longer notice and comment period would be unnecessary and contrary to

the public interest. 5 U.S.C. 553(b)(B). Specifically, NMFS issued a temporary rule closing the high seas and U.S. EEZ between the latitudes of 20° N and 20° S in the WCPFC Area to purse seine fishing from October 9, 2019, through the end of the calendar year (84 FR 52035; October 1, 2019), due to reaching the 2019 fishing effort limit specified by the WCPFC and implemented by NMFS at 50 CFR 200.223(a). Thus, U.S. purse seine vessels are currently unable to fish on the high seas in the overlap area. Once the regulatory changes in this proposed rule go into effect, that fishery closure would no longer apply. Providing more than a 15-day comment period on this proposed rule would unnecessarily lengthen the U.S. purse seine fishery closure in the overlap area, and thus, NMFS finds good cause to provide the public with a 15-day comment period on this proposed rule.

Coastal Zone Management Act (CZMA)

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on February 7, 2019, for review by the responsible state and territorial agencies under section 307 of the CZMA. The CNMI replied by letter dated March 7, 2019, stating that based on the information provided, it has determined that the action will be undertaken in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CNMI's coastal management program. Hawaii replied by letter dated February 15, 2019, stating that, because the overlap area is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. No responses were received from Guam or American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule is not an Executive Order 13771 regulatory action because this rule is not significant under Executive Order 12866.

Regulatory Flexibility Act (RFA)

An IRFA was prepared, as required by section 603 of the RFA. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered as well as its objectives, and the legal basis for this action are contained in the **SUMMARY** section of the preamble and in other sections of this **SUPPLEMENTARY INFORMATION** section of the preamble. The analysis follows:

Estimated Number of Small Entities Affected

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide.

The proposed rule would apply to owners and operators of U.S. commercial fishing vessels used to fish for HMS in the overlap area, including longline vessels, albacore troll vessels, and purse seine vessels. The number of such vessels is the number authorized to fish in both the IATTC Area and WCPFC Area. The numbers as of October 2, 2019, as reflected on the IATTC Vessel Register and the WCPFC Record of Fishing Vessels, were 143 longline vessels, 24 albacore troll vessels, and 16 purse seine vessels.

Based on limited financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all of the affected longline and albacore troll fishing entities, and almost 85% of the purse seine fishing entities, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $11.0 million. Within the purse seine fleet, analysis of the average revenue, by vessel, for the three years of 2016–2018 (most recent data available) reveals that average annual revenue among vessels in the fleet was about $9.0 million, and the three-year annual averages were less than the $11 million threshold for 13 of the 16 vessels on both the RVR and RFV.

Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this proposed rule are described earlier in the preamble. The classes of small entities subject to the proposed requirements and the expected costs of complying with the proposed requirements are described in this proposed rule.

As described in the Paperwork Reduction Act subsection, although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of-information requirements would apply in the overlap area, under the following Control Numbers: (1) 0648–148, West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Data Collection; (2) 0648–0649, Transshipment Requirements under the WCPFC; (3) 0648–0218, South Pacific Tuna Act; (4) 0648–0595, WCPFC Vessel Information Family of Forms; and (5) 0648–0204, West Coast Region Family of Forms.

Fulfillment of the requirements under the proposed rule is not expected to require any professional skills that affected vessel owners and operators do not already possess.

For longline fishing entities, although as previously described there are about 145 such entities that are authorized to be used for fishing in the overlap area, there has been very little fishing activity in the overlap area (and no longline fishing activity at all since 2010), and NMFS has not identified any factors affecting the longline fishing status quo. Consequently, NMFS expects the proposed action to have little or no effect in terms of recordkeeping, reporting, or other compliance requirements for affected longline fishing entities.

For albacore troll fishing entities, NMFS does expect fishing activity in the overlap area, so affected troll fishing entities could experience effects from the proposed rule. Under the proposed rule, two substantive sets of requirements that implement conservation and management measures for HMS would be newly applied to the overlap area: The regulations to implement IATTC conservation and management measures that restrict fishing in proximity to data buoys (50 CFR 300.25(f)), and the regulations to implement IATTC conservation and management measures prohibiting the retention of mobulid rays (with limited exceptions) and requiring that they be handled and released in specified

manners (50 CFR 300.27(i)–(j)). The new data buoy requirements could increase operating costs by increasing the time spent at sea in the overlap area. For example, the vessel operator and crew would have to avoid interactions with data buoys, and if the vessel or gear becomes entangled with a data buoy they would need to make sure to disentangle the gear carefully, to cause as little damage to the data buoys as possible. As NMFS found in the analysis in support of the 2011 rulemaking establishing these requirements throughout the IATTC Area, NMFS expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011). Moreover, data from the National Data Buoy Center (NDBC) indicates that only one anchored data buoy is located in the overlap area. Since interactions with data buoys would be unlikely to occur in the overlap area, the compliance costs are expected to be minor or nil. NMFS does not expect the mobulid ray requirements to lead to any compliance costs for albacore troll fishing vessels, because there is very little bycatch in albacore troll fisheries (81 FR 50401; August 1, 2016).

Some of the regulations implementing WCPFC conservation and management measures (at 50 CFR part 300, subpart O) would no longer apply in the overlap area, but they would be replaced with comparable regulations implementing IATTC conservation and management measures (at 50 CFR part 300, subpart C) that will now apply in this area. Specifically, the IATTC prohibition against retaining oceanic whitetip shark, implemented by 50 CFR 300.27(d)), would now apply in the overlap area. The requirements under the regulations implementing WCPFC decisions and IATTC decisions are similar, and NMFS does not expect any substantive change in compliance costs. There would also be new requirements that apply in the overlap area for albacore troll fishing entities under regulations implementing IATTC decisions for MCS measures, including logbook reporting requirements (50 CFR 300.22(a)(1)) and VMS requirements (50 CFR 300.26). However, because the affected albacore troll fishing entities are already required to comply with the requirements regarding the IATTC RVR and to comply with the logbook reporting and VMS requirements when fishing in the IATTC Area, the addition of the regulations that implement IATTC decisions would not require substantial changes in practices and would not be expected to bring any change in compliance costs.

For the purse seine fishing entities, the removal of several regulations that implement WCPFC conservation and management measures from the overlap area would be expected to reduce compliance costs, but those reductions would be somewhat offset by compliance costs associated with the imposition of similar regulations to implement IATTC conservation and management measures in the overlap area. The regulations that would be removed from the overlap area are the annual limits on purse seine fishing effort and the seasonal prohibitions on setting on FADs (50 CFR 300.223(b)). The regulations that would be applied are the seasonal closures on purse seine fishing and purse seine FAD restrictions (50 CFR 300.28). The respective purse seine measures of IATTC and WCPFC are not directly comparable, and NMFS cannot predict their respective potential compliance costs with any precision. Accordingly, only a qualitative comparison of their respective compliance costs is possible. The measures as they would apply on the high seas are what matter for this analysis, since no portion of the U.S. EEZ is within the overlap area, and no U.S. commercial HMS fishing vessels have had a history of fishing in the foreign EEZs in the overlap area. If the IATTC measures were applied in the overlap area in this proposed rule, U.S. purse seine fishing entities would be subject to one of the IATTC's two 72-day prohibitions on purse seine fishing (50 CFR 300.25(e)) in the overlap area each year. If instead the WCPFC measures applied in the overlap area, U.S. purse seine fishing entities would be allowed, collectively, to spend 1,270 fishing days on the high seas in the WCPFC Area each year, with fishing days spent in the overlap area counting against that limit, and they would be subject to 5-month prohibitions on fishing on FADs in the overlap area each year (50 CFR 300.223). Although, the two sets of measures are not directly comparable, the IATTC measures would provide greater fishing opportunities to most or all affected purse seine fishing entities than those of WCPFC, because the IATTC purse seine closure period is shorter than the purse seine closures that have been in effect on the high seas in the WCPO due to the purse seine fishing effort limits specified by the WCPFC (in 2015, closure from June 15 through December 31, 2015; in 2016, closure from September 2 through December 31, 2016; in 2018, closure from September 18 through December 31, 2018; in 2019, closure from October 9 through December 31, 2019) or the WCPFC FAD prohibition periods. Further, the vessels operating under IATTC measures have greater operational certainty (affording logistical and maintenance predictability) because the vessel owner chooses between one of two closure periods rather than being subject to a variable closure date under WCPFC measures. It is not possible to predict the degree to which those opportunities would be taken advantage of, but the greater opportunities and the flexibility they provide indicate that application of IATTC measures in the overlap area would likely reduce compliance costs for the directly affected purse seine fishing entities.

Purse seine fishing entities authorized to fish in the WCPFC Area but not in the overlap area would not be directly affected by the proposed rule, but they could be indirectly affected. The fishing effort limits set forth in WCPFC conservation and management measures would no longer apply in the overlap area, allowing greater fishing effort in the overlap area. Additionally, under the proposed rule, fishing effort in the overlap area would not be counted against WCPFC limits, potentially increasing fishing opportunities for the U.S. purse seine fleet outside the overlap area. This is based on trends in recent years showing increased U.S. purse seine fishing activity in the overlap area. If all of the fishing days in the overlap area no longer count towards the WCPFC-specified fishing effort limits, it is likely that more fishing days would be available to U.S. purse seine vessels on the high seas in the WCPFC Area outside of the overlap area.

In addition to the changes to the purse seine-specific regulations just described, several substantive requirements would apply to purse seine fishing entities in the overlap area under the proposed rule that do not currently apply in that area: The regulations implementing IATTC conservation and management measures on FADs (50 CFR 300.28), the Pacific bluefin tuna catch limit (50 CFR 300.25(g)), restrictions on fishing in proximity to data buoys (50 CFR 300.25(f)), requirements to release non-tuna species (50 CFR 300.27), requirements to release mobulid rays (with limited exceptions) and release them in specified manners (50 CFR 300.27(i)–(j)), and requirements to release sharks and handle them in specified manners (50 CFR 300.27(k)), as explained in more detail below.

The FAD management measures include FAD identification regulations that would require that deployed FADs be physically marked with unique identifiers, as well as limits on the number of active FADs, restrictions on

FAD deployments and removals, and FAD design regulations, which would require that all FADs on board or deployed meet certain specifications, particularly with respect to the use of netting. As mentioned above, U.S. purse seine vessels fishing in the overlap area are currently required to comply with the regulations for inclusion on the IATTC RVR. Thus, although this proposed rule would change the area of application of the FAD management regulations at 50 CFR 300.28, all of the affected vessels are currently complying with those regulations when fishing in the EPO. Data from 2014–2018 shows that all current U.S. purse seine vessels that fished in the overlap area also fished in the EPO. For affected entities, the change in area of application of the FAD management regulations probably would only bring a minor increase in costs or no increased costs, as they are already complying with those regulations when fishing in the EPO outside the overlap area. Moreover, there are comparable limits for the number of active FADs currently applicable in the overlap area under the regulations implementing WCPFC decisions at 50 CFR 300.223(b).

The Pacific bluefin tuna catch limit that would go into effect in the overlap area under the proposed rule would not be expected to bring compliance costs to the large U.S. purse seine vessels that fish in the overlap area, as these vessels generally do not target or catch Pacific bluefin tuna.

The data buoy requirements could increase operating costs by increasing the time spent at sea for a given amount of fishing. For example, vessels would not be able to fish within one nautical mile of an anchored data buoy, they would have to avoid interactions with data buoys, and if the vessel or gears becomes entangled with a data buoy, the operator and crew would need to make sure to disentangle the gear carefully to cause as little damage to the data buoys as possible. As NMFS found in the 2011 rulemaking that established these requirements throughout the IATTC Area, NMFS expects interactions with data buoys to be rare (76 FR 68332; November 4, 2011). Moreover, there is a low number of data buoys located in the overlap area. Based on data from the NDBC, only one anchored data buoy is located in the overlap area. Thus, interactions with data buoys would be even more unlikely to occur, so the compliance costs are expected to be minor.

The requirements to release non-tuna species, mobulid rays, and sharks are not expected to substantially affect business revenues, because none of the affected fishing entities target non-tuna species, sharks, or rays. However, the requirements could lead to increased time spent by vessel operators and crew handling and releasing incidentally caught non-tuna species, sharks, and rays in the specified manner, and so could bring modest compliance costs. In addition, these requirements could detrimentally affect revenues if targeted tuna are incidentally released when these species are intentionally released from the brailer to comply with the regulations. However, affected U.S. purse seine vessel owners and operators are already subject to these requirements when fishing in the IATTC Area, and thus the small change in the area of application of these requirements would not be expected to substantially increase compliance costs.

Some regulations implementing WCPFC conservation and management measures for HMS (at 50 CFR part 300, subpart O) would no longer apply in the overlap area. However, comparable regulations that implement IATTC conservation and management measures for HMS (at 50 CFR part 300, subpart C) would now apply in the overlap area. Regulations that would shift in this manner include requirements to retain all catch of bigeye tuna, skipjack tuna, and yellowfin tuna (50 CFR 300.27(a)), not to retain oceanic whitetip shark (50 CFR 300.27(d)), and not to retain silky shark (50 CFR 300.27(e)); requirements regarding sea turtle handling and release (50 CFR 300.27(c)); whale shark restrictions (50 CFR 300.27(g)–(h)); and whale shark encirclement reporting requirements (50 300.22(a)(2)). For these requirements, the two sets of regulations are similar, and NMFS does not expect any substantive change in compliance costs.

There would also be five requirements for purse seine fishing entities under the regulations implementing IATTC conservation and management measures that would go into effect under the proposed rule. These requirements include reporting on FAD interactions (50 CFR 300.22(a)(3)(i)), reporting on active FADs (50 CFR 300.22(a)(3)(ii)), logbook reporting requirements (50 CFR 300.22(a)(1)), transshipment requirements (50 CFR 300.25(c)), and VMS requirements (50 CFR 300.26). The first two requirements (reporting on FAD interactions and reporting on active FADs) would bring substantive new requirements. Regarding the requirement for reporting on FAD interactions, as NMFS found in the 2016 rulemaking that established the requirement throughout the IATTC Area (excepting the overlap area), NMFS expects a minimal additional time burden for owners and operators of large purse seine vessels to record the specified information for FAD interactions activities, and expects minor impacts on business incomes (81 FR 86966; December 2, 2016). Regarding reporting on active FADs, as NMFS found in the 2018 rulemaking establishing the requirement throughout the IATTC Area (excepting the overlap area), NMFS does not expect any increase in compliance costs, because it is likely that vessel operators are already collecting the necessary information (83 FR 15503; April 11, 2018). The latter three requirements (logbook reporting requirements, transshipment requirements, and VMS requirements), are not expected to bring any new compliance costs, because the affected purse seine fishing entities are currently subject to those regulations when fishing in the IATTC Area outside of the overlap area, and the addition of these regulations in the overlap area would not require substantial changes in practices. Moreover, the regulations implementing the IATTC prohibition on at-sea transshipments for purse seine vessels is essentially identical to regulations already in effect in the overlap area implementing the WCPF Convention and WCPFC decisions. Similarly, the regulations implementing the IATTC VMS provisions are essentially identical to regulations already in effect in the overlap area implementing the WCPF Convention and WCPFC decisions, but would just apply to a smaller group of vessels—vessels 24 meters or more in overall length. Given that the requirements implementing the WCPF Convention and WCPFC decisions already apply and would continue to apply under the proposed rule to vessels of all sizes, there would be no new VMS requirements under the proposed rule, and all U.S. commercial fishing vessels fishing for HMS in the overlap area would still be required to continuously operate the VMS at all times, with certain exceptions.

In summary, this proposed rule would be expected to have little or no effect on the compliance costs of any affected entities, except purse seine fishing entities. For purse seine fishing entities, this rule would bring modest increases in compliance costs associated with several requirements that would go into effect in the overlap area. However, these costs would be counteracted by a potentially substantial reduction in compliance costs associated with removal of the regulations to implement WCPFC conservation and management measures for fishing effort limits and

FAD prohibition periods from application in the overlap area.

Disproportionate Impacts

NMFS does not expect any disproportionate economic impacts between small and large entities operating vessels resulting from this rule. Furthermore, NMFS does not expect any disproportionate economic impacts based on vessel size, gear, or homeport.

Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with the proposed regulations. NMFS has identified several Federal regulations that duplicate or overlap with the proposed regulations. These include: The proposed logbook reporting requirements at 50 CFR 300.22(a)(1), which overlap with existing regulations at 50 CFR 300.34(b)(1) and 300.218(a), the proposed transshipment requirements at 50 CFR 300.25(c), which overlap with existing regulations at 50 CFR 300.216(b), and the proposed VMS regulations at 50 CFR 300.26, which overlap with existing regulations at 50 CFR 300.45 and 300.219. However, as described above, these regulations impose requirements which are substantially similar to, or in some cases identical to, requirements imposed under regulations currently applicable in the overlap area. Thus, application of these overlapping requirements is not expected to create significant economic burdens on vessel owners and operators.

Alternatives to the Proposed Rule

NMFS has sought to identify alternatives that would minimize the proposed rule's economic impacts on small entities (''significant alternatives''). For most affected entities, the proposed action is likely to have no economic impact or a positive economic impact compared to the no-action alternative. NMFS also considered the alternative of removing application from the overlap area of all regulations derived from WCPFC conservation and management measures and from the WCPF Convention. This alternative would likely result in lower compliance costs than the proposed action for some affected entities, but it would not be consistent with U.S. obligations under the WCPF Convention, since the decisions of the IATTC and WCPFC regarding the overlap area cannot alter existing obligations under the WCPF Convention. Therefore, NMFS does not prefer this alternative.

Paperwork Reduction Act

Although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection of information requirements would apply in the overlap area, under the following Control Numbers: (1) 0648–0148, West Coast Region Pacific Tuna Fisheries Logbook and Fish Aggregating Device Data Collection; (2) 0648–0649, Transshipment Requirements under the WCPFC; (3) 0648–0218, South Pacific Tuna Act; (4) 0648–0595, WCPFC Vessel Information Family of Forms; and (5) 0648–0204, West Coast Region Family of Forms.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Fishing vessels, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 4, 2019.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 300 is proposed to be amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart C—Eastern Pacific Tuna Fisheries

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

Authority: 16 U.S.C. 951 *et seq.*

■ 2. In § 300.21, revise the definition of ''Convention Area or IATTC Convention Area'' to read as follows:

§ 300.21 Definitions

* * * * *

Convention Area or IATTC Convention Area means: All waters of the Pacific Ocean within the area bounded by the west coast of the Americas and by 50° N latitude from the coast of North America to its intersection with 150° W longitude, then 150° W longitude to its intersection with 50° S latitude, and then 50° S latitude to its intersection with the coast of South America.

* * * * *

Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species

■ 3. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 4. In § 300.211, add a definition of ''Overlap Area'' in alphabetical order to read as follows:

§ 300.211 Definitions

* * * * *

Overlap Area means the area of overlap of the IATTC area of competence of the commission and the Convention Area, as described by all waters of the Pacific Ocean in the area bounded by 50° S latitude, 4° S latitude, 150° W longitude, and 130° W longitude.

* * * * *

■ 5. In § 300.218, revise paragraph (h) to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(h) *Whale shark encirclement reports.* The owner and operator of a fishing vessel of the United States used for commercial fishing in the Convention Area that encircles a whale shark (*Rhincodon typus*) with a purse seine in the Convention Area shall ensure that the incident is recorded by the end of the day on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator. This paragraph does not apply in the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, or in the Overlap Area.

■ 6. In § 300.223, revise the introductory text to read as follows:

§ 300.223 Purse seine fishing restrictions.

None of the requirements of this section apply in the territorial seas or archipelagic waters of the United States or any other nation, as defined by the domestic laws and regulations of that nation and recognized by the United States. Except as required in subsection (e) below, none of the requirements of this section apply in the Overlap Area. All dates used in this section are in Universal Coordinated Time, also known as UTC; for example: The year 2013 starts at 00:00 on January 1, 2013 UTC and ends at 24:00 on December 31, 2013 UTC; and July 1, 2013, begins at 00:00 UTC and ends at 24:00 UTC.

* * * * *

■ 7. In § 300.224, add introductory text to read as follows:

§ 300.224 Longline fishing restrictions.

None of the requirements of this section apply in the Overlap Area.

* * * * *

■ 8. In § 300.226, add introductory text to read as follows:

§ 300.226 Oceanic whitetip shark and silky shark.

None of the requirements of this section apply in the Overlap Area.

* * * * *

[FR Doc. 2019–24304 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 84, No. 216

Thursday, November 7, 2019

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–19–0083]

Cotton Classing, Testing and Standards: Notice of Request for an Extension and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension and revision to the currently approved information collection entitled Cotton Classing, Testing, and Standards.

DATES: Comments received by January 6, 2020 will be considered.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–19–0083, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov.* Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery to* Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this document may be found at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cotton Classing, Testing, and Standards.

OMB Number: 0581–0008.

Expiration Date of Approval: March 31, 2020.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: Information solicited is used by the USDA to administer and supervise activities associated with the classification or grading of cotton, cotton linters, and cottonseed based on official USDA Standards. The information requires personal data, such as name, type of business, address, and description of classification services requested. These programs are conducted under the United States Cotton Standards Act (7 U.S.C. 51b), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 473c), and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622h) and regulations appear at 7 CFR part 28.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.08 hours per response.

Respondents: Cotton merchants, warehouses, and gins.

Estimated Number of Respondents: 1,041.

Estimated Number of Responses per Respondent: 2.30.

Estimated Number of Responses: 2,391.

Estimated Total Annual Burden on Respondents: 184.46.

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. Comments may be sent to Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 1, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–24248 Filed 11–6–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–19–0084]

Cotton Classification and Market News Service: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget for an extension of and revision to the currently approved information collection Cotton Classification and Market News Service.

DATES: Comments received by January 6, 2020 will be considered.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–19–0084, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov.* Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery to* Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this document may be found at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Cotton Classification and Market News Service.

OMB Number: 0581–0009.

Expiration Date of Approval: March 31, 2020.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

Abstract: The Cotton Classification and Market News Service program provides market information on cotton prices, quality, stocks, demand and supply to growers, ginners, merchandisers, textile mills and the public for their use in making sound business decisions. The Cotton Statistics and Estimates Act (7 U.S.C. 471–476), authorizes and directs the Secretary of Agriculture to: (a) Collect and publish annually, statistics or estimates concerning the grades and staple lengths of stocks of cotton, known as the carryover, on hand on the 1st of August each year in warehouses and other establishments of every character in the continental U.S., and following such publication each year, to publish at intervals, in his/her discretion, his/her estimate of the grades and staple length of cotton of the current crop (7 U.S.C. 471) and (b) Collect, authenticate, publish and distribute by radio, mail, or otherwise, timely information of the market supply, demand, location, and market prices of cotton (7 U.S.C. 473b). The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) authorizes and directs the Secretary of Agriculture to collect and disseminate marketing information, including adequate outlook information on a market-area basis, for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income, and bringing about a balance between production and utilization of agricultural products.

The information collection requirements in this request are essential to carry out the intent of the Acts and to provide the cotton industry the type of information they need to make sound business decisions. The information collected is the minimum required. Information is requested from growers, cooperatives, merchants, manufacturers, and other government agencies. This includes information on cotton, cottonseed and cotton linters.

The information collected is used only by authorized employees of the USDA, AMS. The cotton industry is the primary user of the compiled information and AMS and other government agencies are secondary users.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.13 hours per response.

Respondents: Cotton Merchandisers, Textile Mills, Ginners.

Estimated Number of Respondents: 696.

Estimated Number of Responses per Respondent: 6.63.

Estimated Number of Responses: 4,614.50.

Estimated Total Annual Burden on Respondents: 598.70.

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. Comments may be sent to Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.* All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 1, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–24250 Filed 11–6–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[AMS–CN–19–0086]

Tobacco Report: Notice of Request for an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural

Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension and revision of the currently approved information collection for Tobacco Report (OMB No. 0581–0004).

DATES: Comments received by January 6, 2020 will be considered.

ADDRESSES: Written comments may be submitted to the addresses specified below. All comments will be made available to the public. Please do not include personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publically disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines. Comments may be submitted anonymously.

Comments, identified by AMS–CN–19–0086, may be submitted electronically through the *Federal eRulemaking Portal at http://www.regulations.gov.* Please follow the instructions for submitting comments. In addition, comments may be submitted by *mail or hand delivery to* Cotton Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. Comments should be submitted in triplicate. All comments received will be made available for public inspection at Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406. A copy of this document may be found at: *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia, 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Tobacco Report.

OMB Number: 0581–0004.

Expiration Date of Approval: March 31, 2020.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of tobacco statistics by USDA with regard to quantities of leaf tobacco in all forms in the United States and Puerto Rico, owned by or in the possession of dealers, manufacturers, and others, with the exception of the original growers of the tobacco.

Inventory information about different tobacco products is reported on a quarterly basis, as of January 1, April 1, July 1, and October 1 of each year, and is due within 15 days of those dates.

The information furnished under the provisions of this Act is used only for the statistical purposes for which it is supplied. No publication shall be made by USDA whereby the data furnished by any particular establishment can be identified, nor shall anyone other than the sworn employees of USDA be allowed to examine the individual reports.

The regulations governing the Tobacco Stocks and Standards Act (7 CFR part 30) issued under the Tobacco Statistics Act (7 U.S.C. 501–508) specifically address the reporting requirements. Tobacco in leaf form or stems is reported by types of tobacco and whether it is stemmed or unstemmed. Tobacco in sheet form is segregated as to whether it is to be used for cigar wrappers, cigar binders, for cigarettes, or for other products.

Tobacco stocks reporting is mandatory. The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products.

The Quarterly Report of Manufacture and Sales of Snuff, Smoking and Chewing Tobacco is voluntary. Information on the manufacture and sale of snuff, smoking and chewing tobacco products is available from Treasury Department publications based on the collection of taxes, but not in the detail desired by the industry. All major tobacco manufacturers agreed to furnish information to AMS for this report.

The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) directs and authorizes USDA to collect, tabulate and disseminate statistics on marketing agricultural products including market supplies, storage stocks, quantity, quality, condition of such products in various positions in the marketing channel, utilization of sub-products, shipments, and unloads.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.88 hours per response.

Respondents: Primarily tobacco dealers and manufacturers, including small businesses or organizations.

Estimated Number of Respondents: 47.

Estimated Total Annual Responses: 188.

Estimated Number of Responses per Respondent: 4.

Estimated Total Annual Burden on Respondents: 166.

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. Comments may be sent to Shethir M. Riva, Director, Research and Promotion, Cotton and Tobacco Program, AMS, USDA, 100 Riverside Parkway, Suite 101, Fredericksburg, Virginia 22406, telephone (540) 361–2726, facsimile (540) 361–1199, or email at *Shethir.Riva@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 1, 2019.

Bruce Summers,

Administrator.

[FR Doc. 2019–24249 Filed 11–6–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Office of the Under Secretary for Economic Affairs

RIN 0691–XC108

American Workforce Policy Advisory Board; Meeting

AGENCY: Office of the Under Secretary for Economic Affairs, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Office of the Under Secretary for Economic Affairs announces the fourth meeting of the American Workforce Policy Advisory Board (Advisory Board). Discussions of the Advisory Board will include its progress toward achieving the goals set at its inaugural meeting on March 6, 2019, as well as other Advisory Board matters. The meeting will take place in Indianapolis, IN on December 5, 2019.

DATES: The Advisory Board will meet on December 5, 2019; the meeting will

begin at 9:30 a.m. and end at approximately 12:00 p.m. (EST).

ADDRESSES: The meeting will be held at the Indiana Women's Prison, 2596 N Girls School Rd. Indianapolis, IN 46214. The meeting is open to the public via audio conference technology. Audio instructions will be prominently posted on the Advisory Board homepage at: *https://www.commerce.gov/americanworker/american-workforce-policy-advisory-board.* Please note: The Advisory Board website will maintain the most current information on the meeting agenda, schedule, and location. These items may be updated without further notice in the **Federal Register**.

The public may also submit statements or questions via the Advisory Board email address, *American WorkforcePolicyAdvisoryBoard@doc.gov* (please use the subject line ''December 2019 Advisory Board Meeting Public Comment''), or by letter to Sabrina Montes, c/o Office of Under Secretary for Economic Affairs, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. If you wish the Advisory Board to consider your statement or question during the meeting, we must receive your written statement or question no later than 5 p.m. (EST) four business days prior to the meeting. We will provide all statements or questions received after the deadline to the members; however, they may not consider them during the meeting.

FOR FURTHER INFORMATION CONTACT: Sabrina Montes, c/o Office of Under Secretary for Economic Affairs, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, (301) 278–9268, or *sabrina.montes@bea.gov.*

SUPPLEMENTARY INFORMATION: The Secretary of Commerce and the Advisor to the President overseeing the Office of Economic Initiatives serve as the co-chairs of the Advisory Board. In addition to the co-chairs, the Advisory Board comprises 25 members that represent various sectors of the economy. The Board advises the National Council for the American Worker.

The December meeting will include updates on implementation of recommendations from the September meeting and discussions of new recommendations under each of the four main goals of the Advisory Board:

- *Develop a Campaign to Promote Multiple Pathways to Career Success.* Companies, workers, parents, and policymakers have traditionally assumed that a university degree is the best, or only, path to a middle-class career. Employers and job seekers should be aware of multiple career pathways and skill development opportunities outside of traditional 4-year degrees.
- *Increase Data Transparency to Better Match American Workers with American Jobs.* High-quality, transparent, and timely data can significantly improve the ability of employers, students, job seekers, education providers, and policymakers to make informed choices about education and employment—especially for matching education and training programs to in-demand jobs and the skills needed to fill them.
- *Modernize Candidate Recruitment and Training Practices.* Employers often struggle to fill job vacancies, yet their hiring practices may actually reduce the pool of qualified job applicants. To acquire a talented workforce, employers must better identify the skills needed for specific jobs and communicate those needs to education providers, job seekers, and students.
- *Measure and Encourage Employer-led Training Investments.* The size, scope, and impacts of education and skills training investments are still not fully understood. There is a lack of consistent data on company balance sheets and in federal statistics. Business and policy makers need to know how much is spent on training, the types of workers receiving training, and the long-term value of the money and time spent in classroom and on-the-job training.

Sabrina L. Montes,

Designated Federal Official, American Workforce Policy Advisory Board, Bureau of Economic Analysis.

[FR Doc. 2019–24282 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–MN–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

10/17/2019 through 10/28/2019

Firm name	Firm address	Date accepted for investigation	Product(s)
Pacific Wire Group, Inc	2201 R Street NW, Auburn, WA 98001.	10/25/2019	The firm manufactures wire products, primarily of steel wire.
Hillside Custom Machining, Welding & Fabrication, LLC.	130 Morgan Way, Morgantown, PA 19543.	10/28/2019	The firm manufactures machinery that produces cartons for packaging goods. The firm also manufactures metal parts.
SI Systems, LLC	101 Larry Holmes Drive, Easton, PA 18042.	10/28/2019	The firm manufacturers equipment for handling and conveying goods and materials.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Irette Patterson,

Program Analyst.

[FR Doc. 2019–24242 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–441–801]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From Switzerland: Rescission of Antidumping Duty Administrative Review: 2017–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from Switzerland for the period of review November 22, 2017, through May 31, 2019.

DATES: Applicable November 7, 2019.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Switzerland for the period of review November 22, 2017, through May 31, 2019.[1] Pursuant to a request from ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC, PTC Alliance Corp., and Webco Industries, Inc., (the petitioners),[2] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Switzerland on July 29, 2019, with respect to three companies: Benteler Rothrist AG (Benteler Rothrist); Mubea Präzisionsstahlrohr AG (Mubea), and Jansen AG (Jansen).[3] On October 23, 2019, the petitioners timely withdrew their request for an administrative review with respect to all entities for which they had requested a review.[4]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners, who were the only parties to request a review, withdrew their request within the 90-day deadline. Accordingly, we are rescinding the administrative review of cold-drawn mechanical tubing from Switzerland for the period November 22, 2017, through May 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of cold-drawn mechanical tubing from Switzerland. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 25521 (June 3, 2019).

[2] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Switzerland—Domestic Industry's Request for First Administrative Review,'' dated July 1, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 36572 (July 29, 2019).

[4] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Switzerland—Domestic Industry's Withdrawal of Request for First Administrative Review,'' dated October 23, 2019.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 1, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–24312 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–845]

Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel From the Federal Republic of Germany: Rescission of Antidumping Duty Administrative Review: 2017–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is rescinding the administrative review of the antidumping duty order on certain cold-drawn mechanical tubing of carbon and alloy steel (cold-drawn mechanical tubing) from the Federal Republic of Germany (Germany) for the period of

review November 22, 2017, through May 31, 2019.

DATES: Applicable November 7, 2019.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Germany for the period November 22, 2017, through May 31, 2019.[1] Pursuant to a timely request from ArcelorMittal Tubular Products LLC, Michigan Seamless Tube, LLC, PTC Alliance Corp., and Webco Industries, Inc., (the petitioners),[2] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the antidumping duty order on cold-drawn mechanical tubing from Germany on July 29, 2019, with respect to six companies: BENTELER Steel/Tube GmbH (Benteler); BENTELER Distribution International GmbH (BDI); Mubea Fahrwerksfedern GmbH (Mubea Fahrwerksfedern); Salzgitter Mannesmann Line Pipe GmbH (Salzgitter Mannesmann Line Pipe); Salzgitter Mannesmann Precision GmbH (Salzgitter Mannesmann Precision); and, VSMPO Tirus GmbH (VSMPO Tirus).[3] On October 8, 2019, the petitioners timely withdrew their request for an administrative review of all of the companies named in their July 1, 2019, request for review,[4] except for Benteler and BDI.[5] On October 23, 2019, the petitioners timely withdrew their request for an administrative review with respect to all entities for which they had requested a review.[6]

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request within 90 days of the publication date of the notice of initiation of the requested review. The petitioners, who were the only parties to request a review, withdrew their request within the 90-day deadline. Accordingly, we are rescinding the administrative review of cold-drawn mechanical tubing from Germany for the period November 22, 2017, through May 31, 2019, in its entirety.

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries of cold-drawn mechanical tubing from Germany. Antidumping duties shall be assessed at rates equal to the cash deposit rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice in the **Federal Register**.

Notification to Importers

This notice serves as the only reminder to importers whose entries will be liquidated as a result of this rescission notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to all parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: November 1, 2019.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2019–24311 Filed 11–6–19; 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 25521 (June 3, 2019).

[2] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Request for First Administrative Review,'' dated July 1, 2019.

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 36572 (July 29, 2019).

[4] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Request for First Administrative Review,'' dated July 1, 2019.

[5] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Partial Withdrawal of Request for First Administrative Review,'' dated October 8, 2019.

[6] *See* Petitioners' Letter, ''Cold-Drawn Mechanical Tubing from Germany—Domestic Industry's Withdrawal of Request for First Administrative Review,'' dated October 23, 2019.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request, Alaska Notification of Intent To Process Aleutian Islands Pacific Cod

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Notification of Intent to Process Aleutian Islands Pacific Cod.

OMB Control Number: 0648–0743.

Form Number(s): None.

Type of Request: Regular.

Number of Respondents: 2.

Average Hours per Response: 30 minutes for notification of intent to process non-community development quota Aleutian Islands Pacific cod from directed fishing.

Burden Hours: 1 hr.

Needs and Uses: This request is for extension of a currently approved information collection that contains the annual notification of intent that the City of Adak or the City of Atka submits to NMFS of its intent to process non-community development quota Aleutian Islands Pacific cod in the upcoming fishing year in order for the Aleutian Islands catcher vessel harvest set-aside to go into effect in the upcoming fishing year.

NMFS uses this information to determine how to calculate Pacific cod allocations required under 50 CFR 679.20(a)(7)(viii) during the annual Bering Sea and Aleutian Islands (BSAI) harvest specifications process. If NMFS receives a notification of intent to

process Aleutian Islands Pacific cod from either the City of Adak or the City of Atka by October 31, NMFS establishes an Aleutian Islands catcher vessel Pacific cod harvest set-aside, along with other Pacific cod allocations by area, sector, and gear type. These harvest limits will be in effect in the following year.

NMFS implemented this collection of information in 2016 under Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. Amendment 113 modified management of the BSAI Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod total allowable catch for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing to a shoreside processor located on land west of 170° W longitude in the Aleutian Islands (''Aleutian Islands shoreplant''). This harvest set-aside applies only if specific notification and performance requirements are met, and only during the first few months of the fishing year. This harvest set-aside provides the opportunity for vessels, Aleutian Islands shoreplants, and the communities where Aleutian Islands shoreplants are located to receive benefits from a portion of the Aleutian Islands Pacific cod fishery. The notification and performance requirements preserve an opportunity for the complete harvest of the BSAI Pacific cod resource if the set-aside is not fully harvested.

In March 2019, the U.S. District Court for the District of Columbia vacated the rule implementing Amendment 113 and remanded Amendment 113 to NMFS for reconsideration. In May 2019, the U.S. Department of Justice filed a notice of appeal.

As the notification of intent is based on the vacated regulations that implemented Amendment 113, this information will not be collected unless the regulations are reinstated on appeal.

NMFS is requesting renewal of this collection of information in the event of a successful appeal.

Affected Public: Local government.

Frequency: Annually; on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–24305 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Wage Mariner Hiring Portal

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before January 6, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, Government Information Specialist, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to: CAPT Joseph P Baczkowski, Office of Marine and Aviation Operations, 8403 Colesville Rd, RM500, Silver Spring, MD 20910, telephone number ((301) 713–7673), email address: *joseph.baczkowski@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Type of Review: Regular Submission (New Collection)

The Wage Mariner Hiring Portal (WMHP) is an internet-based system (website) that is designed to allow an applicant to apply for a ''wage mariner'' position within the National Oceanic and Atmospheric Administration (NOAA) fleet of maritime vessels. The WMHP system collects basic user information, wage mariner licensing, certifications, and relevant current and or past work history. The Department of Commerce (DOC), through NOAA, Office of Marine and Aviation Operations (OMAO) has special hiring authority under Code of Federal Regulations (CFR), Title 5, Chapter 1, Subchapter A, Part 3, § 3.2 and under the DOC Department Administrative Order (DAO) 202–302 Section 2, Subsection .02a. specific to the hiring of federal wage mariner employees. The regulations allow OMAO to hire wage mariners into excepted service positions within the NOAA fleet of ocean going vessels in order to maintain adequate operations, maintenance, and safe staffing of the maritime ships.

No physical forms are used in this collection, it is all online. Applicants fill out basic personal, licensure, and work history information into a profile resume. Once their basic profile is complete, applicants can submit this resume to available wage mariner positions as shown on the WMHP website. The application information received is used to determine if the applicant meets the basic job qualification. The applicant's information is then passed on to the hiring official or it is placed in a pool of prospective candidates for future openings. Application information includes: First and last name, contact number and email address, wage mariner licenses and certifications, relevant work history.

II. Method of Collection

Information will be collected electronically through an online web based interactive system.

III. Data

OMB Control Number: 0648-xxxx.

Form Number(s): None.

Type of Review: Regular submission of a new information collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 60 minutes. 5 minutes to fill our applicant's first and last name and contact mobile and or home number and email address. 5 minutes to fill out wage mariner license specific information. 40 minutes to enter wage mariner certifications and relevant past work history. 10 minutes to fill out relevant educational history.

Estimated Total Annual Burden Hours: 6000 hours.

Estimated Total Annual Cost to Public: 0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Sheleen Dumas,

Departmental Lead PRA Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2019–24306 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR056]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Low-Energy Geophysical Survey in the South Atlantic Ocean

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

ACTION: Notice; Issuance of an Incidental Harassment Authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Scripps Institute of Oceanography (SIO) to incidentally harass, by Level B harassment only, marine mammals during a low-energy marine geophysical survey in the South Atlantic Ocean.

DATES: This Authorization is applicable from November 3, 2019 through November 2, 2020.

FOR FURTHER INFORMATION CONTACT: Stephanie Egger, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On May 15, 2019, NMFS received a request from SIO for an IHA to take marine mammals incidental to conducting a low-energy marine geophysical survey in the South Atlantic Ocean. The application was deemed adequate and complete on August 12, 2019. SIO's request was for take of a small number of 48 species of marine mammals by Level B harassment. Neither SIO nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Planned Activity

SIO plans to conduct low-energy marine seismic surveys in the South Atlantic Ocean during November-December 2019. The seismic surveys would be conducted to understand the volcanic and tectonic development of Walvis Ridge and Rio Grande Rise in the South Atlantic Ocean. The seismic surveys would be conducted in International Waters with water depths ranging from approximately 500 to 5700 m. The surveys would involve one source vessel, R/V *Thomas G. Thompson* (*Thompson*). The *Thompson* would deploy up to two 45-in^3 GI airguns at a depth of 2–4 m with a maximum total volume of ~90 in^3 along predetermined tracklines. Seismic surveys would occur in five survey areas including Libra Massif in the Southwest Atlantic and Valdivia Bank, Gough, Tristan, and Central survey areas in the Southeast Atlantic.

SIO proposes to conduct low-energy seismic surveys low-energy seismic surveys in five areas in the South Atlantic Ocean. Reconnaissance Surveys are planned for three survey areas (Gough, Tristan, Central) and High Quality Surveys are planned to take place along the planned seismic transect lines in the main survey area (Valdivia Bank) and Libra Massif survey area (Figure 1). However, High-Quality Surveys may be replaced by Reconnaissance Surveys depending on weather conditions and timing (*e.g.,* 10 percent of survey effort at Valdivia Bank is expected to consist of Reconnaissance Surveys). All data acquisition in the Tristan survey area would occur in water >1000 m deep; all other survey areas have effort in intermediate (100–1,000 m) and deep (≤1,000 m) water. Most of the survey effort (97 percent) would occur in water >1000 m deep. The planned surveys would be in support of a potential future International Ocean Discovery Program (IODP) project and to improve our understanding of volcanic and tectonic development of oceanic ridges and to enable the selection and analysis of potential future IODP drill sites. To achieve the program's goals, the Principal Investigators propose to collect low-energy, high-resolution multi-channel seismic (MCS) profiles. The planned cruise would consist of digital bathymetric, echosounding, and MCS surveys.

The highest-quality mode is carried out using a pair of 45-in^3 airguns, with airguns spaced 2 m apart at a depth of 2–4 m, with a 400, 800, or 1,600 m hydrophone streamer and with the vessel traveling at to 5 knots (5 kn) to achieve high-quality seismic reflection data. The reconnaissance mode is carried out using either one or two 45-in^3 airguns, with airguns spaced 8 m apart (if 2 are being used) at a water depth of 2–4 m, with a 200 m hydrophone streamer and with the vessel traveling at 8 kn. The receiving system would consist of one hydrophone streamer, 200 to 1,600 m in length, as described below. As the airguns are towed along the survey lines, the hydrophone streamer would receive the returning acoustic signals and transfer the data to the on-board processing system.

In addition to the operations of the airgun array, a hull-mounted multibeam echosounder (MBES) and a sub-bottom profiler (SBP) would also be operated from the *Thompson* continuously throughout the seismic surveys, but not during transits to and from the project area. All planned data acquisition and sampling activities would be conducted by SIO and UW with on board assistance by the scientists who have planned the project. The vessel would be self-contained, and the crew would live aboard the vessel for the entire cruise.

For additional details on the planned activities, please refer to the notice of the proposed IHA that was published in the **Federal Register** on September 30, 2019 (84 FR 51886).

Planned mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Mitigation* and *Monitoring and Reporting* sections).

Comments and Responses

A notice of NMFS's proposal to issue an IHA to SIO was published in the **Federal Register** on September 30, 2019 (84 FR 51886). That notice described, in detail, SIO's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission).

Comment: The Commission recommended the calculated Level A harassment takes should have been added to the authorized Level B harassment takes for the following species: 400 to 404 authorized takes by Level B harassment for both Antarctic and common minke whales; 3,414 to 3,718 authorized takes by Level B harassment for short beaked common dolphin; 17 to 18 authorized takes by Level B harassment for pygmy sperm whales; 12 to 13 authorized takes by Level B harassment for dwarf sperm whales; and 54 to 58 authorized takes by Level B harassment for hourglass dolphins.

Response: NMFS agreed and made those revisions to the authorized takes by Level B harassment. Instances of take by Level A and Level B harassment are independently calculated. The instances of take by Level A harassment are typically subtracted from the take by Level B harassment before being presented in the *Estimated Take* section to ensure they are not double-counted. Since the likelihood of take by Level A harassment was qualitatively ruled out, the calculated take by Level A harassment were previously deducted, but are now added back in to the authorized take by Level B harassment.

Comment: The Commission noted some minor errors of the monitoring requirements between the preamble and the draft IHA.

Response: NMFS agreed and made those corrections to ensure consistency with this final notice and the IHA.

Comment: The Commission recommended revising the group size for Clymene dolphins from 35 to 122 animals, killer whales from 5 to 8 animals, and false killer whales from 19 to 35 (Di Tullio *et al.,* 2016) and making those appropriate changes to the authorized takes by Level B harassment for those species as their total takes were based on group size.

Response: NMFS agreed that the group sizes for Clymene dolphins, killer whales, and false killer whales from Di Tullio *et al.,* 2016 were more recent that the previous group sizes cited and made those revisions to the authorized takes by Level B harassment.

Comment: In the context of a broader criticism of perceived modeling flaws, the Commission recommended NMFS specify why it believes that sound channels with downward refraction, as well as seafloor refractions, are not likely to occur during SIO's survey and the degree to which both of these parameters would affect the estimation (or underestimation) of Level B harassment zones in deep and intermediate water depths.

Response: The L–DEO approach to the modeling is generally conservative as supported by data collected from calibration and other field data along with modeling results. The L–DEO approach does not rely on incorporating every possible environmental factor in the marine environment and while sound channels with downward refraction or seafloor refractions could potentially occur, NMFS disagrees with the Commission that these features need be explicitly addressed through the model given the conservative approach taken. Published results from Tolstoy (2009), Diebold (2010), and Crone et al. (2014, 2017), along with nearly 20 years of PSO observations from previous NSF-funded seismic surveys in various water depths validate the approach. L–DEO has presented their modeling approach to NMFS and the Commission on several occasions. Given the information presented, numerous discussions, and observations from past NSF-funded seismic surveys that used the L–DEO modeling approach, NMFS remains confident that the methodology used is appropriate and conservatively protects marine mammals.

Comment: The Commission noted tables depicting source levels in both the IHA application and the **Federal Register** notice contained inadequate information and that the appendices of SIO's IHA application did not contain necessary information. The Commission recommended that NMFS ensure that all source levels, modified source levels, and related adjustment factors are specified and all relevant isopleth figures and user spreadsheet tables are included in all future NSF-funded and –affiliated applications prior to processing them.

Response: NMFS has added clarification on the tables noted by the Commission and provided the Commission the requested information. NMFS will ensure that all applications contain the necessary information required for adequate understanding of the acoustic modeling prior to publishing the notice of proposed IHA.

Comment: The Commission recommended that, instead of using the LDEO modeling described in the IHA application, NMFS require LDEO to re-estimate the Level A and Level B harassment zones and associated takes of marine mammals using (1) both operational (including number/type/spacing of airguns, tow depth, source level/operating pressure, operational volume) and site-specific environmental (including sound speed profiles, bathymetry, and sediment characteristics at a minimum) parameters, (2) a comprehensive source model (*i.e.,* Gundalf Optimizer) and (3) an appropriate sound propagation model (*i.e.,* BELLHOP). Specifically, the Commission reiterates that LDEO should be using the ray-tracing propagation model BELLHOP—which is a free, standard propagation code that readily incorporates all environmental inputs listed herein, rather than the

limited, in-house MATLAB code currently in use, and recommends NMFS specify why it believes that LDEO's modeling approaches provide more accurate, realistic, and appropriate Level A and Level B harassment zones than BELLHOP. The Commission recommends that NMFS (1) specify why it believes that LDEO's model and other 'modeling' approaches provide more accurate, realistic, and appropriate Level A and B harassment zones than BELLHOP and (2) explain, if LDEO's model and other 'modeling' approaches are considered best available science, why other action proponents that conduct seismic surveys are not implementing similar methods particularly given their simplicity.

Response: We appreciate the Commission's input and direct the reader to our recent response to the same comment, which can be found in the final authorization for similar SIO activities in Argentina (84 FR 54849; October 11, 2019).

Comment: The Commission recommends that, in the next six months, NMFS develop a policy regarding how uncertainty should be incorporated in density estimates that have been extrapolated from other areas and other seasons and specify what adjustments (*i.e.,* CVs, standard deviations, blanket correction factors) should be used for NSF-funded and -affiliated surveys.

Response: NMFS appreciates and thanks the Commission's for its recommendation and will take it under consideration.

Comment: The Commission noted that monitoring and reporting requirements adopted need to be sufficient to provide a reasonably accurate assessment of the manner of taking and the numbers of animals taken incidental to the specified activity. Those assessments should account for all animals in the various survey areas, including those animals directly on the trackline that are not detected and how well animals are detected based on the distance from the observer which is achieved by incorporating g(0) and f(0) values. The Commission recommended that NMFS require SIO to use the Commission's method as described in the Commission's Addendum to its May 1, 2019 letter to better estimate the numbers of marine mammals taken by Level B harassment for the incidental harassment authorization. The Commission stated that all other NSF-affiliated entities and all seismic operators should use this method as well.

Response: We thank the Commission for their recommendation. NMFS is in the process of determining the appropriate method for deriving post-survey estimates of the total number of animals taken by activities such as Scripps' marine geophysical survey.

Comment: The Commission recommended NMFS require SIO to specify in the final monitoring report (1) the number of days the survey occurs and the array is active and (2) the percentage of time and total time the array is active during daylight vs nighttime hours (including dawn and dusk).

Response: NMFS will require SIO to include this information in their final monitoring report.

Comment: The Commission recommended that NMFS refrain from using the renewal process for SIO's authorization based on the complexity of analysis and potential for impacts on marine mammals, and the potential burden on reviewers of reviewing key documents and developing comments quickly. Additionally, the Commission recommends that NMFS use the IHA renewal process sparingly and selectively for activities expected to have the lowest levels of impacts to marine mammals and that require less complex analysis.

Response: We appreciate the Commission's input and direct the reader to our recent response to the same comment, which can be found at 84 FR 52464 (October 2, 2019), pg. 52466. If and when SIO requests a Renewal, we will consider the Commission's comment further and address the concerns specific to this project. We will consider this comment further when and if SIO requests a renewal.

Comment: The Commission noted that the planned surveys are scheduled to three days after the public comment period closes and expressed concern that NMFS did not have adequate time to consider public comments before issuing the IHA. The Commission recommended NMFS more thoroughly review applications, draft **Federal Register** notices, and draft proposed authorizations prior to submitting any proposed authorizations to the **Federal Register**, as well as require earlier submission of applications and other documentation to ensure sufficient time to prepare the proposed authorization and consider comments received from the public. In addition, Commission recommends that NMFS require NSF-funded and -affiliated applications and other documentation to be submitted at least eight months in advance of the vessel leaving port so that NMFS has sufficient time to review and provide comments on the adequacy and accuracy of the application, allow action proponents to make necessary revisions or additions to the application, draft its proposed authorization, and consider the comments received from the public.

Response: We appreciate the Commission's input and direct the reader to our recent response to the same comment, which can be found in the final authorization for similar SIO activities in Argentina (84 FR 54849; October 11, 2019).

Changes From Proposed to Final IHA

Minor corrections have been made to the estimated take table (see Table 9). As described in the Comments and Response section, calculated Level A harassment takes were added to Authorized Level B harassment takes (to ensure the correct total takes) for six species. In addition, group sizes were adjusted for three species based on Di Tullio *et al.* (2016) and therefore changes were made to the authorized take by Level B harassment for those species.

Description of Marine Mammals in the Area of Specified Activities

Section 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find*-species).

The populations of marine mammals considered in this document do not occur within the U.S. EEZ and are therefore not assigned to stocks and are not assessed in NMFS' Stock Assessment Reports (SAR). As such, information on potential biological removal (PBR; defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population) and on annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are lacking; therefore estimates of abundance presented here are based on a variety of proxy sources including International Whaling Commission population estimates (IWC 2019), the U.S. Atlantic SARs (Hayes *et al.,* 2018) for a few dolphin species, and various literature estimates (see IHA application for further detail), as this is considered the best available information on

potential abundance of marine mammals in the area. However, as described above, the marine mammals encountered by the planned survey are not assigned to stocks. All abundance estimate values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 U.S. Atlantic SARs (*e.g.,* Hayes *et al.* 2018) available online at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments,* except where noted otherwise.

Table 1 lists all species with expected potential for occurrence in the Argentine Basin, Southwest Atlantic Ocean, and summarizes information related to the population, including regulatory status under the MMPA and ESA. For taxonomy, we follow Committee on Taxonomy (2018).

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock [1]	ESA/MMPA status; strategic (Y/N) [2]	Abundance	PBR	Relative occurrence in project area
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Balaenidae						
Southern right whale	*Eubalaena australis*	n/a	E/D; N	12,000 [3] 3,300 [5]	N.A.	Uncommon.
Family Cetotheriidae						
Pygmy right whale	*Caperea marginata*	n/a		N.A.	N.A.	Rare.
Family Balaenopteridae (rorquals)						
Blue whale	*Balaenoptera musculus*	n/a	E/D; Y	2,300 true [4] 1,500 pygmy [6]	N.A.	Rare.
Fin whale	*Balaenoptera physalus*	n/a	E/D; Y	15,000 [6]	N.A.	Uncommon.
Sei whale	*Balaenoptera borealis*	n/a	E	10,000 [6]	N.A.	Uncommon.
Common minke whale	*Balaenoptera acutorostrata*	n/a		515,000 [3 6]	N.A.	Common.
Antarctic minke whale	*Balaenoptera bonaerensis*	n/a		515,000 [3 6]	N.A.	Common.
Humpback whale	*Megaptera novaeangliae*	n/a		42,000 [3]	N.A.	Rare.
Bryde's whale	*Balaenoptera edeni/brydei*	n/a		48,109 [7]	N.A.	Common.
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Physeteridae						
Sperm whale	*Physeter macrocephalus*	n/a	E	12,069 [10]	N.A.	Uncommon.
Family Kogiidae						
Pygmy sperm whale	*Kogia breviceps*	n/a		N.A.	N.A.	Rare.
Dwarf sperm whale	*Kogia sima*	n/a		N.A.	N.A.	Uncommon.
Family Ziphiidae (beaked whales)						
Arnoux's beaked whale	*Berardius arnuxii*	n/a		599,300 [11]	N.A.	Uncommon.
Cuvier's beaked whale	*Ziphius cavirostris*	n/a		599,300 [11]	N.A.	Uncommon.
Southern bottlenose whale	*Hyperoodon planifrons*	n/a		599,300 [11]	N.A.	Uncommon.
Shepherd's beaked whale	*Tasmacetus sheperdi*	n/a		N.A.	N.A.	Uncommon.
Blainville's beaked whale	*Mesoplodon densirostris*	n/a		N.A.	N.A.	Rare.
Gray's beaked whale	*Mesoplodon grayi*	n/a		599,300 [11]	N.A.	Uncommon.
Gervais' beaked whale	*Mesoplodon europaeus*	n/a		N.A.	N.A.	Rare.
Hector's beaked whale	*Mesoplodon hectori*	n/a		N.A.	N.A.	Rare.
True's beaked whale	*Mesoplodon mirus*	n/a		N.A.	N.A.	Rare.
Strap-toothed beaked whale	*Mesoplodon layardii*	n/a		599,300 [11]	N.A.	Uncommon.
Andrews' beaked whale	*Mesoplodon bowdoini*	n/a		N.A.	N.A.	Rare.
Spade-toothed beaked whale	*Mesoplodon traversii*	n/a		N.A.	N.A.	Rare.
Family Delphinidae						
Risso's dolphin	*Grampus griseus*	n/a		18,250 [12]	N.A.	Common.
Rough-toothed dolphin	*Steno bredanensis*	n/a		N.A.	N.A.	Common.
Common bottlenose dolphin	*Tursiops truncatus*	n/a		77,532 [12]	N.A.	Uncommon.
Pantropical spotted dolphin	*Stenella attenuata*	n/a		3,333 [12]	N.A.	Common.
Atlantic spotted dolphin	*Stenella frontalis*	n/a		44,715 [12]	N.A.	Rare.
Spinner dolphin	*Stenella longirostris*	n/a		N.A.	N.A.	Uncommon.
Clymene dolphin	*Stenella clymene*	n/a		N.A.	N.A.	Rare.
Striped dolphin	*Stenella coeruleoalba*	n/a		54,807 [12]	N.A.	Uncommon.
Short-beaked common dolphin	*Delphinus delphis*	n/a		70,184 [10]	N.A.	Uncommon.
Fraser's dolphin	*Lagenodelphis hosei*	n/a		N.A.	N.A.	Uncommon.
Dusky dolphin	*Lagenorhynchus obscurus*	n/a		7,252 [12]	N.A.	Rare.
Hourglass dolphin	*Lagenorhynchus cruciger*	n/a		150,000 [6]	N.A.	Rare.
Southern right whale dolphin	*Lissodelphis peronii*	n/a		N.A.	N.A.	Uncommon.
Killer whale	*Orcinus orca*	n/a		25,000 [14]	N.A.	Uncommon.
Short-finned pilot whale	*Globicephala macrorhynchus*	n/a		200,000 [6]	N.A.	Uncommon.
Long-finned pilot whale	*Globicephala melas*	n/a		200,000 [6]	N.A.	Uncommon.
False killer whale	*Pseudorca crassidens*	n/a		N.A.	N.A.	Uncommon.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY PRESENT IN THE PROJECT AREA EXPECTED TO BE AFFECTED BY THE SPECIFIED ACTIVITIES—Continued

Common name	Scientific name	Stock [1]	ESA/MMPA status; strategic (Y/N) [2]	Abundance	PBR	Relative occurrence in project area
Pygmy killer whale	*Feresa attenuata*	n/a		N.A.	N.A.	Uncommon.
Melon-headed whale	*Peponocephala electra*	n/a		N.A.	N.A.	Uncommon.
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions)						
Cape fur seal	*Arctocephalus pusillus pusillus*	n/a		Approximately 2 million [16]	N.A.	Uncommon.
Subantarctic fur seal	*Arctocephalus tropicalis*	n/a		400,000 [15]	N.A.	Uncommon.
Family Phocidae (earless seals)						
Crabeater seal	*Lobodon carcinophaga*	n/a		5—10 million [17]	N.A.	Rare.
Leopard seal	*Hydrurga leptonyx*	n/a		222,000—440,000 [18]	N.A.	Rare.
Southern elephant seal	*Mirounga leonina*	n/a		750,000 [19]	N.A.	Uncommon.

N.A. = Data not available. NL = Not listed.
[1] U.S. *Endangered Species Act* (NOAA 2019): EN = Endangered.
[2] International Union for the Conservation of Nature (IUCN) Red List of Threatened Species (IUCN 2019): EN = Endangered; NT = Near Threatened; VU = Vulnerable; LC = Least Concern; DD = Data Deficient
[3] Convention on International Trade in Endangered Species of Wild Fauna and Flora (UNEP–WCMC 2017): Appendix I = Threatened with extinction; Appendix II = not necessarily threatened with extinction but may become so unless trade is closely controlled.
[4] Southern Hemisphere (IWC 2019).
[5] Southwest Atlantic (IWC 2019).
[6] Antarctic (Boyd 2002).
[7] Southern Hemisphere (IWC 1981).
[8] Dwarf and Antarctic minke whales combined.
[9] There are 14 distinct population segments (DPSs) of humpback whales recognized under the ESA; the Brazil and Gabon/Southwest Africa DPSs are not listed (NOAA 2019).
[10] Estimate for the Antarctic, south of 60°S (Whitehead 2002).
[11] All beaked whales south of the Antarctic Convergence; mostly southern bottlenose whales (Kasamatsu and Joyce 1995).
[12] Estimate for the western North Atlantic (Hayes *et al.* 2018).
[13] Estimate for Patagonian coast (Dans *et al.* 1997).
[14] Minimum estimate for Southern Ocean (Branch and Butterworth 2001).
[15] Global population (Hofmeyr and Bester 2018).
[16] Butterworth *et al.* (1995 *in* Kirkman and Arnould 2018).
[17] Global population (Bengtson and Stewart 2018).
[18] Global population (Rogers 2018).
[19] Total world population (Hindell *et al.* 2016).

All species that could potentially occur in the planned survey areas are included in Table 1. As described below, all 48 species temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized it.

A detailed description of the species likely to be affected by the planned geophysical surveys, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, information regarding local occurrence, and marine mammal hearing were provided in the **Federal Register** notice for the proposed IHA (84 FR 51886; September 30, 2019). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS's website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects from underwater noise from SIO's planned geophysical surveys have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (84 FR 51886; September 30, 2019) included a discussion of the effects of anthropogenic noise on marine mammals and their habitat, therefore that information is not repeated here; please refer to that **Federal Register** notice (84 FR 51886; September 30, 2019) for that information. No instances of serious injury or mortality are expected as a result of the planned activities.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would be by Level B harassment only, as use of the acoustic sources (*i.e.,* seismic airgun) has the potential to result in disruption of behavioral patterns for individual marine mammals. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* marine mammal exclusion zones) discussed in detail below in *Mitigation* section, Level A harassment is neither anticipated nor authorized. As described previously, no mortality is anticipated or authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds

above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007; Ellison *et al.,* 2012). Based on what the available science indicates, and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

SIO's planned activity includes the use of impulsive seismic sources, and therefore the 160 dB re 1 μPa (rms) is applicable.

Level A harassment for non-explosive sources—NMFS' *Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing* (Version 2.0) (Technical Guidance) (NMFS, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). SIO's planned activity includes the use of impulsive seismic sources.

These thresholds are provided in Table 2 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS Onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,\ LF,24h}$: 183 dB	*Cell 2:* $L_{E,\ LF,24h}$: 199 dB
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB $L_{E,\ MF,24h}$: 185 dB	*Cell 4:* $L_{E,\ MF,24h}$: 198 dB
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB $L_{E,\ HF,24h}$: 155 dB	*Cell 6:* $L_{E,\ HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB $L_{E,\ PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The planned survey would entail the use of a 2-airgun array with a total discharge of 90 in^3 at a two depth of 2–4 m. Lamont-Doherty Earth Observatory (LDEO) model results are used to determine the 160 dB$_{rms}$ radius for the 2-airgun array in deep water (>1,000 m) down to a maximum water depth of 2,000 m. Received sound levels were predicted by LDEO's model (Diebold *et al.,* 2010) as a function of distance from the airguns, for the two 45 in^3 airguns. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogenous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from a 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico in 2007–2008 (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the Level A and Level B harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect

all the SPL isopleths at their widest point from the sea surface down to the maximum relevant water depth (~2,000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths, comparisons at short ranges between sound levels for direct arrivals recorded by the calibration hydrophone and model results for the same array tow depth are in good agreement (see Figures 12 and 14 in Appendix H of NSF–USGS 2011). Consequently, isopleths falling within this domain can be predicted reliably by the LDEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent. Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the LDEO model is a robust tool for conservatively estimating isopleths.

The planned surveys would acquire data with two 45-in^3 guns at a tow depth of 2–4 m. For deep water (>1,000 m), we use the deep-water radii obtained from LDEO model results down to a maximum water depth of 2,000 m for the airgun array with 2-m and 8-m airgun separation. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see Figure 16 in Appendix H of NSF–USGS 2011).

LDEO's modeling methodology is described in greater detail in SIO's IHA application. The estimated distances to the Level B harassment isopleths for the two planned airgun configurations in each water depth category are shown in Table 3.

TABLE 3—PREDICTED RADIAL DISTANCES FROM R/V THOMPSON SEISMIC SOURCE TO ISOPLETHS CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

Airgun configuration	Water depth (m)	Predicted distances (m) to 160 dB received sound level
Two 45 in^3 guns, 2-m separation	>1,000 (deep)	[a] 539
	100–1,000 (intermediate)	[b] 809
Two 45 in^3 guns, 8-m separation	> 1,000 (deep)	[a] 578
	100–1,000 (intermediate)	[b] 867

[a] Distance based on LDEO model results.
[b] Distance based on LDEO model results with a 1.5 x correction factor between deep and intermediate water depths.
[c] Distance based on empirically derived measurements in the Gulf of Mexico with scaling applied to account for differences in tow depth.

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by LDEO using the NUCLEUS software program and the NMFS User Spreadsheet, described below. The updated acoustic thresholds for impulsive sounds (*e.g.,* airguns) contained in the Technical Guidance were presented as dual metric acoustic thresholds using both SEL_{cum} and peak sound pressure metrics (NMFS 2018). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group. In recognition of the fact that the requirement to calculate Level A harassment ensonified areas could be more technically challenging to predict due to the duration component and the use of weighting functions in the new SEL_{cum} thresholds, NMFS developed an optional User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to facilitate the estimation of take numbers.

The SEL_{cum} for the 2–GI airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the farfield signature. Because the farfield signature does not take into account the interactions of the two airguns that occur near the source center and is calculated as a point source (single airgun), the modified farfield signature is a more appropriate measure of the sound source level for large arrays. For this smaller array, the modified farfield changes will be correspondingly smaller as well, but we use this method for consistency across all array sizes.

SIO used the same acoustic modeling as Level B harassment with a small grid step in both the inline and depth

directions to estimate the SEL_{cum} and peak SPL. The propagation modeling takes into account all airgun interactions at short distances from the source including interactions between subarrays using the NUCLEUS software to estimate the notional signature and the MATLAB software to calculate the pressure signal at each mesh point of a grid. For a more complete explanation of this modeling approach, please see *Appendix A: Determination of Mitigation Zones* in SIO's IHA application.

TABLE 4—MODELED SOURCE LEVELS (dB) FOR R/V THOMPSON 90 IN^3 AIRGUN ARRAYS

Functional hearing group	8-kn survey with 8-m airgun separation: Peak SPL_{flat}	8-kn survey with 8-m airgun separation: SEL_{cum}	5-kn survey with 2-m airgun separation: Peak SPL_{flat}	5-kn survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	228.8	207	232.8	206.7
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	[1] N/A	206.7	229.8	206.9
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	233	207.6	232.9	207.2
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	230	206.7	232.8	206.9
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	[1] N/A	203	225.6	207.4

[1] N/A indicates source level not applicable or not available. There are no values for the 2 x 45 cu.in at 4m depth with an 8m separation for the MF cetaceans and Otariids (maximum peak value is 221dB so less than 230 or 232dB). Therefore, we cannot provide any radial distance or modified peak farfield values for these two hearing groups.

In order to more realistically incorporate the Technical Guidance's weighting functions over the seismic array's full acoustic band, unweighted spectrum data for the *Thompson's* airgun array (modeled in 1 Hz bands) was used to make adjustments (dB) to the unweighted spectrum levels, by frequency, according to the weighting functions for each relevant marine mammal hearing group. These adjusted/weighted spectrum levels were then converted to pressures (μPa) in order to integrate them over the entire broadband spectrum, resulting in broadband weighted source levels by hearing group that could be directly incorporated within the User Spreadsheet (*i.e.,* to override the Spreadsheet's more simple weighting factor adjustment). Using the User Spreadsheet's ''safe distance'' methodology for mobile sources (described by Sivle *et al.,* 2014) with the hearing group-specific weighted source levels, and inputs assuming spherical spreading propagation and source velocities and shot intervals provided in SIO's IHA application, potential radial distances to auditory injury zones were calculated for SEL_{cum} thresholds, for both array configurations.

Inputs to the User Spreadsheet in the form of estimated SLs are shown in Table 4. User Spreadsheets used by SIO to estimate distances to Level A harassment isopleths for the two potential airgun array configurations are shown in Tables A–4 and A–5 in *Appendix A* of SIO's IHA application. Outputs from the User Spreadsheet in the form of estimated distances to Level A harassment isopleths are shown in Table 5. As described above, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the dual metrics (SEL_{cum} or Peak SPL_{flat}) is exceeded (*i.e.,* metric resulting in the largest isopleth).

TABLE 5—MODELED RADIAL DISTANCES TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

Functional Hearing Group (Level A harassment thresholds)	8-kn survey with 8-m airgun separation: Peak SPL_{flat}	8-kn survey with 8-m airgun separation: SEL_{cum}	5-kn survey with 2-m airgun separation: Peak SPL_{flat}	5-kn survey with 2-m airgun separation: SEL_{cum}
Low frequency cetaceans ($L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB)	3.08	2.4	4.89	6.5
Mid frequency cetaceans ($L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB)	0	0	0.98	0
High frequency cetaceans ($L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB)	34.84	0	34.62	0
Phocid Pinnipeds (Underwater) ($L_{pk,flat}$: 218 dB; $L_{E,HF,24h}$: 185 dB)	4.02	0	5.51	0.1
Otariid Pinnipeds (Underwater) ($L_{pk,flat}$: 232 dB; $L_{E,HF,24h}$: 203 dB)	0	0	0.48	0

Note that because of some of the assumptions included in the methods used, isopleths produced may be overestimates to some degree, which will ultimately result in some degree of overestimate of take by Level A harassment. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate. For mobile sources, such as the planned seismic survey, the User Spreadsheet predicts the closest distance at which a stationary animal would not incur PTS if the sound source traveled by the animal in a straight line at a constant speed.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

SIO determined that the preferred source of density data for marine mammal species that might be encountered in the planned survey areas in the South Atlantic Ocean was Di Tullio *et al.* (2016). The rationale for using these data was that these surveys were conducted offshore along the continental slope at the same latitudes as the planned seismic surveys and so come from a similar season, water depth category, and climatic region in the southern Atlantic Ocean. When data for species expected to occur in the planned seismic survey areas were not available in Di Tullio *et al.* (2016), data from White *et al.* (2002) was used as

calculated in LGL/NSF (2019) because they came from an area which was slightly south of the planned project area but well north of the AECOM/NSF (2014) study area. An exception was made for the southern right whale, for which densities from AECOM/NSF (2014) were higher and thus more conservative. Next data came from AECOM/NSF (2014); although they come from an area south of the planned project area, they were the next best data available for those species. For species not included in these sources stated above, data came from from de Boer (2010), Garaffo *et al.* (2011), NOAA–SWFSC LOA (2013 in AECOM/NSF 2014), Wedekin *et al.* (2014), Bradford *et al.* (2017), and Mannocci *et al.* (2017). When densities were not directly available from the above studies, they were estimated using sightings and effort reported in those sources. Densities calculated from de Boer (2010) come from LGL/NSF (2016); densities from White *et al.* (2002), Garaffo *et al.* (2011), and Wedekin *et al.* (2014) are from LGL/NSF (2019). Data sources and density calculations are described in detail in Appendix B of SIO's IHA application. For some species, the densities derived from past surveys may not be representative of the densities that would be encountered during the planned seismic surveys. However, the approach used is based on the best available data. Estimated densities used to inform take estimates are presented in Table 6.

TABLE 6—MARINE MAMMAL DENSITIES IN THE PLANNED SURVEY AREA

Species	Estimated density (#/km²) [a]
LF Cetaceans	
Southern right whale	*0.007965*
Pygmy right whale	N.A.
Blue whale	*0.000051*
Fin whale	*0.000356*
Sei whale	*0.000086*
Bryde's whale	0.000439
Common (dwarf) minke whale	0.077896
Antarctic minke whale	0.077896
Humpback whale	0.000310
MF Cetaceans	
Sperm whale	*0.005975*
Arnoux's beaked whale	0.011379
Cuvier's beaked whale	0.000548
Southern bottlenose whale	0.007906
Shepherd's beaked whale	0.009269
Blainville's beaked whale	0.000053
Gray's beaked whale	0.001885
Hector's beaked whale	0.000212
Gervais' beaked whale	0.001323
True's beaked whale	0.000053
Strap-toothed beaked whale	0.000582
Andrew's beaked whale	0.000159
Spade-toothed beaked whale	0.000053
Risso's dolphin	0.010657
Rough-toothed dolphin	0.005954
Common bottlenose dolphin	0.040308
Pantropical spotted dolphin	0.003767
Atlantic spotted dolphin	0.213721
Spinner dolphin	0.040720
Clymene dolphin	0.006800
Striped dolphin	0.004089
Short-beaked common dolphin	0.717166
Fraser's dolphin	0.021040
Dusky dolphin	0.012867
Southern right whale dolphin	0.006827
Killer whale	0.000266
Short-finned pilot whale	0.002085
Long-finned pilot whale	0.021379
False killer whale	0.000882
Pygmy killer whale	0.000321
Melon-headed whale	0.003540
HF Cetaceans	
Pygmy sperm whale	0.003418
Dwarf sperm whale	0.002582
Hourglass dolphin	0.011122
Otariids	
Subantarctic fur seal	0.00274
Cape fur seal	N.A.
Phocids	
Crabeater seal	0.00649
Leopard seal	0.00162
Southern elephant seal	0.00155

N.A. indicates density estimate is not available.

Species in italics are listed under the ESA as endangered.

[a] See Appendix B in SIO's IHA application for density sources.

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A harassment or Level B harassment, radial distances from the airgun array to predicted isopleths corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances are then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the Level A harassment and Level B harassment thresholds. The area estimated to be ensonified in a single day of the survey is then calculated (Table 7), based on the areas predicted to be ensonified around the array and the estimated trackline distance traveled per day. This number is then multiplied by the number of survey days. The product is then multiplied by 1.25 to account for the additional 25 percent contingency. This results in an estimate of the total area (km²) expected to be ensonified to the Level A and Level B harassment thresholds for each survey type (Table 7).

TABLE 7—AREAS (km²) TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS

Survey type	Criteria	Relevant isopleth (m)	Daily ensonified area (km²)	Total survey days	25 percent increase	Total ensonified area (km²)
5-kn survey	Level B Harassment (160 dB)					
	Intermediate water	809	14.67	10	1.25	183.34
	Deep water	539	231.31	10	1.25	2891.42
	Level A Harassment					
	LF cetacean	6.5	2.89	10	1.25	36.125
	MF cetacean	1	0.44	10	1.25	5.55
	HF cetacean	34.6	15.37	10	1.25	192.13

TABLE 7—AREAS (km²) TO BE ENSONIFIED TO LEVEL A AND LEVEL B HARASSMENT THRESHOLDS—Continued

Survey type	Criteria	Relevant isopleth (m)	Daily ensonified area (km²)	Total survey days	25 percent increase	Total ensonified area (km²)
	Phocids	5.5	2.44	10	1.25	30.53
	Otariids	0.5	0.22	10	1.25	2.77
8-kn survey	Level B Harassment (160 dB)					
	Intermediate water	867	25.95	4	1.25	129.75
	Deep water	578	395.88	4	1.25	1979.38
	Level A Harassment					
	LF cetacean	3.1	2.21	4	1.25	11.04
	MF cetacean	0	0	4	1.25	0
	HF cetacean	34.8	24.78	4	1.25	124
	Phocids	4	2.85	4	1.25	14.24
	Otariids	0	0	4	1.25	0

The total ensonified areas (km²) for each criteria presented in Table 7 were summed to determine the total ensonified area for all survey activities (Table 8).

TABLE 8—TOTAL ENSONIFIED AREAS (km²) FOR ALL SURVEYS

Criteria	Total ensonified area (km²) for all surveys
160 dB Level B (all depths)	5183.89

TABLE 8—TOTAL ENSONIFIED AREAS (km²) FOR ALL SURVEYS—Continued

Criteria	Total ensonified area (km²) for all surveys
160 dB Level B (intermediate water)	313.09
160 dB Level B (deep water)	4870.80
LF cetacean Level A	47.11
MF cetacean Level A	5.55
HF cetacean Level A	316.04
Phocids Level A	44.77
Otariids Level A	2.77

The marine mammals predicted to occur within these respective areas, based on estimated densities (Table 6), are assumed to be incidentally taken. While some takes by Level A harassment have been estimated, based on the nature of the activity and in consideration of the planned mitigation measures (see *Mitigation* section below), Level A take is not expected to occur and has not been authorized. Estimated exposures for the planned survey are shown in Table 9.

TABLE 9—CALCULATED AND AUTHORIZED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF POPULATION EXPOSED

Species	Calculated take [1]		Authorized take [4]	Percent of population [5]
	Level B harassment [2]	Level A harassment [3]	Level B harassment only	
LF Cetaceans:				
Southern right whale	*41*	*0*	*41*	*1.3*
Pygmy right whale	N.A.	N.A.	[5] 2	N.A.
Blue whale	*0*	*0*	*3* [6]	*<0.1*
Fin whale	*2*	*0*	*4* [6]	*<0.1*
Sei whale	*0*	*0*	*3* [6]	*<0.1*
Bryde's whale	2	0	20 [5]	<0.1
Common (dwarf) minke whale	400	4	404	<0.1
Antarctic minke whale	400	4	404	<0.1
Humpback whale	2	0	203 [5]	0
MF Cetaceans:				
Sperm whale	*31*	*0*	*31*	*0.3*
Arnoux's beaked whale	59	0	59	<0.1
Cuvier's beaked whale	3	0	3	<0.1
Southern bottlenose whale	41	0	41	<0.1
Shepherd's beaked whale	48	0	48	N.A.
Blainville's beaked whale	0	0	7 [6]	N.A.
Gray's beaked whale	10	0	10	<0.1
Hector's beaked whale	1	0	2 [6]	N.A.
Gervais' beaked whale	7	0	7	N.A.
True's beaked whale	0	0	2 [6]	N.A.
Strap-toothed beaked whale	3	0	3	<0.1
Andrew's beaked whale	1	0	2 [6]	N.A.
Spade-toothed beaked whale	0	0	2 [6]	N.A.

TABLE 9—CALCULATED AND AUTHORIZED LEVEL A AND LEVEL B EXPOSURES, AND PERCENTAGE OF POPULATION EXPOSED—Continued

Species	Calculated take [1]		Authorized take [4]	Percent of population [5]
	Level B harassment [2]	Level A harassment [3]	Level B harassment only	
Risso's dolphin	55	0	78 [6]	0.3
Rough-toothed dolphin	31	0	55 [6]	N.A.
Common bottlenose dolphin	209	0	209	0.3
Pantropical spotted dolphin	20	0	104 [6]	0.6
Atlantic spotted dolphin	1108	0	1108	2.5
Spinner dolphin	211	0	315 [6]	N.A.
Clymene dolphin	35	0	122 [6]	N.A.
Striped dolphin	21	0	110 [5]	<0.1
Short-beaked common dolphin	3714	4	3718	5.3
Fraser's dolphin	109	0	283 [6]	N.A.
Dusky dolphin	67	0	67	0.9
Southern right whale dolphin	35	0	35	N.A.
Killer whale	1	0	8 [6]	<0.1
Short-finned pilot whale	11	0	41 [6]	<0.1
Long-finned pilot whale	111	0	111	0.1
False killer whale	5	0	35 [6]	N.A.
Pygmy killer whale	2	0	26 [6]	N.A.
Melon-headed whale	18	0	170 [6]	N.A.
HF Cetaceans:				
Pygmy sperm whale	17	1	18	N.A.
Dwarf sperm whale	12	1	13	N.A.
Hourglass dolphin	54	4	58	<0.1
Otariids:				
Subantarctic fur seal	14	0	14	<0.1
Cape fur seal	N.A.	N.A.	20 [7]	N.A.
Phocids:				
Crabeater seal	34	0	34	<0.1
Leopard seal	8	0	8	<0.1
Southern elephant seal	8	0	8	<0.1

Species in italics are listed under the ESA as endangered. N.A. (-) is not available.

[1] Take using NMFS daily method for calculating ensonified area: Estimated density multiplied by the daily ensonified area to levels ≥160 dB re 1 μPa_{rms} on one selected day multiplied by the number of survey days, times 1.25 (see Appendix C); daily ensonified area = full 160-dB area minus ensonified area for the appropriate PTS threshold.

[2] Level B harassment takes, based on the 160-dB criterion, excluding exposures to sound levels equivalent to PTS thresholds.

[3] Level A harassment takes if there were no mitigation measures.

[4] Authorized take by Level B harassment are the Level B harassment calculated takes, unless otherwise indicated. For those species where Level A harassment takes were calculated, those takes were added to the Authorized Level B harassment takes. Level A harassment is unlikely due to size of the calculated PTS isopleths (very small) and the mitigation measures (*i.e.,* shutdown zones).

[5] Authorized take (Level B harassment only) increased to maximum group size from Jefferson *et al.* (2015).

[6] Authorized take (Level B harassment only) increased to mean group size from Di Tullio *et al.* (2016).

[7] Authorized take (Level B harassment only) increased to 20 individuals, as no densities available.

It should be noted that the planned take numbers shown in Table 9 are expected to be conservative for several reasons. First, in the calculations of estimated take, 25 percent has been added in the form of operational survey days to account for the possibility of additional seismic operations associated with airgun testing and repeat coverage of any areas where initial data quality is sub-standard, and in recognition of the uncertainties in the density estimates used to estimate take as described above. Additionally, marine mammals would be expected to move away from a loud sound source that represents an aversive stimulus, such as an airgun array, potentially reducing the likelihood of takes by Level A harassment. However, the extent to which marine mammals would move away from the sound source is difficult to quantify and is, therefore, not accounted for in the take estimates.

Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse

impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

SIO has reviewed mitigation measures employed during seismic research surveys authorized by NMFS under previous incidental harassment authorizations, as well as recommended best practices in Richardson *et al.* (1995), Pierson *et al.* (1998), Weir and Dolman (2007), Nowacek *et al.* (2013), Wright (2014), and Wright and Cosentino (2015), and has incorporated a suite of required mitigation measures into their project description based on the above sources.

To reduce the potential for disturbance from acoustic stimuli associated with the activities, SIO is required to implement mitigation measures for marine mammals. Mitigation measures that must be adopted during the planned surveys include (1) Vessel-based visual mitigation monitoring; (2) Establishment of a marine mammal exclusion zone (EZ) and buffer zone; (3) shutdown procedures; (4) ramp-up procedures; and (4) vessel strike avoidance measures.

Vessel-Based Visual Mitigation Monitoring

Visual monitoring requires the use of trained observers (herein referred to as visual PSOs) to scan the ocean surface visually for the presence of marine mammals. PSO(s) must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring must begin not less than 30 minutes prior to ramp-up, including for nighttime ramp-ups of the airgun array, and must continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. Following a shutdown for any reason, observations must occur for at least 30 minutes prior to the planned start of airgun operations. Observations must also occur for 60 minutes after airgun operations cease for any reason (except after sunset). Observations must also be made during daytime periods when the *Thompson* is underway without seismic operations, such as during transits, to allow for comparison of sighting rates and behavior with and without airgun operations and between acquisition periods. Airgun operations must be suspended when marine mammals are observed within, or about to enter, the designated EZ (as described below).

During seismic operations, three visual PSOs must be based aboard the *Thompson.* PSOs must be appointed by SIO with NMFS approval. One dedicated PSO must monitor the EZ during all daytime seismic operations. PSO(s) must be on duty in shifts of duration no longer than 4 hours. Other vessel crew must also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). Before the start of the seismic survey, the crew must be given additional instruction in detecting marine mammals and implementing mitigation requirements.

The *Thompson* is a suitable platform from which PSOs would watch for marine mammals. Standard equipment for marine mammal observers must be 7 x 50 reticule binoculars and optical range finders. At night, night-vision equipment must be available. The observers must be in communication with ship's officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or seismic source shutdown.

The PSOs must have no tasks other than to conduct observational effort, record observational data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements. PSO resumes shall be provided to NMFS for approval. At least one PSO must have a minimum of 90 days at-sea experience working as PSOs during a seismic survey. One ''experienced'' visual PSO will be designated as the lead for the entire protected species observation team. The lead will serve as primary point of contact for the vessel operator.

Exclusion Zone and Buffer Zone

An EZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes, *e.g.,* auditory injury, disruption of critical behaviors. The PSOs must establish a minimum EZ with a 100 m radius for the airgun array. The 100-m EZ must be based on radial distance from any element of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within, enters, or appears on a course to enter this zone, the acoustic source must be shut down (see Shutdown Procedures below).

The 100-m radial distance of the standard EZ is precautionary in the sense that it would be expected to contain sound exceeding injury criteria for all marine mammal hearing groups (Table 5) while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort. In this case, the 100-m radial distance would also be expected to contain sound that would exceed the Level A harassment threshold based on sound exposure level (SEL_{cum}) criteria for all marine mammal hearing groups (Table 5). In the 2011 Programmatic Environmental Impact Statement for marine scientific research funded by the National Science Foundation or the U.S. Geological Survey (NSF–USGS 2011), Alternative B (the Preferred Alternative) conservatively applied a 100-m EZ for all low-energy acoustic sources in water depths >100 m, with low-energy acoustic sources defined as any towed acoustic source with a single or a pair of clustered airguns with individual volumes of ≤250 in^3. Thus the 100-m EZ planned for this survey is consistent with the PEIS.

Our intent in prescribing a standard EZ distance is to (1) encompass zones within which auditory injury could occur on the basis of instantaneous exposure; (2) provide additional protection from the potential for more severe behavioral reactions (*e.g.,* panic, antipredator response) for marine mammals at relatively close range to the acoustic source; (3) provide consistency for PSOs, who need to monitor and implement the EZ; and (4) define a distance within which detection probabilities are reasonably high for most species under typical conditions.

PSOs will also establish and monitor a 200-m buffer zone. During use of the acoustic source, occurrence of marine mammals within the buffer zone (but outside the EZ) will be communicated to the operator to prepare for potential shutdown of the acoustic source. The buffer zone is discussed further under *Ramp Up Procedures* below.

An extended EZ of 500 m must be enforced for all beaked whales, *Kogia* species, and Southern right whales. SIO must also enforce a 500-m EZ for aggregations of six or more large whales (*i.e.,* sperm whale or any baleen whale) that does not appear to be traveling (*e.g.,* feeding, socializing, etc.) or a large

whale with a calf (calf defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult).

Shutdown Procedures

If a marine mammal is detected outside the EZ but is likely to enter the EZ, the airguns must be shut down before the animal is within the EZ. Likewise, if a marine mammal is already within the EZ when first detected, the airguns must be shut down immediately.

Following a shutdown, airgun activity must not resume until the marine mammal has cleared the 100-m EZ. The animal must be considered to have cleared the 100-m EZ if the following conditions have been met:

- It is visually observed to have departed the 100-m EZ;
- it has not been seen within the 100-m EZ for 15 min in the case of small odontocetes and pinnipeds; or
- it has not been seen within the 100-m EZ for 30 min in the case of mysticetes and large odontocetes (including sperm whales), and also pygmy sperm whales, dwarf sperm whales, pilot whales, beaked whales, and Risso's dolphins.

This shutdown requirement must be in place for all marine mammals, with the exception of small delphinoids under certain circumstances. As defined here, the small delphinoid group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement would apply solely to specific genera of small dolphins—*Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella, Steno,* and *Tursiops*—and would only apply if the animals were traveling, including approaching the vessel. If, for example, an animal or group of animals is stationary for some reason (*e.g.,* feeding) and the source vessel approaches the animals, the shutdown requirement applies. An animal with sufficient incentive to remain in an area rather than avoid an otherwise aversive stimulus could either incur auditory injury or disruption of important behavior. If there is uncertainty regarding identification (*i.e.,* whether the observed animal(s) belongs to the group described above) or whether the animals are traveling, the shutdown must be implemented.

We include this small delphinoid exception because shutdown requirements for small delphinoids under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small delphinoids are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small delphinoids commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding, with no apparent effect observed in those delphinoids (*e.g.,* Barkaszi *et al.,* 2012). The potential for increased shutdowns resulting from such a measure would require the *Thompson* to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinoids) are no more likely to incur auditory injury than are small delphinoids, they are much less likely to approach vessels. Therefore, retaining a power-down/shutdown requirement for large delphinoids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinoids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the source vessel.

Shutdown of the acoustic source is also required upon observation of a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes are met, observed approaching or within the Level A or Level B harassment zones.

Ramp-up Procedures

Ramp-up of an acoustic source is intended to provide a gradual increase in sound levels following a shutdown, enabling animals to move away from the source if the signal is sufficiently aversive prior to its reaching full intensity. Ramp-up is required after the array is shut down for any reason for longer than 15 minutes. Ramp-up would begin with the activation of one 45 in^3 airgun, with the second 45 in^3 airgun activated after 5 minutes.

Two PSOs are required to monitor during ramp-up. During ramp up, the PSOs must monitor the EZ, and if marine mammals were observed within the EZ or buffer zone, a shutdown must be implemented as though the full array were operational. If airguns have been shut down due to PSO detection of a marine mammal within or approaching the 100 m EZ, ramp-up must not be initiated until all marine mammals have cleared the EZ, during the day or night. Criteria for clearing the EZ would be as described above.

Thirty minutes of pre-clearance observation are required prior to ramp-up for any shutdown of longer than 30 minutes (*i.e.,* if the array were shut down during transit from one line to another). This 30-minute pre-clearance period may occur during any vessel activity (*i.e.,* transit). If a marine mammal were observed within or approaching the 100 m EZ during this pre-clearance period, ramp-up must not be initiated until all marine mammals cleared the EZ. Criteria for clearing the EZ would be as described above. If the airgun array has been shut down for reasons other than mitigation (*e.g.,* mechanical difficulty) for a period of less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant visual observation and no detections of any marine mammal have occurred within the EZ or buffer zone. Ramp-up must be planned to occur during periods of good visibility when possible. However, ramp-up is allowed at night and during poor visibility if the 100 m EZ and 200 m buffer zone have been monitored by visual PSOs for 30 minutes prior to ramp-up.

The operator is required to notify a designated PSO of the planned start of ramp-up as agreed-upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up. A designated PSO must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed. The operator must provide information to PSOs documenting that appropriate procedures were followed. Following deactivation of the array for reasons other than mitigation, the operator is required to communicate the near-term operational plan to the lead PSO with

justification for any planned nighttime ramp-up.

Vessel Strike Avoidance Measures

Vessel strike avoidance measures are intended to minimize the potential for collisions with marine mammals. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

The required measures include the following: Vessel operator and crew must maintain a vigilant watch for all marine mammals and slow down or stop the vessel or alter course to avoid striking any marine mammal. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel according to the parameters stated below. Visual observers monitoring the vessel strike avoidance zone may be either third-party observers or crew members, but crew members responsible for these duties must be provided sufficient training to distinguish marine mammals from other phenomena. Vessel strike avoidance measures must be followed during surveys and while in transit.

The vessel must maintain a minimum separation distance of 100 m from large whales (*i.e.,* baleen whales and sperm whales). If a large whale is within 100 m of the vessel, the vessel must reduce speed and shift the engine to neutral, and must not engage the engines until the whale has moved outside of the vessel's path and the minimum separation distance has been established. If the vessel is stationary, the vessel must not engage engines until the whale(s) has moved out of the vessel's path and beyond 100 m. The vessel must maintain a minimum separation distance of 50 m from all other marine mammals (with the exception of delphinids of the genera *Delphinus, Lagenodelphis, Lagenorhynchus, Lissodelphis, Stenella, Steno,* and *Tursiops* that approach the vessel, as described above). If an animal is encountered during transit, the vessel must attempt to remain parallel to the animal's course, avoiding excessive speed or abrupt changes in course. Vessel speeds must be reduced to 10 kn or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near the vessel.

Based on our evaluation of the applicant's required measures, NMFS has determined that the planned mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the planned action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

SIO described marine mammal monitoring and reporting plan within their IHA application. Monitoring that is designed specifically to facilitate mitigation measures, such as monitoring of the EZ to inform potential shutdowns of the airgun array, are described above and are not repeated here. SIO's monitoring and reporting plan includes the following measures:

Vessel-Based Visual Monitoring

As described above, PSO observations must take place during daytime airgun operations and nighttime start-ups (if applicable) of the airguns. During seismic operations, three visual PSOs must be based aboard the *Thompson.* PSOs must be appointed by SIO with NMFS approval. The PSOs must have successfully completed relevant training, including completion of all required coursework and passing a written and/or oral examination developed for the training program, and must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences and a minimum of 30 semester hours or equivalent in the biological sciences and at least one undergraduate course in math or statistics. The educational requirements may be waived if the PSO has acquired the relevant skills through alternate training, including (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored marine mammal surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.

During the majority of seismic operations, one PSO is required to monitor for marine mammals around the seismic vessel. PSOs must be on duty in shifts of duration no longer than 4 hours. Other crew must also be instructed to assist in detecting marine mammals and in implementing mitigation requirements (if practical). During daytime, PSOs must scan the area around the vessel systematically with reticle binoculars (*e.g.,* 7 × 50 Fujinon) and with the naked eye. At night, PSOs must be equipped with night-vision equipment.

PSOs must record data to estimate the numbers of marine mammals exposed to various received sound levels and to document apparent disturbance reactions or lack thereof. Data must be used to estimate numbers of animals potentially 'taken' by harassment (as defined in the MMPA). They must also provide information needed to order a shutdown of the airguns when a marine mammal is within or near the EZ. When a sighting is made, the following information about the sighting must be recorded:

(1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to the airguns or vessel (*e.g.,* none, avoidance, approach, paralleling, etc.), and behavioral pace; and

(2) Time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare.

All observations and shutdowns must be recorded in a standardized format. Data must be entered into an electronic database. The accuracy of the data entry must be verified by computerized data validity checks as the data are entered and by subsequent manual checking of the database. These procedures allow initial summaries of data to be prepared during and shortly after the field program and facilitate transfer of the data to statistical, graphical, and other programs for further processing and archiving. The time, location, heading, speed, activity of the vessel, sea state, visibility, and sun glare must also be recorded at the start and end of each observation watch, and during a watch whenever there is a change in one or more of the variables.

Results from the vessel-based observations must provide:

(1) The basis for real-time mitigation (*e.g.,* airgun shutdown);

(2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS;

(3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted;

(4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and

(5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Reporting

A draft report must be submitted to NMFS within 90 days after the end of the survey. The report must describe the operations that were conducted and sightings of marine mammals near the operations. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring and must summarize the dates and locations of seismic operations, including percentage of time and total time the array is active during daylight versus nighttime hours (including dawn and dusk), and all marine mammal sightings (dates, times, locations, activities, associated seismic survey activities). The report must also include estimates of the number and nature of exposures that occurred above the harassment threshold based on PSO observations, including an estimate of those that were not detected in consideration of both the characteristics and behaviors of the species of marine mammals that affect detectability, as well as the environmental factors that affect detectability.

The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airguns were operating. Tracklines should include points recording any change in airgun status (*e.g.,* when the airguns began operating, when they were turned off, or when they changed from full array to single gun or vice versa). GIS files shall be provided in ESRI shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available to NMFS. The draft report must be accompanied by a certification from the lead PSO as to the accuracy of the report, and the lead PSO may submit directly NMFS a statement concerning implementation and effectiveness of the required mitigation and monitoring. A final report must be submitted within 30 days following resolution of any comments on the draft report.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, our analysis applies to all the species listed in Table 1, given that NMFS expects the anticipated effects of the planned seismic survey to be similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, NMFS has identified species-specific factors to inform the analysis.

NMFS does not anticipate that serious injury or mortality would occur as a result of SIO's planned seismic survey, even in the absence of planned mitigation. Thus the authorization does not authorize any mortality. As discussed in the *Potential Effects* section, neither stranding nor vessel strike are expected to occur.

No takes by Level A harassment are authorized. The 100-m exclusion zone encompasses the Level A harassment isopleths for all marine mammal hearing groups, and is expected to prevent animals from being exposed to sound levels that would cause PTS. Also, as described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice of the *Thompson's* approach due to the vessel's relatively low speed when conducting seismic surveys. We expect that any instances of take would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area or short-term decreased foraging (if such activity were occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

Potential impacts to marine mammal habitat were discussed previously in this document (see *Potential Effects of the Specified Activity on Marine Mammals and their Habitat*). Marine mammal habitat may be impacted by

elevated sound levels, but these impacts would be temporary. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise.

Because of the temporary nature of the disturbance, the availability of similar habitat and resources in the surrounding area, and the lack of important or unique marine mammal habitat, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. In addition, there are no feeding, mating or calving areas known to be biologically important to marine mammals within the planned project area.

As described above, marine mammals in the survey area are not assigned to NMFS stocks. The activity is expected to impact a very small percentage of all marine mammal populations, most cases 0.1 percent or less that would be affected by SIO's planned survey (less than 5.3 percent each for all marine mammal populations where abundance estimates exist). Additionally, the acoustic ''footprint'' of the planned survey would be very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels would increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the planned survey area. The seismic array would be active 24 hours per day throughout the duration of the planned survey. However, the very brief overall duration of the planned survey (14 days) would further limit potential impacts that may occur as a result of the planned activity.

The required mitigation measures are expected to reduce the number and/or severity of takes by allowing for detection of marine mammals in the vicinity of the vessel by visual and acoustic observers, and by minimizing the severity of any potential exposures via shutdowns of the airgun array. The required mitigation (in combination with the small Level A harassment zones) will be effective in preventing PTS in all species and none is authorized.

Of the marine mammal species under our jurisdiction that are likely to occur in the project area, the following species are listed as endangered under the ESA: Fin, sei, blue, sperm, and southern right whales. We are proposing to authorize very small numbers of takes for these species (Table 9), relative to their population sizes (again, for species where population abundance estimates exist), therefore we do not expect population-level impacts to any of these species. There is no known biological important areas for any of the species listed in Table 9. The other marine mammal species that may be taken by harassment during SIO's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area; of the non-listed marine mammals for which we propose to authorize take, none are considered ''depleted'' or ''strategic'' by NMFS under the MMPA.

NMFS concludes that exposures to marine mammal species due to SIO's planned seismic survey would result in only short-term (temporary and short in duration) effects of Level B harassment to individuals exposed. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the authorized take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- No take by Level A harassment is anticipated or authorized;
- The anticipated impacts of the planned activity on marine mammals would primarily be temporary behavioral changes due to avoidance of the area around the survey vessel. The relatively short duration of the planned survey (14 days) would further limit the potential impacts of any temporary behavioral changes that would occur;
- The availability of alternate areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity;
- The planned project area does not contain areas of significance for feeding, mating or calving;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the planned survey would be temporary and spatially limited; and
- The planned mitigation measures, including visual and acoustic monitoring and shutdowns, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

The numbers of marine mammals that we authorize to be taken would be considered small relative to the relevant populations (less than 5.3 percent for all species) for the species for which abundance estimates are available. No known current worldwide or regional population estimates are available for 16 species under NMFS jurisdiction that could be incidentally taken as a result of the planned survey: the pygmy right whale, pygmy sperm whale, dwarf sperm whale, Shepherd's beaked whale, Blainville's beaked whale, Hector's beaked whale, Gervais' beaked whale, True's beaked whale, Andrew's beaked whale, spade-toothed beaked whale, rough-toothed dolphin, spinner dolphin, Clymene dolphin, Fraser's dolphin, southern right whale dolphin, false killer whale, pygmy killer whale, and Melon-headed whale and Cape fur seal.

NMFS has reviewed the geographic distributions and habitat preferences of these species in determining whether the numbers of takes authorized herein are likely to represent small numbers. Pygmy right whales have a circumglobal distribution and occur throughout coastal and oceanic waters in the Southern Hemisphere (between 30 to 55° S) (Jefferson *et al.* 2015; Kemper

2018). Pygmy and dwarf sperm whales occur in deep waters on the outer continental shelf and slope in tropical to temperate waters of the Atlantic, Indian, and Pacific Oceans, but their precise distributions are unknown because much of what we know of the species comes from strandings (McAlpine, 2018). Based on stranding records and the known habitat preferences of beaked whales in general, Shepherd's beaked whales are assumed to have a circumpolar distribution in deep, cold temperate waters of the Southern Ocean (Pitman *et al.,* 2006; Mead 2018). Blainville's beaked whale is the most widely distributed beaked *Mesoplodon* species with sightings and stranding records throughout the North and South Atlantic Ocean (MacLeod *et al.,* 2006; Pitman, 2018). Hector's beaked whales are found in cold temperate waters throughout the southern hemisphere between 35° S and 55° S (Zerbini and Secchi, 2001; Pitman, 2018). True's beaked whale has a disjunct, antitropical distribution (Jefferson *et al.,* 2015). In the Southern Hemisphere, it is known to occur in South Africa, South America, and Australia (Findlay *et al.* 1992; Souza *et al.,* 2005; MacLeod and Mitchell 2006; MacLeod *et al.,* 2006; Best *et al.,* 2009). Andrew's beaked whales have a circumpolar distribution north of the Antarctic Convergence to 32° S (MacLeod *et al.,* 2006; Pitman, 2018). Andrew's beaked whale is known only from stranding records between 32° S and 55° S, with more than half of the strandings occurring in New Zealand (Jefferson *et al.,* 2015). Gervais' beaked whale is generally considered to be a North Atlantic species, it likely occurs in deep waters of the temperate and tropical Atlantic Ocean in both the northern and southern hemispheres (Jefferson *et al.,* 2015). The southernmost stranding record was reported for São Paulo, Brazil, possibly expanding the known distributional range of this species southward (Santos *et al.,* 2003), but the distribution range of Gervais' beaked whale is not generally known to extend as far south as the planned project area. The spade-toothed beaked whale is considered relatively rare and is known from only four records, three from New Zealand and one from Chile (Thompson *et al.,* 2012). The rough-toothed dolphin is distributed worldwide in tropical and subtropical waters (Jefferson *et al.,* 2015). Rough-toothed dolphins are generally seen in deep, oceanic water, although it is known to occur in coastal waters of Brazil (Jefferson *et al.,* 2015; Cardoso *et al.,* 2019). The Clymene dolphin only occurs in tropical and subtropical waters of the Atlantic Ocean (Jefferson *et al.,* 2015). Clymeme dolphins inhabits areas where water depths are 700–4,500 m or deeper (Fertl *et al.,* 2003). Fraser's dolphins are distributed in tropical oceanic waters worldwide, between 30° N and 30° S and generally inhabits deeper, offshore water (Moreno *et al.,* 2003, Dolar 2018). The southern right whale dolphin is distributed between the Subtropical and Antarctic convergences in the Southern Hemisphere, generally between ~30° S and 65° S (Jefferson *et al.,* 2015; Lipsky and Brownell, 2018). The false killer whale is found worldwide in tropical and temperate waters, generally between 50 ° N and 50° S (Odell and McClune, 1999). It is widely distributed, but not abundant anywhere (Carwardine, 1995). The false killer whale generally inhabits deep, offshore waters, but sometimes is found over the continental shelf and occasionally moves into very shallow water (Jefferson *et al.,* 2015; Baird, 2018b). The pygmy killer whale has a worldwide distribution in tropical and subtropical waters, generally not ranging south of 35° S (Jefferson *et al.* 2015). The melon-headed whale is an oceanic species found worldwide in tropical and subtropical waters from ~40° N to 35° S (Jefferson *et al.,* 2015). The Cape fur seal currently breeds at 40 colonies along the coast of South Africa, Namibia, and Angola, including on the mainland and nearshore islands (Kirkman *et al.,* 2013). There have been several new breeding colonies established in recent years, as the population has shifted northward (Kirkman *et al.,* 2013). More than half of the seal population occurs in Namibia (Wickens *et al.,* 1991). High densities have been observed between 30 and 60 nm from shore, with densities dropping farther offshore (Thomas and Schülein, 1988).

Based on the broad spatial distributions and habitat preferences of these species relative to the areas where SIO's planned survey will occur, NMFS concludes that the authorized take of these species likely represent small numbers relative to the affected species' overall population sizes, though we are unable to quantify the take numbers as a percentage of population.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the ESA Interagency Cooperation Division, whenever we propose to authorize take for endangered or threatened species.

The NMFS Office of Protected Resources Interagency Cooperation Division issued a Biological Opinion on October 29, 2019, under section 7 of the ESA, on the issuance of an IHA to SIO under section 101(a)(5)(D) of the MMPA by the NMFS Permits and Conservation Division. The Biological Opinion concluded that the proposed action is not likely to jeopardize the continued existence of fin whale, sei whale, blue

whale, sperm whale, and southern right whale, and is not likely to destroy or modify critical habitat of listed species because no critical habitat exists for these species in the action area.

Authorization

As a result of these determinations, NMFS has issued an IHA to SIO for conducting a marine geophysical survey in the South Atlantic Ocean in November and December 2019, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: November 1, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–24265 Filed 11–6–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Defense Advisory Committee on Women in the Services will take place.

DATES: Day 1—Open to the public Wednesday, December 4, 2019 from 8:00 a.m. to 12:30 p.m. Day 2—Open to the public Thursday, December 5, 2019 from 8:00 a.m. to 11:30 a.m.

ADDRESSES: The address of the open meeting is the Key Bridge Marriott, located at 1401 Lee Highway, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Colonel Toya J. Davis, U.S. Army, (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *toya.j.davis.mil@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. Website: *http://dacowits.defense.gov*. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Purpose of the Meeting: The purpose of the meeting is for the DACOWITS to receive written information and briefings on topics related to the recruitment, retention, employment, integration, well-being, and treatment of women in the Armed Forces of the United States.

Agenda: Wednesday, December 4, 2019, from 8:00 a.m. to 12:30 p.m.—Welcome, Introductions, and Announcements; Request for Information Status Update; Briefings and DACOWITS discussion; and a Public Comment Period. Thursday, December 5, 2019, from 8:00 a.m. to 11:30 a.m.—Welcome, Introductions, and Announcements; Briefings and DACOWITS discussion.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public, subject to the availability of space.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DACOWITS. Individuals submitting a written statement must submit their statement no later than 5:00 p.m., Tuesday, November 26, 2019 to Mr. Robert Bowling (703) 697–2122 (Voice), 703–614–6233 (Facsimile), *osd.pentagon.ousd-p-r.mbx.dacowits@mail.mil* (Email). Mailing address is 4800 Mark Center Drive, Suite 04J25–01, Alexandria, VA 22350. If members of the public are interested in making an oral statement, a written statement must be submitted. If a statement is not received by Tuesday, November 26, 2019, prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Committee during this quarterly business meeting. After reviewing the written statements, the Chair and the Designated Federal Officer (DFO) will determine if the requesting persons are permitted to make an oral presentation. The DFO will review all timely submissions with the DACOWITS Chair and ensure they are provided to the members of the Committee.

Dated: November 1, 2019.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2019–24264 Filed 11–6–19; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–242–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Sunshine Valley Solar, LLC

This is a supplemental notice in the above-referenced proceeding of Sunshine Valley Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24322 Filed 11–6–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG20–19–000.
Applicants: Sun Streams, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 10/30/19.
Accession Number: 20191030–5084.
Comments Due: 5 p.m. ET 11/20/19.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER17–194–003.
Applicants: Hartree Partners, LP.
Description: Notice of Change in Status and Updated Market Power Analysis of Hartree Partners, LLC.
Filed Date: 10/31/19.
Accession Number: 20191031–5296.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER18–1418–002.
Applicants: Evergy Kansas Central, Inc.
Description: Compliance filing: Compliance Filing, Section 28.5, Loss Adjustments to be effective 6/28/2018.
Filed Date: 10/31/19.
Accession Number: 20191031–5265.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–269–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3330R1 City of Nixa, Missouri NITSA NOAs to be effective 10/1/2019.
Filed Date: 10/31/19.
Accession Number: 20191031–5226.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–270–000.
Applicants: Dynegy Oakland, LLC.
Description: § 205(d) Rate Filing: Annual Reliability Must Run Agreement and Schedule F Informational Filings to be effective 1/1/2020.
Filed Date: 10/31/19.
Accession Number: 20191031–5228.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–271–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Rev to the OATT and RAA re Price Responsive Demand Rules to be effective 12/30/2019.
Filed Date: 10/31/19.
Accession Number: 20191031–5231.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–272–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Taygete Energy Project II 1st Amend and Restated GIA to be effective 10/24/2019.
Filed Date: 10/31/19.
Accession Number: 20191031–5256.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–273–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2019–10–31 Southern California Maximum Gas Constraint Amendment to be effective 12/31/2019.
Filed Date: 10/31/19.
Accession Number: 20191031–5258.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–274–000.
Applicants: AEP Texas Inc.
Description: § 205(d) Rate Filing: AEPTX-Blackjack Creek Wind Farm GIA to be effective 10/24/2019.
Filed Date: 10/31/19.
Accession Number: 20191031–5260.
Comments Due: 5 p.m. ET 11/21/19.

Docket Numbers: ER20–275–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: PASNY VDER Tariff 10–2019 to be effective 11/1/2019.
Filed Date: 11/1/19.
Accession Number: 20191101–5000.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–276–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–11–01_Attachment O Prairie Power, Inc. Filing to be effective 1/1/2020.
Filed Date: 11/1/19.
Accession Number: 20191101–5045.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–277–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SPS FERC Production Depreciation Rates Update to be effective 1/1/2020.
Filed Date: 11/1/19.
Accession Number: 20191101–5075.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–278–000.
Applicants: Avista Corporation.
Description: Tariff Cancellation: Avista Corp Cancellation Rate Sched CG2 Order 1000 Agreement to be effective 12/31/2019.
Filed Date: 11/1/19.
Accession Number: 20191101–5098.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–279–000.
Applicants: Arizona Public Service Company.
Description: Tariff Cancellation: Service Agreement No. 318 Cancellation to be effective 1/1/2020.
Filed Date: 11/1/19.
Accession Number: 20191101–5135.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–280–000.
Applicants: Skookumchuck Wind Energy Project, LLC.
Description: Baseline eTariff Filing: Application for MBR Authority and Initial Baseline Tariff Filing to be effective 12/1/2019.
Filed Date: 11/1/19.
Accession Number: 20191101–5141.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–281–000.
Applicants: DATC Path 15, LLC.
Description: § 205(d) Rate Filing: Revised Appendix I 2020 to be effective 1/1/2020.
Filed Date: 11/1/19.
Accession Number: 20191101–5145.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–282–000.
Applicants: FPL Energy Illinois Wind, LLC.
Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 12/31/2019.
Filed Date: 11/1/19.
Accession Number: 20191101–5151.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–283–000.
Applicants: Heartland Generation Ltd.
Description: § 205(d) Rate Filing: Notice of Succession to Market Based Rate Tariff and Notice of Change in Status to be effective 12/30/2019.
Filed Date: 11/1/19.
Accession Number: 20191101–5173.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–284–000.
Applicants: Basin Electric Power Cooperative.
Description: § 205(d) Rate Filing: Basin Electric Submission of Revised Rate Schedule A to be effective 12/31/9998.
Filed Date: 11/1/19.
Accession Number: 20191101–5175.
Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–285–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Cancellation: Notice of Cancellation of WMPA SA No.

4372; Queue No. AB1–035 to be effective 11/12/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5196.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–286–000.

Applicants: Puget Sound Energy, Inc.

Description: Tariff Cancellation: ColumbiaGrid Cancellation Filing to be effective 12/31/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5208.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–287–000.

Applicants: CPV Fairview, LLC.

Description: § 205(d) Rate Filing: CPV Fairview, LLC—Reactive Power Rate Schedule to be effective 12/1/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5220.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–288–000.

Applicants: Florida Power & Light Company.

Description: § 205(d) Rate Filing: FPL and Landfill Energy Systems, LLC Service Agreement for Firm P-to-P TS to be effective 11/2/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5222.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–289–000.

Applicants: Appalachian Power Company, Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: AEP submits ILDSAs, SA Nos. 1252, 1336, 1677, 5 Facilities Agreement and an ECSA to be effective 12/31/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5223.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–290–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Revisions to Revise Treatment of Schedule 1 Point-To-Point Revenue to be effective 1/1/2020.

Filed Date: 11/1/19.

Accession Number: 20191101–5246.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–291–000.

Applicants: PJM Interconnection, L.L.C.

Description: Tariff Cancellation: Notice of Cancellation of WMPA/SA No. 4373; Queue No. AB1–036 to be effective 11/12/2019.

Filed Date: 11/1/19.

Accession Number: 20191101–5247.

Comments Due: 5 p.m. ET 11/22/19.

Docket Numbers: ER20–292–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: Kansas City Board of Public Utilities Formula Rate to be effective 1/1/2020.

Filed Date: 11/1/19.

Accession Number: 20191101–5248.

Comments Due: 5 p.m. ET 11/22/19.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES20–7–000.

Applicants: Portland General Electric Company.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Portland General Electric Company.

Filed Date: 10/31/19.

Accession Number: 20191031–5291.

Comments Due: 5 p.m. ET 11/21/19.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF20–182–000.

Applicants: Eco Green Generation LLC.

Description: Form 556 of Eco Green Generation LLC [Clean Power #7].

Filed Date: 10/31/2019.

Accession Number: 20191031–5168.

Comment Date: Non-Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (Toll Free). For Tty, Call (202) 502–8659.

Dated: November 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24317 Filed 11–6–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–246–000]

Windhub Solar A, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Windhub Solar A, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24318 Filed 11–6–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2837–033]

Notice of Availability of Environmental Assessment: Erie Boulevard Hydropower, LP

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for license for the Granby Hydroelectric Project, located on the Oswego River, in the town of Fulton, in Oswego County, New York, and has prepared an Environmental Assessment (EA) for the project. The project occupies no federal land.

The EA contains Commission staff's analysis of the potential environmental effects of the project. The EA concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs- filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2837–033.

For further information, contact Allyson Conner at (202) 502–6082 or by email at *allyson.conner@ferc.gov.*

Dated: November 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24319 Filed 11–6–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–245–000]

Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization: Sun Streams, LLC

This is a supplemental notice in the above-referenced proceeding of Sun Streams, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 21, 2019.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 1, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–24320 Filed 11–6–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2019–0188; FRL–10001–63]

Cherokee Nation System Solutions LLC; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Cherokee Nation System Solutions LLC in accordance with the CBI regulations. Cherokee Nation System Solutions LLC has been awarded a contract to perform work for OPP, and access to this information will enable Cherokee Nation System Solutions LLC to fufill the obligations of the contract.

DATES: Cherokee Nation System Solutions LLC will be given access to this information on or before November 12, 2019.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 703–305–6478 email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2019–0188 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Contractor Requirements

Under this contract numbers, the contractor will perform the following: Under Contract No. EP–W–18–015/0680/18/801485/01, the Contractor shall prepare and deliver reports, including plans, evaluations, studies, analyses and manuals in accordance with Attachment 1, Performance Work Statement. Each report shall cite the contract number, identify the U.S. EPA as the sponsoring agency, and identify the name of the Contractor preparing the report.

The Contractor shall furnish two (2) copies of the combined monthly technical and financial progress report stating the progress made, including the percentage of the project completed, and a description of the work accomplished to support the cost. If the work is ordered using work assignments or delivery orders, include the estimated percentage of task completed during the reporting period for each work assignment or delivery order.

Specific discussions shall include difficulties encountered and remedial action taken during the reporting period, and anticipated activity with a schedule of deliverables for the subsequent reporting period.

The Contractor shall provide a list of outstanding actions awaiting Contracting Officer authorization, noted with the corresponding work assignment, such as subcontractor consents, overtime approvals, and work plan approvals.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involve work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Cherokee Nation System Solutions LLC, prohibits use of the information for any purpose not specified in these contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, Cherokee Nation System Solutions LLC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Cherokee Nation System Solutions LLC until the requirements in this document have been fully satisfied. Records of information provided to Cherokee Nation System Solutions LLC will be maintained by EPA Project Officers for this contract. All information supplied to Cherokee Nation System Solutions LLC by EPA for use in connection with this contract will be returned to EPA when Cherokee Nation System Solutions LLC has completed its work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: November 1, 2019.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2019–24270 Filed 11–6–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0075; FRL–9992–82]

Certain New Chemicals; Receipt and Status Information for August 2019

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is required under the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act, to make information publicly available and to publish information in the **Federal Register** pertaining to submissions under TSCA Section 5, including notice of receipt of a Premanufacture notice (PMN), Significant New Use Notice (SNUN) or Microbial Commercial Activity Notice (MCAN), including an amended notice or test information; an exemption application (Biotech exemption); an application for a test marketing exemption (TME), both pending and/or concluded; a notice of commencement (NOC) of manufacture (including import) for new chemical substances; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review. This document covers the period from 08/01/2019 to 08/31/2019.

DATES: Comments identified by the specific case number provided in this document must be received on or before December 9, 2019.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0075, and the specific case number for the chemical substance related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental

Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Jim Rahai, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–8593; email address: *rahai.jim@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the Agency taking?

This document provides the receipt and status reports for the period from 08/01/2019 to 08/31/2019. The Agency is providing notice of receipt of PMNs, SNUNs and MCANs (including amended notices and test information); an exemption application under 40 CFR part 725 (Biotech exemption); TMEs, both pending and/or concluded; NOCs to manufacture a new chemical substance; and a periodic status report on new chemical substances that are currently under EPA review or have recently concluded review.

EPA is also providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

B. What is the Agency's authority for taking this action?

Under the TSCA, 15 U.S.C. 2601 *et seq.,* a chemical substance may be either an ''existing'' chemical substance or a ''new'' chemical substance. Any chemical substance that is not on EPA's TSCA Inventory of Chemical Substances (TSCA Inventory) is classified as a ''new chemical substance,'' while a chemical substance that is listed on the TSCA Inventory is classified as an ''existing chemical substance.'' (See TSCA section 3(11).) For more information about the TSCA Inventory go to: *https://www.epa.gov/tsca-inventory.*

Any person who intends to manufacture (including import) a new chemical substance for a non-exempt commercial purpose, or to manufacture or process a chemical substance in a non-exempt manner for a use that EPA has determined is a significant new use, is required by TSCA section 5 to provide EPA with a PMN, MCAN or SNUN, as appropriate, before initiating the activity. EPA will review the notice, make a risk determination on the chemical substance or significant new use, and take appropriate action as described in TSCA section 5(a)(3).

TSCA section 5(h)(1) authorizes EPA to allow persons, upon application and under appropriate restrictions, to manufacture or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a)(2), for ''test marketing'' purposes, upon a showing that the manufacture, processing, distribution in commerce, use, and disposal of the chemical will not present an unreasonable risk of injury to health or the environment. This is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5 and 8 and EPA regulations, EPA is required to publish in the **Federal Register** certain information, including notice of receipt of a PMN/SNUN/MCAN (including amended notices and test information); an exemption application under 40 CFR part 725 (biotech exemption); an application for a TME, both pending and concluded; NOCs to manufacture a new chemical substance; and a periodic status report on the new chemical substances that are currently under EPA review or have recently concluded review.

C. Does this action apply to me?

This action provides information that is directed to the public in general.

D. Does this action have any incremental economic impacts or paperwork burdens?

No.

E. What should I consider as I prepare my comments for EPA?

1. *Submitting confidential business information (CBI).* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Status Reports

In the past, EPA has published individual notices reflecting the status of TSCA section 5 filings received, pending or concluded. In 1995, the Agency modified its approach and streamlined the information published in the **Federal Register** after providing notice of such changes to the public and an opportunity to comment (See the **Federal Register** of May 12, 1995, (60 FR 25798) (FRL–4942–7). Since the passage of the Lautenberg amendments to TSCA in 2016, public interest in information on the status of section 5 cases under EPA review and, in particular, the final determination of such cases, has increased. In an effort to be responsive to the regulated community, the users of this information, and the general public, to comply with the requirements of TSCA, to conserve EPA resources and to streamline the process and make it more timely, EPA is providing information on its website about cases reviewed under the amended TSCA, including the section 5 PMN/SNUN/MCAN and exemption notices received, the date of receipt, the final EPA determination on the notice, and the effective date of EPA's determination for PMN/SNUN/MCAN notices on its website at: *https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/status-pre-manufacture-notices.* This information is updated on a weekly basis.

III. Receipt Reports

For the PMN/SNUN/MCANs that have passed an initial screening by EPA during this period, Table I provides the following information (to the extent that such information is not subject to a CBI claim) on the notices screened by EPA during this period: The EPA case number assigned to the notice that indicates whether the submission is an initial submission, or an amendment, a notation of which version was received, the date the notice was received by EPA, the submitting manufacturer (*i.e.,* domestic producer or importer), the potential uses identified by the manufacturer in the notice, and the chemical substance identity.

As used in each of the tables in this unit, (S) indicates that the information in the table is the specific information provided by the submitter, and (G) indicates that this information in the table is generic information because the specific information provided by the submitter was claimed as CBI. Submissions which are initial submissions will not have a letter following the case number. Submissions which are amendments to previous submissions will have a case number followed by the letter ''A'' (*e.g.,* P–18–1234A). The version column designates submissions in sequence as ''1'', ''2'', ''3'', etc. Note that in some cases, an initial submission is not numbered as version 1; this is because earlier version(s) were rejected as incomplete or invalid submissions. Note also that future versions of the following tables may adjust slightly as the Agency works to automate population of the data in the tables.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2019 TO 08/31/2019

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–16–0207A	2	8/28/2019	CBI	(G) Additive for electrolyte solution	(G) Spiro Tetrafluoroborate.
P–16–0225A	4	8/6/2019	CBI	(S) The notified substance will be used as a fragrance ingredient, being blended (mixed) with other fragrance ingredients to make fragrance oils that will be sold to industrial and commercial customers for their incorporation into soaps, detergents, cleaners, air fresheners, candles and other similar industrial, household and consumer products.	(G) Alkylene-substituted propoxycyclohexanol.
P–16–0442A	5	7/31/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, polymers with disubstituted amine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0443A	5	7/31/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, hydrogenated polymers with disubstituted amine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0444A	5	7/31/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, polymers with substituted alkanediamine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0445A	5	7/31/2019	CBI	(G) Polymer for coatings	(G) Carboxylic acids, unsaturated, hydrogenated polymers with substituted alkanediamine, alkanediol, substituted alkylpropanoic acid, alkanedioic acid and substituted isocyanatocycloalkane, compds with alkylamine.
P–16–0570A	5	8/2/2019	Emery Oleochemicals.	(S) Aromatic polyester polyol for rigid foam.	(G) Aromatic Polyester Polyol.
P–17–0115A	3	8/7/2019	CBI	(S) An adhesion promoter for coating formulations.	(G) Aminoalkyl alkoxysilane.
P–17–0295A	2	8/8/2019	CBI	(S) Refrigerant used in closed systems for (i) chillers (commercial comfort air conditioners); and (ii) industrial process refrigeration.	(G) Hydrochlorofluoroolefin.
P–17–0395A	5	8/1/2019	CBI	(G) Water treatment additive	(G) Alkyl tri dithiocarbmate tri salt.
P–17–0405A	5	8/15/2019	CBI	(G) Oil and gas well performance	(G) halogentated benzoic acid ethyl ester.
P–17–0406A	5	8/15/2019	CBI	(G) Oil and gas well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0407A	4	8/15/2019	CBI	(G) Well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0408A	3	8/15/2019	CBI	(G) Well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0409A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0410A	3	8/15/2019	CBI	(G) Monitor well performance.	(G) halogenated benzoic acid ethyl ester.
P–17–0411A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0412A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0415A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0416A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0417A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0418A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0420A	5	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0421A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0422A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid.
P–17–0423A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated benzoic acid ethyl ester.
P–17–0441A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0442A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0443A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0444A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0445A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0446A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0447A	4	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0448A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2019 TO 08/31/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–17–0449A	3	8/15/2019	CBI	(G) Monitor well performance	(G) halogenated sodium benzoate.
P–17–0450A	3	8/15/2019	CBI	(G) Monitor well performance	(G) Halogenated benzoic acid.
P–18–0068A	3	8/14/2019	CBI	(G) Polymer composite additive	(G) Metal, oxo alkylcarboxylate complexes.
P–18–0075A	2	8/21/2019	CBI	(S) Precursor component to make an optical convertor in the next step of manufacturing.	(G) Saturated fatty acid, reaction products with cadmium zinc selenide sulfide, alkylamine and polymeric amine.
P–18–0084A	6	8/7/2019	ShayoNano USA, Inc.	(S) Additive for paints and coatings	(S) silicon zinc oxide.
P–18–0190A	3	8/7/2019	Cabot Corporation	(S) Pigment Dispersing Aid	(G) 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts.
P–18–0190A	4	8/14/2019	Cabot Corporation	(S) Pigment Dispersing Aid	(G) 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substituted butyl amide, polymers with epichlorohydrin and trimethylolpropane, sodium salts.
P–18–0191A	3	8/7/2019	Cabot Corporation	(S) Pigment Dispersing Aid	(G) 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substitutedbutyl [3-[2-[1-[[(substitutedphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]methyl amide, polymers with epichlorohydrin and trimthylolpropane, sodium salts.
P–18–0191A	4	8/14/2019	Cabot Corporation	(S) Pigment Dispersing Aid	(G) 2,5-Furandione, polymer with ethenylbenzene, 4-hydroxy-substitutedbutyl [3-[2-[1-[[(substitutedphenyl)amino]carbonyl]-2-oxopropyl]diazenyl]phenyl]methyl amide, polymers with epichlorohydrin and trimthylolpropane, sodium salts.
P–18–0273	1	8/7/2018	CBI	(G) Plasticizer/softener in PVC manufacturing.	(S) 1,4-Cyclohexanedicarboxylic acid, 1,4-bis(2-ethylhexyl) ester.
P–18–0281A	2	8/22/2019	CBI	(G) Electrolyte additive	(G) Cyclic sulfate.
P–18–0292A	5	8/23/2019	CBI	(G) Use in print resins	(G) alkanediol, polymer with 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane, alkylaminoalkyl methacrylate-blocked.
P–18–0295A	4	8/9/2019	CBI	(G) Ingredient in the manufacture of consumer cleaning products, (G) Use as monomer in the manufacture of resins for use in paint and coating products. (S) Use as a monomer in the manufacture of plastic products. In this process the notified substance is reacted with one or more other compounds to become part of a polymer. Depending on the reactants involved, the final polymer can be a resin used to make molded plastic products or the final polymer can be a shorter polymer used as a plasticizer.	(S) 1,3-Butanediol, (3R)-.
P–18–0310A	2	8/7/2019	Chitec Technology Co., Ltd.	(G) Polymer additive	(S) Benzenepropanoic acid, 3-(2H-benzotriazol-2-yl)-5-(1,1-dimethylethyl)-4-hydroxy-, 2,2-bis(hydroxymethyl)butyl ester.
P–18–0318A	2	8/20/2019	Gelest	(S) Surface treatment for added lubricity and anti-static properties and research.	(S) 1-Octadecanaminium, N,N-dimethyl-N-[3-(triethoxysilyl)propyl]- chloride.
P–18–0351A	2	8/11/2019	CBI	(G) UV curable inks	(G) Acrylic acid, tricyclo alkyl ester.
P–18–0384A	3	8/6/2019	Sigma-Aldrich CO, LLC.	(S) Starting material for manufacture of 6Lithium chloride scintillation crystals for use in radiation detection.	(S) Lithium 6.
P–18–0403A	3	8/15/2019	Clarion Plastics & Coatings USA Inc.	(S) Dispersing agent for pigments, paints, and coatings.	(S) 2-Propenoic acid, 2-methyl-, butyl ester, polymer with 2-(dimethylamino)ethyl 2-methyl-2-propenoate and 2-ethylhexyl 2-methyl-2-propenoate.
P–19–0047A	2	7/31/2019	CBI	(S) Binder for Thermoplastic Coatings and Ink/Adhesive.	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, a-hydro-w-hydroxypoly(oxy-1,4-butanediyl), a-hydro-w-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1′-methylenebis[4-isocyanatobenzene], Pr alc.-blocked where a = alpha and w = omega.
P–19–0047A	3	8/20/2019	CBI	(S) Binder for Thermoplastic Coatings and Ink/Adhesive.	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 5-amino-1,3,3-trimethylcyclohexanemethanamine, a-hydro-w-hydroxypoly(oxy-1,4-butanediyl), a-hydro-w-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and 1,1′-methylenebis[4-isocyanatobenzene], Pr alc.-blocked where a = alpha and w = omega.

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2019 TO 08/31/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0055A	2	8/13/2019	Rahn USA, Corp.	(S) The PMN is solely used as a photo initiator within UV curable coating/ink formulations. This photo initiator is starting the polymerization process during the UV curing process of the formulation. The curing is achieved by UV light only, no heat is applied. After curing, the PMN substance is no longer available for exposure or release.	(S) 1,3-propanediol, 2-ethyl-2-(hydroxymethyl)-, polymer with oxirane, 4-(dimethylamino)benzoate.
P–19–0059A	4	8/6/2019	Essential Industries, Inc.	(S) Wood Coating	(S) Butanoic acid, 3-oxo-, 2-[(2-methyl-1-oxo-1-propen-1-yl)oxy]ethyl ester, polymer with butyl 2-propenoate, ethenylbenzene, 1,1′-[(1-methyl-1,2-ethanediyl)bis[oxy(methyl-2,1-ethanediyl)]] di-2-propenoate, methyl 2-methyl-2-propenoate and 2-methyl-2-propenoic acid, ammonium salt.
P–19–0077A	5	8/7/2019	CBI	(G) Agricultural	(G) alkenylamide.
P–19–0077A	6	8/8/2019	CBI	(G) Agricultural	(G) alkenylamide.
P–19–0078A	3	8/19/2019	SHIN–ETSU MICROSI.	(G) Contained use for microlithography for electronic device manufacturing.	(G) Substitutedheterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricycle[3.3.1.13,7]decane-1- carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[(1-ethylcyclopentyl)oxy]benzene and 4-ethenylphenol, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated.
P–19–0079A	2	8/19/2019	SHIN–ETSU MICROSI.	(G) Contained use for microlithography for electronic device manufacturing.	(G) substituted heterocyclic onium compound, salt with 2,2,2-trifluoro-1-(sulfomethyl)-1-(trifluoromethyl)ethyl 3-[(2-methyl-1-oxo-2-propen-1-yl)oxy]tricyclo[3.3.1.13,7]decane-1- carboxylate (1:1), polymer with acenaphthylene, 1-ethenyl-4-[[1-(1-methylethyl)cyclopentyl]oxy]benzene and 4-ethenylphenol, di-Me 2,2′-(1,2-diazenediyl)bis[2-methylpropanoate]-initiated.
P–19–0085A	2	8/5/2019	Neste oil US, Inc.	(G) The PMN substance will be used as a functional fluid in electrical equipment.	(G) Aliphatic hydrocarbons, C16–18-branched and linear.
P–19–0086A	4	8/14/2019	CBI	(G) Monitor oil and gas well performance.	(G) Halogenated sodium alkylbenzoate.
P–19–0087A	4	8/14/2019	CBI	(G) Monitor oil-and-gas well performance.	(G) Halogenated Sodium alkylbenzoate.
P–19–0089A	6	8/14/2019	CBI	(G) Well performance tracer	(G) Halogenated sodium alkylbenzoate.
P–19–0090A	4	8/14/2019	CBI	(G) Well performance tracer	(G) Halogenated sodium benzoate.
P–19–0091A	4	8/14/2019	CBI	(G) Well performance tracer	(G) Halogenated alkylbenzoic acid.
P–19–0092A	3	8/14/2019	CBI	(G) Tracer of well performance	(G) Halogenated alkylbenzoic acid.
P–19–0093A	4	8/14/2019	CBI	(G) Tracer for well performance	(G) Halogenated benzoic acid.
P–19–0095A	5	8/16/2019	CBI	(G) Consumer Disposables, Polymer Sheet, and Durable Goods.	(G) Poly hydroxy alkanoate.
P–19–0097A	5	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0100A	6	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0101A	6	8/14/2019	CBI	(G) Monitor well performance	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0102A	4	8/1/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0103A	3	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkyl benzoic acid.
P–19–0104A	5	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0105A	4	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid, ethyl ester.
P–19–0106A	4	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0107A	4	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0108A	4	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated alkylbenzoic acid, ethyl ester.
P–19–0110A	4	8/14/2019	CBI	(G) Well performance monitor	(G) Halogenated benzoic acid, ethyl ester.
P–19–0113A	4	8/23/2019	CBI	(G) Flow cell additive	(G) metal oxide-chloro.
P–19–0119A	2	8/28/2019	ZSCHIMMER & SCHWARZ.	(S) Foaming additive used in building/construction, exposure would only occur during loading of finished product. Product application is used in closed system with very low possibility for exposure. To be used on construction sites.	(S) Poly(oxy-1,2-ethanediyl), alpha-sulfo-omega-hydroxy-, C9–11-branched alkyl ethers, sodium salts.
P–19–0137	2	8/8/2019	CBI	(G) Component in lubricants	(G) Alkyl oligomeric reaction products.
P–19–0137A	3	8/19/2019	CBI	(G) Component in lubricants	(G) Alkyl oligomeric reaction products.
P–19–0142	1	7/31/2019	CBI	(G) An ingredient used in the manufacture of photoresist.	(G) Heteropolycycle, aromatic-, salt with dihalo-substituted alkyl carbopolycycle carboxylate (1:1).
P–19–0143	1	8/2/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent for use in epoxy resin for water-based coating for a variety of substrates and civil applications in commercial and consumer usages.	(G) Aldehyde, polymer with mixed alkanepolyamines, 2,2′-[1,4-alkanediylbis(oxyalkylene)] bis[oxirane], 2-(alkoxyalkyloxirane, 4,4′-(1-alkylidene)bis[phenol], 2,2′-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt).
P–19–0143A	2	8/8/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent for use in epoxy resin for water-based coating for a variety of substrates and civil applications in commercial and consumer usages.	(G) Aldehyde, polymer with mixed alkanepolyamines, 2,2′-[1,4-alkanediylbis(oxyalkylene)] bis[oxirane], 2-(alkoxyalkyloxirane, 4,4′-(1-alkylidene)bis[phenol], 2,2′-[(1-alkylidene)bis(4,1-alkyleneoxyalkylene)]bis[oxirane] and 2-(aryloxyalkyl)oxirane, acetate (salt).

TABLE I—PMN/SNUN/MCANS APPROVED * FROM 08/01/2019 TO 08/31/2019—Continued

Case No.	Version	Received date	Manufacturer	Use	Chemical substance
P–19–0144	1	8/5/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent in epoxy based self-leveling floor coatings.	(G) Alkanedioic Acid, compds. With substituted arylalkylamine- arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane -epichlorohydrin-aldehyde-2,2′-[(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products.
P–19–0144A	2	8/8/2019	Aditya Birla Chemicals (USA), LLC.	(S) A crosslinking agent in epoxy based self-leveling floor coatings.	(G) Alkanedioic Acid, compds. With substituted arylalkylamine- arylalcohol disubstituted alkane-the diglycidyl ether of a arylalcohol disubstituted alkane -epichlorohydrin-aldehyde-2,2′-[(1-alkylidene)bis[4,1-aryleneoxy(alkyl-2,1-alkanediyl)oxyalkylene]]bis[oxirane]-alkanepolyamine polymer-1-[[2-[(2-aminoalkyl)amino]alkyl]amino]-3-aryloxy-2-alcohol reaction products.
P–19–0145	2	8/15/2019	ARC Products, Inc	(S) Oil Field Drilling fluid additive	(G) 1,2-Ethanediamine, N1-(2-aminoethyl)-N2-[2-[(2-aminoethyl)amino]ethyl]-,polymer with 2-methyloxirane and oxirane, compd. with haloalkane.
P–19–0146	2	8/13/2019	CBI	(G) Reagent used to introduce deuterium to the substrate chemical.	(G) Modified dimethyl sulfoxide.
P–19–0147	1	8/16/2019	CRODA, INC	(G) Cleaning additive	(G) alkoxylated butyl alkyl ester.
P–19–0148	1	8/22/2019	CBI	(G) Fertilizer ingredient	(G) Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, potassium salts.
P–19–0149	1	8/22/2019	CBI	(G) Fertilizer ingredient	(G) Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid potassium salt (1:1)-potassium 2-oxoacetate (1:1) reaction products, potassium salts.
P–19–0150	1	8/22/2019	CBI	(G) Fertilizer ingredient	(G) Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid-2-oxoacetic acid reaction products, sodium salts.
P–19–0151	1	8/22/2019	CBI	(G) Fertilizer ingredient	(G) Iron, complexes with ethylenediamine-4-hydroxycarbomonocycle hetero-acid sodium salt (1:1)-sodium 2-oxoacetate (1:1) reaction products, sodium salts.
P–19–0152	2	8/27/2019	UBE AMERICA, INC.	(G) Pre-polymer for polyurethane roll covers.	(G) alkaneic acid, dialkyl ester polymer with alkanediol, [[(isocyanatocarbomonocycle)alkyl)carbomonocycle)carbamate.
P–19–0153	2	8/28/2019	Wego Chemical Group.	(S) Raw material in Flame Retardant product.	(G) Dibromoalkyl ether Tetrabromobisphenol A.
SN–19–0004A	6	8/12/2019	CBI	(S) A lubricating agent used in the production of automotive disc brakes.	(G) Pitch coke.
SN–19–0004A	7	8/14/2019	CBI	(S) A lubricating agent used in the production of automotive disc brakes.	(G) Pitch coke.

* The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission prior to the start of the 90-day review period, and in no way reflects the final status of a complete submission review.

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs that have passed an initial screening by EPA during this period: The EPA case number assigned to the NOC including whether the submission was an initial or amended submission, the date the NOC was received by EPA, the date of commencement provided by the submitter in the NOC, a notation of the type of amendment (*e.g.,* amendment to generic name, specific name, technical contact information, etc.) and chemical substance identity.

TABLE II—NOCS APPROVED * FROM 08/01/2019 TO 08/31/2019

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
J–16–0025A	8/23/2019	9/11/2018	Provided CBI substantiation	(G) Modified trichoderma reesei.
P–14–0070	7/31/2019	7/14/2019	N	(S) Pentamethylenediamine; 1,5-pentanediamine.
P–15–0157	8/7/2019	8/3/2019	N	(G) Bis(carbomethoxy)benzenesulfonic acid sodium salt polymer with 1,3-benzenedicarboxylic acid, 2,2-dimethyl-1, 3-propanediol and 1,2-ethanediol.
P–15–0605	8/22/2019	8/16/2019	N	(S) Alkenes, C18–22, mixed with polyethylene, oxidized, hydrolyzed, distn. residues, from C16–18 alcs. manuf.
P–16–0207A	8/27/2019	9/12/2018	Provided CBI substantiation	(G) Spiro tetrafluoroborate.
P–16–0225	8/6/2019	7/7/2019	N	(G) Alkylene-substituted propoxycyclohexanol.
P–16–0348	8/28/2019	8/14/2019	N	(G) Polypentaerythritol, mixed esters with linear and branched monoacids.
P–16–0407A	8/28/2019	10/13/2017	Amended the generic chemical name.	(G) Functionalized polyamide.

TABLE II—NOCS APPROVED * FROM 08/01/2019 TO 08/31/2019—Continued

Case No.	Received date	Commencement date	If amendment, type of amendment	Chemical substance
P–16–0422	8/15/2019	7/31/2019	N	(S) 1,2-cyclohexanedicarboxylic acid, 1-(phenylmethyl) ester, ester with 2,2,4-trimethyl-1,3-pentadiol mono(2-methylpropanoate).
P–18–0185	8/7/2019	8/2/2019	N	(G) Fatty acid, polymer with alkanedioic acid dialkyl ester, hydroxyl alkyl substituted alkanediol, substituted carbomonocycle and alkylol substituted alkane.
P–18–0200	8/9/2019	7/12/2019	N	(G) Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, triethylene glycol, trimethylolalkane and polypropylene glycol.
P–18–0201	8/9/2019	7/12/2019	N	(G) Waste plastics, poly(ethylene terephthalate), polymers with diethylene glycol, glycerol, polyerythritol, phthalic anhydride, triethylene glycol, trimethyl olalkane and polypropylene glycol.
P–18–0278	8/8/2019	8/2/2019	N	(G) Isophthalic acid, polymer with terephthalic acid and C4 and C6 dialkyl amines.
P–18–0286	8/16/2019	8/14/2019	N	(S) Propane, 1,1,1,3,3,3-hexafluoro-2-methoxy-.
P–19–0021	8/9/2019	8/1/2019	N	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkylene carbonate, alkanediol, isocyanate, compd. with alkylamine,.
P–19–0022	8/9/2019	8/1/2019	N	(G) Hydroxyalkyl carboxylic acid, polymer with alkylamine, alkylene carbonate, alkanediol, isocyanate, compd. with alkylamine,.
P–19–0031	8/19/2019	7/25/2019	N	(G) Formaldehyde, polymer with N1-(2-aminoethyl)-alkanediamine, 5-amino-1,3,3-trimethylcyclohexane methanamine, 2-(chloromethyl)oxirane, 4,4′-(1-methylethylidene)bis[phenol] and alpha-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl).

*The term 'Approved' indicates that a submission has passed a quick initial screen ensuring all required information and documents have been provided with the submission.

In Table III of this unit, EPA provides the following information (to the extent such information is not subject to a CBI claim) on the test information that has been received during this time period: The EPA case number assigned to the test information; the date the test information was received by EPA, the type of test information submitted, and chemical substance identity.

TABLE III—TEST INFORMATION RECEIVED FROM 08/01/2019 TO 08/31/2019

Case No.	Received date	Type of test information	Chemical substance
P–00–0281	8/18/2019	Daphnia sp., Acute Immobilization Test (OECD Test Guideline 202), Fish, Acute Toxicity Test (OECD Test Guideline 202), Surface Tension of Aqueous Solutions (OECD Test Guideline 115), Analytical Method Validation for Algae.	(G) Alkylaryl sulfonic acid, sodium salts.
P–11–0484	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Alkyl sulfate salt.
P–11–0487	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl polyamide.
P–11–0527	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl halide.
P–11–0528	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl thiol.
P–11–0529	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl thio acrylamide.
P–11–0530	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl thio polyacrylamide.
P–11–0532	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl amine.
P–11–0533	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl thio polyacrylamide.
P–11–0534	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl thio polyacrylic acid-acrylamide.
P–11–0543	8/21/2019	Mass Spectrometry Analysis to Detect Impurities/Residuals	(G) Polyfluorinated alkyl quanternary ammonium chloride.
P–16–0225	8/6/2019	Combined Repeated Dose Toxicity with the Reproduction/Development Toxicity Screening Test (OECD Test Guideline 422).	(G) Alkylene-substituted propoxycyclohexanol, Alkylene-substituted propoxycyclohexanol.

TABLE III—TEST INFORMATION RECEIVED FROM 08/01/2019 TO 08/31/2019—Continued

Case No.	Received date	Type of test information	Chemical substance
P–16–0543	8/9/2019	Exposure Monitoring Report	(G) Halogenophosphoric acid metal salt.
P–18–0027	8/28/2019	Fish acute toxicity test, freshwater and marine (OECD Test Guideline 203), Special Considerations—Tests with Aquatic and Sediment-Dwelling Fauna and Aquatic Microcosms, Fish Acute Toxicity Mitigated by Humic Acid.	(G) 2-Propenoic acid, 2-alkyl-, 2-(dialkylamino)alkyl ester, polymer with alpha-(2-alkyl-1-oxo-2-alken-1-yl)-omega-methoxypoly(oxy-1,2-alkanediyl).
P–18–0141	8/14/2019	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (OECD Test Guideline 422), Reproduction/Developmental Toxicity Screening Test (OECD Test Guideline 421), Repeated Dose 28-day Oral Toxicity Study in Rodents (OECD Test Guideline 407), Acute Inhalation Toxicity (OECD Test Guideline 403).	(G) Methyl modified lactam.
P–18–0141	8/21/2019	Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test (OECD Test Guideline 422), Reproduction/Developmental Toxicity Screening Test (OECD Test Guideline 421), Repeated Dose 28-day Oral Toxicity Study in Rodents (OECD Test Guideline 407).	(G) Methyl modified lactam.
P–18–0203	8/7/2019	Partition Coefficient (n-octanol/water), HPLC Method (OECD Test Guideline 117).	(G) Trialkyl alkanal, polymer with alkylalkanal and phenol.
P–19–0137	8/19/2019	Modified Activated Sludge, Respiration Inhibition Test for Sparingly Soluble Chemicals (OECD Test Guideline 209), In Vitro Mammalian Chromosome Aberration Test (OECD Test Guideline 473).	(G) Alkyl oligomeric reaction products.

If you are interested in information that is not included in these tables, you may contact EPA's technical information contact or general information contact as described under **FOR FURTHER INFORMATION CONTACT** to access additional non-CBI information that may be available.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: October 29, 2019.

Pamela Myrick,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2019–24287 Filed 11–6–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0236; FRL–10001–87]

N-Methylpyrrolidone (NMP); Draft Toxic Substances Control Act (TSCA) Risk Evaluation and TSCA Science Advisory Committee on Chemicals (SACC) Meeting; Notice of Availability, Public Meeting, and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of and soliciting public comment on the draft Toxic Substances Control Act (TSCA) risk evaluation of N-Methylpyrrolidone (NMP). The purpose of the risk evaluation process under TSCA is to determine, upon issuance of a final risk evaluation, whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. EPA is also submitting the same document to the TSCA Science Advisory Committee on Chemicals (SACC) for peer review and is announcing that there will be an in-person public meeting of the TSCA SACC to consider and review the draft risk evaluation. Preceding the in-person meeting, there will be a preparatory virtual public meeting for the panel to consider the scope and clarity of the draft charge questions for the peer review.

DATES:

Virtual Meeting: The preparatory virtual meeting will be held on November 12, 2019, from 1:00 p.m. to approximately 4:00 p.m. (EST). You must register online on or before November 12, 2019, to receive the webcast meeting link and audio teleconference information. Submit your written comments for the preparatory virtual meeting, or request time to present oral comments, on or before 10:00 a.m. on November 12, 2019.

In-Person Meeting: The in-person meeting will be held on December 5–6, 2019, from 8:00 a.m. to approximately 6:00 p.m. (EST) on the first day, and 8:00 a.m. to 12:30 p.m. on the second day. Any comments submitted on the draft risk evaluation on or before November 26, 2019, will be provided to the SACC for their consideration before the meeting. Comments received after November 26, 2019, and prior to the oral public comment period during the meeting will be available to the SACC for their consideration during the meeting. Please submit requests to present oral comments during the in-person meeting on or before December 3, 2019, to be included on the meeting agenda. All comments received by the end of the comment period will be considered by EPA.

Comments: All comments on the draft risk evaluation must be received on or before January 6, 2020.

For additional instructions, see Unit III. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES:

Virtual Meeting: Please visit *http://www.epa.gov/tsca-peer-review* to register.

In-Person Meeting: The in-person meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA. Additional meeting information can be found on the TSCA SACC website at *http://www.epa.gov/tsca-peer-review.*

Comments: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0236 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

Requests to present oral comments and requests for special accommodations. Submit requests for special accommodations, or requests to present oral comments during the virtual meeting and/or the in-person peer review meeting, to the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT** by the deadline identified in the **DATES** section.

FOR FURTHER INFORMATION CONTACT:

TSCA SACC Meeting: Dr. Todd Peterson, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–6428; email address: *peterson.todd@epa.gov.*

Draft Risk Evaluation: Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may be of interest to persons who are or may be required to conduct testing and those interested in risk evaluations of chemical substances under TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in these draft risk evaluations, the EPA has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information on specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i)–(ii) and (iv)–(v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process last no longer than three years, with a possible additional six-month extension. 15 U.S.C. 2605(b)(4)(G). The statute also requires that the EPA allow for no less than a 30-day public comment period on the draft risk evaluation, prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4)(H).

C. What action is EPA taking?

EPA is announcing the availability of and seeking public comment on the draft risk evaluation of the chemical substances identified in Unit II. EPA is seeking public comment on all aspects of the draft risk evaluation, including any preliminary conclusions, findings, and determinations, and the submission of any additional information that might be relevant to the draft risk evaluation, including the science underlying the draft risk evaluation and the outcome of the systematic review associated with the chemical substances. This 60-day comment period on the draft risk evaluation satisfies TSCA section 6(b)(4)(H), which requires EPA to ''provide no less than 30 days public notice and an opportunity for comment on a draft risk evaluation prior to publishing a final risk evaluation,'' and 40 CFR 702.49(a), which states that ''EPA will publish a draft risk evaluation in the **Federal Register**, open a docket to facilitate receipt of public comment, and provide no less than a 60-day comment period, during which time the public may submit comment on EPA's draft risk evaluation.'' In addition to any new comments on the draft risk evaluation, the public should resubmit or clearly identify any previously filed comments, modified as appropriate, that are relevant to the draft risk evaluation and that the submitter feels have not been addressed. EPA does not intend to respond to comments submitted prior to the release of the draft risk evaluation unless they are clearly identified in comments on the draft risk evaluation.

EPA is also submitting the draft risk evaluation and associated supporting documents to the TSCA SACC for peer review and announcing the meeting for the peer review panel. All comments submitted to the dockets on the draft risk evaluation by the deadline identified in the **DATES** section will be provided for consideration to the TSCA SACC peer review panel, which will have the opportunity to consider the comments during its discussions.

D. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that

you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Draft TSCA Risk Evaluation

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As these chemicals are part of the first ten chemical substances undergoing risk evaluation, these chemical substances were not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of risk evaluation is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight-of-scientific-evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B, will be followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

B. What is NMP?

N-methylpyrrolidone (NMP), also called N-methyl-2-pyrrolidone, or 1-methyl-2-pyrrolidone, is a chemical that is widely used during the manufacture and production of polymers, pharmaceuticals, agrichemicals and petroleum products. Information from the 2016 Chemical Data Reporting (CDR) for NMP indicates the reported production volume is more than 160 million lbs/year (manufacture and import).

Information about the problem formulation and scope phases of the TSCA risk evaluation for this chemical is available at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-n-methylpyrrolidone-nmp-0.*

III. TSCA SACC

A. What is the purpose of the TSCA SACC?

The TSCA SACC was established by EPA in 2016 and operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 2 *et seq.* The TSCA SACC provides expert independent scientific advice and consultation to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA.

The TSCA SACC is comprised of experts in: Toxicology; human health and environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic modelling (PBPK) modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). When needed, the committee will be assisted in their reviews by ad hoc participants with specific expertise in the topics under consideration.

B. How can I access the TSCA SACC documents?

EPA's background documents, related supporting materials, and draft charge questions to the TSCA SACC are available on the TSCA SACC website and in the docket established for the specific chemical substances. In addition, EPA will provide additional background documents (*e.g.,* TSCA SACC members participating in this meeting and the meeting agenda) as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available, in the docket at *http://www.regulations.gov* and the TSCA SACC website at *http://www.epa.gov/tsca-peer-review.*

After the public meeting, the TSCA SACC will prepare meeting minutes summarizing its recommendations to EPA. The meeting minutes will be posted on the TSCA SACC website and in the relevant docket.

C. What do I need to know about the TSCA SACC public meetings?

The focus of the public meeting is to peer review EPA's draft risk evaluation. After the peer review process, EPA will consider peer reviewer comments and recommendations, and public comments, in finalizing the risk evaluation. The draft risk evaluation contains: Discussion of chemistry and physical-chemical properties; characterization of conditions of use; environmental fate and transport assessment; human health exposures; environmental hazard assessment; risk characterization; risk determination; and a detailed description of the systematic review process developed by the Office of Pollution Prevention and Toxics to search, screen, and evaluate scientific literature for use in the risk evaluation process.

D. How do I participate in the public meetings?

You may participate in the public meetings by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify the corresponding docket ID number in the subject line on the first page of your request.

1. Preparatory virtual meeting. The preparatory virtual meeting will be conducted via webcast and telephone. You may participate in the preparatory virtual meeting by registering to join the webcast. You may also submit written comments or request time for oral comments.

i. *Registration.* You must register to participate in the preparatory virtual meeting. To participate by listening or making a comment during this meeting, please go to the EPA website to register: *http://www.epa.gov/tsca-peer-review.* Registration online will be confirmed by an email that will include the webcast meeting link and audio teleconference information.

ii. *Written comments.* Written comments for consideration during the preparatory virtual meeting should be submitted, using the instructions in **ADDRESSES** and this unit, on or before the date set in the **DATES** section.

iii. *Oral comments.* Requests to make brief oral comments to the TSCA SACC during the preparatory virtual meeting should be submitted when registering online or with the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before noon on the date set in the **DATES** section. Oral comments before the TSCA SACC during the preparatory virtual meeting are limited to approximately 5 minutes due to the time constraints of this virtual meeting.

2. *In-person meeting.* You may participate in the in-person public meeting by attending and by providing written or oral comments. The in-person meeting may also be webcast. Please refer to the TSCA SACC website at *http://www.epa.gov/tsca-peer-review* for information on how to access the webcast. Please note that for the in-person meeting, the webcast is a supplementary public process provided only for convenience. If difficulties arise resulting in webcasting outages, the in-person meeting will continue as planned.

i. *Seating at the meeting.* Seating at the meeting will be open and on a first-come basis.

ii. *Written comments.* To provide the TSCA SACC the time necessary to consider and review your comments, written comments must be submitted by the date set in the **DATES** section and using the instructions in the **ADDRESSES** section and this unit. Comments received after the date set in the **DATES** section and prior to the end of the oral public comment period during the meeting will still be provided to the TSCA SACC for their consideration.

iii. *Oral comments.* To be included on the meeting agenda, submit your request to make brief oral comments at the in-person meeting to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before the date set in the **DATES** section. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment. Oral comments before TSCA SACC during the in-person meeting are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of the comments and presentation for distribution by the DFO to the TSCA SACC at the meeting.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: November 4, 2019.

Andrew R. Wheeler,

Administrator.

[FR Doc. 2019–24349 Filed 11–6–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10052	American Sterling Bank	Sugar Creek	MO	11/1/2019
10094	Mutual Bank	Harvey	IL	11/1/2019
10497	Allendale County Bank	Fairfax	SC	11/1/2019

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819).

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on November 4, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–24340 Filed 11–6–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update To Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing below.

SUPPLEMENTARY INFORMATION: This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992, issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation website at *www.fdic.gov/bank/individual/failed/banklist.html,* or contact the Manager of Receivership Oversight at *RO@fdic.gov* or at Division of Resolutions and Receiverships, FDIC, 1601 Bryan Street, Suite 34100, Dallas, TX 75201–3401.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10534	City National Bank of New Jersey	Newark	NJ	11/1/19

Dated: November 4, 2019.

Federal Deposit Insurance Corporation.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–24339 Filed 11–6–19; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

[Notice 2019–16]

Filing Dates for the Maryland Special Election in the 7th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: Maryland has scheduled special elections on February 4, 2020, and April 28, 2020, to fill the U.S. House of Representatives seat in the 7th Congressional District of the late Representative Elijah Cummings.

Committees required to file reports in connection with the Special Primary Election on February 4, 2020, 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 April 28, 2020, shall file a 12-day Pre-Primary, a 12-day Pre-General, 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 Maryland Special Primary and Special General Elections shall file a 12-day Pre-Primary Report on January 23, 2020; a 12-day Pre-General Report on April 16, 2020; and a 30-day Post-General Report on May 28, 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 January 23, 2020. (See charts below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees not filing monthly in 2020 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Maryland 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 Pre-Primary 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-Primary Report. Both forms must be filed by January 23, 2020.

Committees filing monthly that make contributions or expenditures in connection with the Maryland Special Primary or Special General Elections will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the Maryland 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 MARYLAND SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. and overnight mailing deadline	Filing deadline
Committees Involved in Only the Special Primary (02/04/2020) Must File:			
Year-End	—WAIVED—		
Pre-Primary	01/15/2020	01/20/2020	01/23/2020
April Quarterly	03/31/2020	04/15/2020	04/15/2020
Committees Involved in Both the Special Primary (02/04/2020) and Special General (04/28/2020) Must File:			
Year-End	—WAIVED—		

CALENDAR OF REPORTING DATES FOR MARYLAND SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. and overnight mailing deadline	Filing deadline
Pre-Primary	01/15/2020	01/20/2020	01/23/2020
April Quarterly	—WAIVED—		
Pre-General	04/08/2020	04/13/2020	04/16/2020
Post-General	05/18/2020	05/28/2020	05/28/2020
July Quarterly	06/30/2020	07/15/2020	07/15/2020
Committees Involved in Only the Special General (04/28/2020) Must File:			
April Quarterly	—WAIVED—		
Pre-General	04/08/2020	04/13/2020	04/16/2020
Post-General	05/18/2020	05/28/2020	05/28/2020
July Quarterly	06/30/2020	07/15/2020	07/15/2020

[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.

Dated: November 1, 2019.

On behalf of the Commission.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019–24258 Filed 11–6–19; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than December 9, 2019.

A. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Napoleon Bancorporation, Inc., Napoleon, North Dakota;* to acquire Sargent Bankshares, Inc., and thereby indirectly acquire Sargent County Bank, both of Forman, North Dakota.

Board of Governors of the Federal Reserve System, November 4, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–24337 Filed 11–6–19; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Federal Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th and Constitution Avenue NW, Washington, DC 20551–0001, not later than November 21, 2019.

A. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Jay Courtney Hammond, Omaha, Nebraska; Logan Lucile Hammond, Nebraska City, Nebraska; and Tad D. Hammond, Nebraska City, Nebraska, as custodian for two minors;* as members of a group acting in concert with Tad D. Hammond to form the Hammond Family Control Group to acquire voting shares of Bedford Bancorp, Inc., Bedford, Iowa, and thereby indirectly acquire voting shares of State Savings Bank, Creston, Iowa.

2. *Charles S. Lichtigman, Ormond Beach, Florida; individually and together with Edward D. Lightman and Daniel J. Miller, both of Winter Park, Florida; Sanford Miller, James R. Bledsoe, Michael J. Opalewski, Timothy W. Curtis, Philip T. Fleuchaus, and William Navarra, all of Ormond Beach, Florida; James R. Hester, Astor, Florida; and L. Gale Lemerand, Daytona Beach, Florida;* as members of a group acting in concert to acquire voting shares of FirState Bancorp, Inc. and thereby indirectly acquire voting shares of 1st State Bank of Mason City, both of Mason City, Illinois.

B. Federal Reserve Bank of Minneapolis (Mark A. Rauzi, Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Christian J. Ryan, Byron, Minnesota;* to acquire voting shares of Olmsted Bancorporation, Inc., and thereby indirectly acquire voting shares of First Security Bank, both of Byron, Minnesota.

Board of Governors of the Federal Reserve System, November 1, 2019.

Michele Taylor Fennell,

Assistant Secretary of the Board.

[FR Doc. 2019–24241 Filed 11–6–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or the Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the CDC, announces the following meeting of the Advisory Board on Radiation and Worker Health (ABRWH). This meeting is open to the public, limited only by the space available. The meeting space accommodates approximately 150 people and the audio conference line has 150 ports for callers. The public is welcome to submit written comments in advance of the meeting, to the contact person below. Written comments received in advance of the meeting will be included in the official record of the meeting. The public is also welcome to listen to the meeting by joining the teleconference (information below).

DATES: The meeting will be held on December 11, 2019 from 8:15 a.m. to 5:30 p.m., PST. A public comment session will be held on December 11, 2019 at 5:30 p.m., PST and conclude at 6:30 p.m., PST or following the final call for public comment, whichever comes first.

ADDRESSES: Hilton Oakland Airport Hotel, One Hegenberger Road, Oakland, California 94621; Phone: (510) 635–5000, Fax: (510) 383–4090. The public may join the audio conference call via FTS Conferencing. The USA toll-free dial-in number is 1–866–659–0537; and the pass code is 9933701. The meeting will also be accessible via Web conference by Skype: meeting CONNECTION: *https://webconf.cdc.gov/zab6/yzdq02pl?sl=1.*

FOR FURTHER INFORMATION CONTACT: Theodore Katz, MPA, Designated Federal Officer, NIOSH, CDC, 1600 Clifton Road, Mailstop E–20, Atlanta, Georgia 30329–4027, Telephone (513) 533–6800, Toll Free 1 (800) CDC–INFO, Email *ocas@cdc.gov.*

SUPPLEMENTARY INFORMATION:

BACKGROUND: The Advisory Board was established under the

Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC). In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC.

The Advisory Board's charter was issued on August 3, 2001, renewed at appropriate intervals, rechartered on February 12, 2018, and will terminate on February 12, 2020.

PURPOSE: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advising the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

MATTERS TO BE CONSIDERED: The agenda will include discussions on the following: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; SEC Petitions Update; Completed Site Profile Reviews; Draft Report to the Secretary, HHS on Dose Reconstruction Reviews, Coworker Modeling Guidelines Review; SEC Petition Review Update for Savannah River Site (Aiken, South Carolina, 1972–2007); Lawrence Berkeley National Laboratory Site Profile Review Update; and a Board Work Session. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Kalwant Smagh,

Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2019–24244 Filed 11–6–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2013–N–0375, FDA–2013–N–0520, FDA–2008–D–0031, FDA–2012–N–0386, FDA–2013–N–0377, FDA–2011–D–0147, FDA–2013–N–1588, FDA–2013–N–0093, and FDA–2016–N–1593]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for

each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* 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.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of Collection	OMB control No.	Date approval expires
Agreement for Shipment of Devices for Sterilization	0910–0131	9/30/2022
Substances Prohibited from Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed	0910–0339	9/30/2022
Clinical Laboratory Improvement Amendments Waiver Applications	0910–0598	9/30/2022
Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products	0910–0650	9/30/2022
Tobacco Health Document Submission	0910–0654	9/30/2022
Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence Requirements for Tobacco Products	0910–0673	9/30/2022
Exemptions From Substantial Equivalence Requirements for Tobacco Products	0910–0684	9/30/2022
Evaluation of the Program for Enhanced Review Transparency and Communication for New Molecular Entity New Drug Applications and Original Biologics License Applications in Prescription Drug User Fee Acts and 351(k) Biologics License Applications in Biosimilars User Fee Act	0910–0746	9/30/2022
Medical Device Accessories	0910–0823	9/30/2022

Dated: October 29, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24263 Filed 11–6–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–3768]

Best Practices in Drug and Biological Product Postmarket Safety Surveillance for Food and Drug Administration Staff; Draft Document; Availability; Establishment of Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; establishment of public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is establishing a public docket to collect comments on a draft document that details best practices for drug safety surveillance entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff.'' The 21st Century Cures Act (Cures Act) was enacted on December 13, 2016, and requires that FDA make publicly available on its internet website best practices for drug safety surveillance activities. The draft document sets forth risk-based principles by which FDA conducts ongoing postmarketing safety surveillance for drug and biological products to address the Cures Act requirements. FDA is seeking public comment on the draft best practices in drug and biological product postmarket safety surveillance.

DATES: Submit either electronic or written comments on the draft document by January 6, 2020 to ensure that the Agency considers your comment on this draft document before it begins work on the final version.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–3768 for ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Eileen Wu, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 3472, Silver Spring, MD 20993–0002, 301–796–2345, *eileen.wu@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is establishing a public docket to collect comments on a draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff.'' Title IX, section 915 of the Food and Drug Administration Amendments Act of 2007 (FDAAA) added a new section 505(r) to the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(r)), requiring FDA to prepare a summary analysis of the adverse drug reaction reports received for a drug by 18 months after approval or after use of the drug by 10,000 individuals, whichever is later. The analysis includes identification of any new risks not previously identified, potential new risks, or known risks reported in unusual number.

The Cures Act (Pub. L. 114–255) was enacted on December 13, 2016, and has the goal of advancing medical product innovation, as well as ensuring patient access to safe and effective treatments as soon as possible. Section 3075 of the Cures Act amended section 505(r)(2)(D) of the FD&C Act to eliminate the requirement for summary analyses for drugs as required by FDAAA. In place of the summary analyses, section 3075 amended section 505(r)(2)(D) of the FD&C Act to include the requirement that FDA make publicly available on its internet website best practices for drug safety surveillance activities for drugs approved under section 505 of the FD&C Act or section 351 of the Public Health Service Act (PHS Act).

Section 3075 of the Cures Act also amended section 505(k)(5) of the FD&C Act to strike ''bi-weekly screening'', as required by FDAAA, and insert ''screenings''; it also added the requirement that FDA make publicly available on its internet website guidelines, developed with input from experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, that detail best practices for drug safety surveillance using the Adverse Event Reporting System.

The draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff'' sets forth risk-based principles by which FDA conducts ongoing postmarketing safety surveillance for drug and biological products to address the Cures Act requirements. Although section 3075 of the Cures Act only references drugs approved under section 505 of the FD&C Act or section 351 of the PHS Act, the draft document additionally provides a high-level discussion regarding other products, including over-the-counter monograph, compounded, and homeopathic drug products. The draft document also includes a high-level overview of other data sources, tools, and methods, as well as drug safety surveillance activities that extend beyond use of the Adverse Event Reporting System (and its successors). These additional topics are included to provide context and a general overview of FDA's safety surveillance process. FDA is seeking public comment on the draft best practices document before it begins work on the final version, which will be made publicly available.

II. Electronic Access

Persons with access to the internet may obtain the draft document entitled ''Best Practices in Drug and Biological Product Postmarket Safety Surveillance for FDA Staff'' at *https://www.fda.gov/media/130216/download.*

Dated: November 1, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–24332 Filed 11–6–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: Healthy Start Evaluation and Quality Improvement, OMB No. 0915–0338—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than December 9, 2019.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (301) 443–1984.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Healthy Start Evaluation and Quality Improvement. OMB No. 0915–0338—Revision.

Abstract: The National Healthy Start Program, funded through HRSA's Maternal and Child Health Bureau (MCHB), has the goal of reducing racial and ethnic disparities in infant mortality and other adverse perinatal outcomes. The program began as a demonstration project with 15 grantees in 1991 and since then has expanded to 101 grantees serving communities in 34 states, Washington, DC, and Puerto

Rico. Healthy Start grantees serve communities with high rates of poor perinatal outcomes, including infant mortality at least 1.5 times the U.S. national average. These communities are often low-income and in geographically, racially, ethnically, and linguistically diverse areas. Healthy Start offers services during the perinatal period (before, during, and after pregnancy) and the program works with women, infants, and families through the first 18 months after birth. The Healthy Start program uses four approaches to reduce infant mortality through individual services and community support to women, infants, and families: (1) Improve women's health, (2) improve family health and wellness, (3) promote systems change, and (4) assure impact and effectiveness. Over the past few years, MCHB has sought to implement a uniform set of data elements for monitoring and conducting an evaluation to assess grantees' progress towards these program approaches. Under the current OMB approval, the data collection instruments for this evaluation include the following: The National Healthy Start Program Survey; Community Action Network Survey; Healthy Start Site Visit Protocol; Healthy Start Participant Focus Group Protocol; and six client-level screening tools: (1) Demographic Intake Form, (2) Pregnancy Status/History, (3) Preconception, (4) Prenatal, (5) Postpartum, and (6) Interconception/Parenting.

In this proposed revision, MCHB plans to retain the client-level tools, and to eliminate the National Healthy Start Program Survey, Community Action Network Survey, Healthy Start Site Visit Protocol, and Healthy Start Participant Focus Group Protocol instruments. These instruments have been removed to streamline this data collection activity for the evaluation. For the six client-level tools, MCHB plans to consolidate these into three forms: (1) Background, (2) Prenatal, and (3) Parent/Child. These tools have been revised based on the public comments received during the 60-day comment period. The purpose of these changes is to consolidate items that are duplicated across the forms. In addition to consolidating questions across tools, many individual items have been eliminated or in some cases reworded in order to focus the evaluation more clearly on individual and programmatic progress on performance measures. This will shorten the revised instruments, center them more clearly on program improvement, and decrease the number of personal/sensitive questions.

In addition to the elimination, consolidation, and rewording of several items, questions designed to increase efficiency and accuracy in reporting have been added. Specifically, many of the grantees' annual reporting requirements require calculations based on infants' birth dates, estimated due dates, dates enrolled in the Healthy Start program, trimester in which certain health-related activities occurred, and so on. These revised tools include the information necessary to make these calculations so that annual aggregate reporting will be based on individual client-level data. This will increase accountability, efficiency, and accuracy in terms of the clients served as well as reduce overall burden on the grantees by streamlining reporting systems.

A 60-day notice was published in the **Federal Register** on January 31, 2019, vol. 84, no. 21, pp. 753–754. There were 16 public comments.

Need and Proposed Use of the Information: The purpose of the revised data collection instruments will be to assess grantee and client-level progress towards meeting Healthy Start program performance measures. The data will be used to conduct ongoing performance monitoring of the program; thus, meeting program needs for accountability, programmatic decision-making, and ongoing quality assurance.

Likely Respondents: Respondents include pregnant women and non-pregnant women of reproductive age who are served by the Healthy Start program as well as any of their spouses/partners or other caregivers who are participating in receiving Healthy Start services.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and, to transmit or otherwise disclose the information. Compared to the versions submitted for the 60-day approval process in January, estimated burden hours have increased somewhat as a result of implementing the feedback provided in public comments during the 60-day comment period. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Background	* 55,550	1	55,550	.50	27,775
Prenatal	* 30,300	1	30,300	.17	5,151
Parent/Child	* 30,300	1	30,300	.42	12,726
Total	116,150		116,150		45,652

* All participants (55,550) complete the Background form, and a subset of these same individuals (30,300) also complete the Prenatal or Parent/Child forms, for a total of 116,150 responses.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2019–24278 Filed 11–6–19; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Erin N. Potts Kant (Respondent), former Clinical Research Coordinator, Division of Pulmonary, Allergy, and Critical Care Medicine (PMCCM), Duke University School of Medicine (Duke). Ms. Potts Kant engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Heart, Lung, and Blood Institute (NHLBI), National Institutes of Health (NIH), grants HL105702, HL005009, HL058795, HL036982, HL044984, HL062472, HL067021, HL067281, HL067669, HL068072, HL073896, HL077291, HL077763, HL079915, HL081285, HL081763, HL082504, HL084123, HL084917, HL085655, HL086887, HL087094, HL090146, HL090265, HL098099, HL091335, HL091642–02, HL092994, HL073907, and HL111151; National Institute of Allergy and Infectious Diseases (NIAID), NIH, grants AI081672, AI089756, AI068822, AI056101, AI067798, AI074751, AI050021, AI058161, AI064789, and AI052201; National Institute on Environmental Health Sciences (NIEHS), NIH, grants ES020426, ES007943, ES011961, ES012496, ES016836, ES012717, ES015675, ES016126, ES016347, ES016659, and ES020350; National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), NIH, grants DK050814, DK077159, and DK077307; National Cancer Institute (NCI), NIH, grants CA142842 and CA092656; National Center for Research Resources (NCRR), NIH, grants RR005959 and RR024127; and National Institute of Child Health and Human Development (NICHD), NIH, grant HD043728. The administrative actions, including permanent debarment, were implemented beginning on October 1, 2019, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Elisabeth A. Handley, Interim Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Erin N. Potts Kant, Duke University School of Medicine: Based on the report of an investigation conducted by Duke, an admission from the Respondent, and additional analysis conducted by ORI in its oversight review, ORI found that Erin N. Potts Kant, former Clinical Research Coordinator, PMCCM, Duke, engaged in research misconduct in research supported by PHS funds, specifically NHLBI, NIH, grants HL105702, HL005009, HL058795, HL036982, HL044984, HL062472, HL067021, HL067281, HL067669, HL068072, HL073896, HL077291, HL077763, HL079915, HL081285, HL081763, HL082504, HL084123, HL084917, HL085655, HL086887, HL087094, HL090146, HL090265, HL098099, HL091140, HL091335, HL091642–02, HL092994, HL073907, and HL111151; NIAID, NIH, grants AI081672, AI089756, AI068822, AI056101, AI067798, AI074751, AI050021, AI058161, AI064789, and AI052201; NIEHS, NIH, grants ES020426, ES007943, ES011961, ES012496, ES016836, ES012717, ES015675, ES016126, ES016347, ES016659, and ES020350; NIDDK, NIH, grants DK050814, DK077159, and DK077307; NCI, NIH, grants CA142842 and CA092656; NCRR, NIH, grants RR005959 and RR024127; and NICHD, NIH, grant HD043728.

Affected data were included in grant applications ES023609, ES016126–07, ES023283, ES019585, ES016347, ES016659, ES020350, ES020426, ES017219, and ES016836 submitted to NIEHS, NIH; grant applications HL099800, HL091642–02, HL111151, HL107590, HL092994, and HL105702 submitted to NHLBI, NIH; grant applications AI081672–06, AI067798, AI052201, and AI081672 submitted to NIAID, NIH; and grant application NS084893 submitted to the National Institute of Neurological Disorders and Stroke (NINDS), NIH.

ORI found that Respondent engaged in research misconduct by knowingly and intentionally falsifying and fabricating research data included in one hundred and seventeen (117) figures and two (2) tables in thirty-nine (39) published papers, three (3) manuscripts, and two (2) research records.

Specifically, the Respondent:

- Falsified flexiVent data for lung-function measurements in mice by changing numerical values in the datasets generated by the apparatus, or fabricated flexiVent datasets, and provided the false data to investigators for inclusion in ninety-three (93) figures and one (1) table in thirty-two (32) published papers and two (2) manuscripts
- falsified flexiVent data that were included in seventy-two (72) figure panels and one (1) table in the following thirty-two (32) published papers and two (2) manuscripts:

—Figures 2b–2f in *Pediatric Res.* 2013;74(1):11–18 (hereafter referred to as the ''*Pediatric Res.* 2013 paper'')
—Figures 2a, 2c, and 2d in *J. Appl. Physiol.* 2013 *Articles In Press version;* Retraction in: *J. Appl. Physiol.* 2013;114(12):1762
—Figures 2a, 5a, and 5b in *Env. Health Perspect.* 2012;120(12):1692–8; Retraction in: *Env. Health Perspect.* 2015;123(7):A172
—Figures 3b and 4c in *J. Allergy and Clin. Immunol.* 2012;130(1):205–14.e2 (hereafter referred to as the ''*J. Allergy and Clin. Immunol.* paper''); Correction in: *J. Allergy and Clin. Immunol.* 2015;137(1)
—Figures 2 and 3d in *Free Rad. Biol. and Med.* 2012;52(3):705–15 (hereafter referred to as the ''*Free Rad. Biol. and Med.* paper'')
—Figures 1b, 1c, 6a, 6b, and 6c in *PLoS One* 2011;6(11):e27137 (hereafter referred to as the ''*PLoS One* 2011 paper'')
—Figure 4 in *Am. J. Respir. Cell Mol. Biol.* 2012;46(4):454–60 (hereafter referred to as the ''*Am. J. Respir. Cell Mol. Biol.* 2012 paper''); Retraction in: *Am J. Respir. Cell Mol. Biol.* 2015;52(4):523
—Supplemental Figure E2 in *Am. J. Respir. Cell Mol. Biol.* 2012;46(2):249–56
—Figure 5c in *J. Immunol.* 2011;187(9):4800–8; Correction in: *J. Immunol.* 2016; 196(5):2424
—Figure 1 in *J. Allergy Ther.* 2011(Suppl 1):001 (hereafter referred to as the ''*J. Allergy Ther.* 2011 paper'')
—Figure 2b in *Am. J. Physiol. Lung Cell. Mol. Physiol.* 2011;301(5):L739–L744 (hereafter referred to as the ''*Am. J. Physiol. Lung Cell. Mol. Physiol.* 2011a paper''); Retraction in: *Am. J. Physiol. Lung Cell Mol. Physiol.* 2015;308(9):L981
—Figures 1 and 4 in *Env. Health Perspect.* 2011;119(10):1403–8 (hereafter referred to as the ''*Env. Health Perspect.* 2011 paper''); Retraction: *Env. Health Perspect.* 2016;124(4):A69
—Figures 1a, 2a (middle panel), and 7d in *J. Clin. Invest.* 2011;121(3):941–4 (hereafter referred to as the ''*J. Clin. Invest.* 2011 paper''
—Figures 1a, 1b, and 2b in *PNAS* 2011;108(5):2100–5 (hereafter referred to as the ''*PNAS* 2011 paper''); Retraction: *PNAS* 2014;112(14):E1813

—Figures 5, 6, and 8 in *Am. J. Resp. Crit. Care Med.* 2011;183(12):1644–52 (hereafter referred to as the ''*Am. J. Resp. Crit. Care Med.* 2011 paper'')
—Figures 2c, 4c, and 5c in *J. Immunol.* 2010;185(11):6891–8 (hereafter referred to as the ''*J. Immunol.* 2010 paper''); Erratum in: *J. Immunol.* 2016;196(5):2426
— Figure 6 in *Am. J. Physiol. Lung Cell. Mol. Physiol.* 2010;299(3):L345–L352 (hereafter referred to as the ''*Am. J. Physiol. Lung Cell. Mol. Physiol.* 2010 paper''); Correction in: *Am J. Physiol. Lung Cell Mol. Physiol.* 2015;309(7):L750
—Figures 2a and 2b in *Pediatric Res.* 2010;68(1):70–74; Retraction in: *Pediatric Res.* 2015;77(4):606
—Table 1, Figures 1 and 7 in *Am. J. Physiol. Lung Cell. Mol. Biol.* 2011;44(2):175–84 (hereafter referred to as the ''*Am. J. Physiol. Lung Cell. Mol. Biol.* 2011b paper'')
—Figure 3a in *Am. J. Resp. Crit. Care Med.* 2010;181(7):666–75; Expression of Concern: *Am. J. Resp. Crit. Care Med.* 2015;192(6):771
—Figure 4d in *PNAS* 2009;106(28):11691–6; Correction in: *PNAS* 2015;112(29):E3970
—Figures 1a, 1b, 5a, and 5b in *J. Immunol.* 2009;182(12):7818–27; Correction in: *J. Immunol.* 2015;195(6):2917
—Figure 5B in *Am. J. Resp. Crit. Care Med.* 2009;180(1):11–18 (hereafter referred to as the ''*Am. J. Resp. Crit. Care Med.* 2009 paper'')
—Figures 3B and 3C in *NMR Biomed.* 2009;22(5):502–15; Erratum in: *NMR Biomed.* 2015;28(9):1185
—Figures 5b, 7b, 7c, 8c, and 9a in *J. Biol. Chem.* 2009;284(17):11309–17; Correction in: *J. Biol. Chem.* 2016;291(37):19257
—Figure 1 in *Am. J. Physiol. Lung Cell. Mol. Biol.* 2009;41(1):107–13
—Figures 1b and 1c in *J. Leukoc. Biol.* 2009;85(1):124–31
—Figure 1a in *J. Clin. Inv.* 2008;118(10):3462–9; Retraction: *J. Clin. Inv.* 2016;126(5)
—Figure 9a in *Am. J. Physiol. Lung Cell. Mol. Physiol.* 294(1):L139–L148, 2008; Retraction: *Am. J. Physiol. Lung Cell Mol. Physiol.* 308(8):L854, 2015
—Figures 1a, 1b, and 1c in *J. Immunol.* 2007;2179:4367–75 (hereafter referred to as the ''*J. Immunol.* 2007 paper''); Correction: *J. Immunol.* 2016;196:2425
—Figure 1a in *PLoS One* 2012;7(9):e45667; Retraction: *PloS One* 2016; *http://dx.doi.org/10.1371/journal.pone.0155287*
—Figures 4 and 6 in *J. Allergy Ther.* 2012;S1:004
—Figure 2b in a draft manuscript for *PLoS One* 2014;9(5):e97951; Corrected before publication
—Figures 7a and 7b in a draft manuscript for *Am. J. Physiol. Lung Cell. Mol. Biol.* 2014;51(6):810–21

• fabricated flexiVent data that were included in twenty-one (21) figure panels in the following twelve (12) published papers:

—Figure 2a in the *Pediatric Res.* 2013 paper
—Figure 6a in the *J. Allergy and Clin. Immunol.* paper
—Figure 8 in *J. App. Physiol.* 2012;112(9):1437–44 (hereafter referred to as the ''*J. App. Physiol.* 2012 paper'')
—Figures 2 and 3d in the *Free Rad. Biol. Med.* paper
—Figure 1a in the *PLoS One* 2011 paper
—Figure 5 in the *Am. J. Resp. Crit. Care Med.* 2011 paper
—Figures 1b, 1d, and 3 in the *Am. J. Physiol. Lung Cell. Mol. Physiol.* 2011a paper
—Figures 1 and 4 in the *Env. Health Perspec.* 2011 paper
—Figure 2a (right panel) in the *J. Clin. Inv.* 2011 paper
—Figures 1a and 2a in the *PNAS* 2011 paper
—Figures 2c, 4c, and 5c in the *J. Immunol.* 2010 paper
—Figures 1a, 1b, and 1c in the *J. Immunol.* 2007 paper

• falsified cytokine multiplex immunoassay data for murine bronchoalveolar lavage by changing certain numerical values in datasets generated by the assay, or fabricated multiplex immunoassay data, and provided the false data to investigators for inclusion in fourteen (14) figure panels and one (1) table in eleven (11) published papers, one (1) manuscript, and two (2) research records.

• falsified multiplex data that were included in thirteen (13) figure panels and one (1) table in the following ten (10) published papers, one (1) manuscript, and one (1) research record:

—Table 3 and Figure 4 in *Am. J. Resp. Crit. Care Med.* 2012;186(5):404–11
—Figures 3b and 3c in *Am. J. Physiol. Lung Cell. Mol. Physiol.* 2012;303(3):L181–L188
—Figures 1 and 3 in the *Am. J. Physiol. Lung Cell. Mol. Biol.* 2012 paper
—Figure 3 in the *J. Allergy Ther.* 2011 paper
—Figure 4 in the *Am. J. Physiol. Lung Cell. Mol. Physiol.* 2011a paper
—Figure 3 in the *Am. J. Physiol. Lung Cell. Mol. Biol.* 2011b paper
—Figure 2 in the *J. Physiol. Lung Cell. Mol. Physiol.* 2010 paper
—Figure 4 in *Am. J. Resp. Crit. Care Med.* 2009;180(12):1218–26
—Figure 7 in the *Am. J. Resp. Crit. Care Med.* 2009 paper
—Figure 1 in *FASEB* 2016;26(11):4743–54
—Figure 2 in a draft manuscript of the 2013 *Env. Health Perspec.* paper
—Unpublished research record for hydroxyproline-related data

• fabricated multiplex data that were included in one (1) figure in the following published paper:

—Figure 7 in the *J. Appl. Physiol.* 2012 paper

Ms. Potts Kant entered into a Voluntary Exclusion Agreement (Agreement) and voluntarily agreed, beginning on October 1, 2019:

(1) To exclude herself permanently from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement programs of the United States Government referred to as ''covered transactions'' pursuant to HHS' Implementation (2 CFR part 376) of OMB Guidelines to Agencies on Governmentwide Debarment and Suspension, 2 CFR part 180 (collectively the ''Debarment Regulations''); and

(2) to exclude herself permanently from serving in any advisory capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

Elisabeth A. Handley,

Interim Director, Office of Research Integrity.

[FR Doc. 2019–24291 Filed 11–6–19; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities'' unless the Secretary waives interest in whole or part, or a different rate is prescribed by statute, contract, or

repayment agreement. The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10⅛%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2019. This rate is based on the Interest Rates for Specific Legislation, ''National Health Services Corps Scholarship Program (42 U.S.C. 254o(b)(1)(A))'' and ''National Research Service Award Program (42 U.S.C. 288(c)(4)(B)).'' This interest rate will be applied to overdue debt until the Department of Health and Human Services publishes a revision.

David C. Horn,

Director, Office of Financial Policy and Reporting.

[FR Doc. 2019–24237 Filed 11–6–19; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–new]

Agency Information Collection Request: 60-Day Public Comment Request

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before January 6, 2020.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier OS–0990-new-60D and project title for reference., to *Sherrette.funn@hhs.gov,* or call 202–795–7714, the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: OASH specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Health Evaluation of Pregnancy Prevention Program Replications for High Risk and Hard to Reach Youth.

Type of Collection: OMB No. 0990–NEW.

Abstract: The Office of the Assistant Secretary for Health (OASH), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB on a new information collection request. OASH seeks to collect information to understand whether previously proven adolescent pregnancy programs have similar effects on knowledge, attitudes, beliefs, intentions, and behaviors related to sexual activity and health among different youth in different locations, especially among understudied and hard-to-reach youth. We propose to collect both qualitative and quantitative information in a quasi-experimental design with a matched comparison group. Approximately 12 organizations implementing a broad range of previously proven-effective pregnancy prevention programs (including sexual health education, sexual risk avoidance, and youth development programs) will recruit hard to reach or high-risk youth. Youth will complete surveys at baseline, immediately following the intervention, and at three months follow-up, yielding quantitative data about youth knowledge, attitudes, beliefs, intentions, and behaviors related to sexual health. Surveys will last for about 50 minutes. Focus groups yielding qualitative data about youth perspectives about adolescent pregnancy prevention programs will occur after the interventions are complete and will last for approximately 90 minutes.

Need and Proposed Use of the Information: Rates of pregnancy among hard-to-reach, high-risk, vulnerable, or understudied youth are significantly higher than the general population. However, there have been few evaluations assessing whether programs that have been previously proven successful can be delivered successfully to these youth. Hence, this evaluation is intended to help fill the evidence gap about the efficacy and effectiveness of existing pregnancy prevention programs among high-risk, vulnerable, or understudied youth. To enhance the rigor of the evaluation, a matched comparison group will be identified. OASH plans to use the findings of this evaluation to inform guidance to HHS grantees and prospective grantees on approaches for replication of pregnancy prevention programs for hard-to-reach and underserved youth.

Likely respondents: Respondents will include youth aged, and their parents/guardians. Respondents will also include youth in a matched comparison group (''comparison youth'').

Burden: Exhibit 1 summarizes the total annual burden hours estimated for this ICR. This hour-burden estimate includes time spent by program youth, comparison group youth, and parents/guardians of both groups to complete data collection for the ICR.

Respondents	Form name	Max number of respondents	Average burden per response (hours)	Total max burden (hours)
Youth Program Participants	Baseline survey	3,060	0.83	2,540
	First follow-up survey	1,836	0.83	1,524
	3-month follow-up survey	1,102	0.83	914
	Focus group assent	1,193	0.25	298
	Focus group protocol	1,074	1.50	1,611
Youth Comparison Group Participants.	Baseline survey	9,181	0.83	7,620
	First follow-up survey	1,836	0.83	1,524
	3-month follow-up survey	1,101	0.83	914
Parents/Guardians	Enrollment forms	4,708	0.25	1,177
	Parental consent	14,124	0.25	3,531
Total Burden				21,654

Terry Clark,

Asst Paperwork Reduction Act Reports Clearance Officer,Office of the Secretary.

[FR Doc. 2019–24296 Filed 11–6–19; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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, NICHD.

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 intramural programs and projects conducted by the Eunice Kennedy Shriver National Institute of Child Health & Human Development, 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, NICHD.

Date: December 6, 2019.

Open: 8:30 a.m. to 11:45 a.m.

Agenda: A report by the Scientific Director, NICHD, on the status of the NICHD Division of Intramural Research; talks by various intramural scientists, and current organizational structure.

Place: National Institutes of Health, Building 31A, 31 Center Drive, Room 2A48, Bethesda, MD 20892.

Closed: 11:45 a.m. to 4:00 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 31A, 31 Center Drive, Room 2A48, Bethesda, MD 20892.

Contact Person: Constantine A. Stratakis, MD, D(med)Sci, Scientific Director, Acting Director, Division of Intramural Population Health Research (DIPHR), Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31A, Room 2A46, Bethesda, MD 20892, 301–594–5984, *stratakc@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/meetings/Pages/index.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: November 1, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–24261 Filed 11–6–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–1066]

Recreational Boating Safety Projects, Programs, and Activities Funded Under Provisions of the Fixing America's Surface Transportation Act; Fiscal Year 2019

ACTION: Notice.

SUMMARY: The Coast Guard is publishing this notice to satisfy a requirement of the Fixing America's Surface Transportation Act that requires a detailed accounting of the projects, programs, and activities funded under the national recreational boating safety program provision of the Act be published annually in the **Federal Register**. This notice specifies the funding amounts the Coast Guard has committed, obligated, or expended during fiscal year 2019, as of September 30, 2019.

FOR FURTHER INFORMATION CONTACT: For questions on this notice please contact Mr. Jeffrey Decker, U.S. Coast Guard, Regulations Development Manager, (202) 372–1507.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Since 1998, Congress has passed a series of laws providing funding for projects, programs, and activities funded under the national recreational boating safety program, which is administered by the U.S. Coast Guard. For a detailed description of the legislative history, please see the Recreational Boating Safety Projects, Programs, and Activities Funded Under Provisions of the Fixing America's Surface Transportation Act; Fiscal Year 2016 Notice published in the **Federal Register** on April 12, 2017 (82 FR 17671).

These funds are available to the Secretary from the Sport Fish Restoration and Boating Trust Fund (Trust Fund) established under 26 U.S.C. 9504(a) for payment of Coast Guard expenses for personnel and activities directly related to coordinating and carrying out the national recreational boating safety program. Amounts made available under this subsection remain available during the two succeeding fiscal years. Any amount that is unexpended or unobligated at the end of the 3-year period during which it is available, shall be withdrawn by the Secretary and allocated to the States in addition to any other amounts available for allocation in the fiscal year in which they are withdrawn or the following fiscal year.

Use of these funds requires compliance with standard Federal contracting rules with associated lead and processing times resulting in a lag time between available funds and spending. The total amount of funding transferred to the Coast Guard from the Trust Fund, and committed, obligated, and/or expended during fiscal year 2019 for each project is shown below.

Specific Accounting of Funds

The total amount of funding transferred to the Coast Guard from the Sport Fish Restoration and Boating Trust Fund and committed, obligated, and/or expended during fiscal year 2019 for each project is shown in the chart below.

Project	Description	Cost
46 U.S.C. 43 Compliance: Inspection Program/Boat Testing Program.	Provided for continuance of the national recreational boat compliance inspection program, which began in January 2001.	$2,456,799
46 U.S.C. 43 Compliance: Staff Salaries and Travel.	Provided for personnel to oversee manufacturer compliance with 46 USC 43 requirements.	585,586
Administrative Overhead	Office supplies	109,101

Project	Description	Cost
Boating Accident Report Database (BARD) Web System.	Provided for maintaining the BARD Web System, which enables reporting authorities in the 50 States, five U.S. Territories, and the District of Columbia to submit their accident reports electronically over a secure Internet connection.	250,136
Contract Personnel Support	Provided contract personnel to conduct boating safety-related research and analysis.	672,553
National Boating Safety Advisory Council	Provided for member travel and meeting costs for the National Boating Safety Advisory Council meetings.	60,975
Grant Management Training	Provided to facilitate staff training on new grant management requirements	109,531
Recreational Boating Safety Program Travel.	Provided for travel by employees of the Boating Safety Division to gather background and planning information for new recreational boating safety initiatives.	168,301
Reimbursable Salaries	Provided for 18 personnel directly related to coordinating and carrying out the national recreational boating safety program.	2,396,677
Survey	Provided for collecting data to support the National Recreational Boating Survey	469,641

Of the $8.168 million made available to the Coast Guard in fiscal year 2019, $1,971,866 has been committed, obligated, or expended and an additional $5,307,440 of prior fiscal year funds have been committed, obligated, or expended, as of September 30, 2019. The remainder of the FY18 and FY19 funds made available to the Coast Guard (approximately $6,231,389) may be retained for the allowable period for the National Recreational Boating Survey, other projects, or transferred into the pool of money available for allocation through the state grant program.

Authority

This notice is issued pursuant to 5 U.S.C. 552 and 46 U.S.C. 13107(c)(4).

Dated: October 31, 2019.

D.C. Barata,

Captain, U.S. Coast Guard, Director of Inspections & Compliance.

[FR Doc. 2019–24297 Filed 11–6–19; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2018–0006; OMB No. 1660–0103]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Property Acquisition and Relocation for Open Space

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency will submit the information collection described below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. This information collection concerns the property acquisition and relocation for open space process as part of the administration of FEMA's mitigation grant programs, and the withdrawal of three previously proposed forms (FEMA Form 086–0–31a, FEMA Form 086–0–31b, and FEMA Form 086–0–31c) from the information collection included in the initial 60-day public comment period regarding the Severe Risk Property Acquisition (SRPA) direct grant to property owners for acquisition and demolition of severe repetitive loss structures. After reviewing all the comments submitted, FEMA has determined there is no need for SRPA direct grant-related forms at this time. At this time, FEMA has decided not to implement the SRPA direct to property owners grant.

DATES: Comments must be submitted on or before January 6, 2020.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Jennie Orenstein, Grants Policy Branch Chief, FIMA, FEMA, (202) 212–4071, or the Records Management Division, email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: Regulations at 44 CFR part 80 govern property acquisitions for the creation of open space under FEMA's three hazard mitigation assistance (HMA) grant programs: The Pre-Disaster Mitigation program (PDM) and Hazard Mitigation Grant Program (HMGP), authorized under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5121–5207; and the Flood Mitigation Assistance Program (FMA) authorized under the National Flood Insurance Act (NFIA) of 1968, as amended, 42 U.S.C. 4001 *et seq.* Acquisition and relocation of property for open space use is a popular mitigation activity eligible under PDM, HMGP, and FMA. These programs require any property acquired with FEMA funds to be deed restricted and maintained as open space in perpetuity to ensure against future risk from hazards to life and property, and to reduce the need for disaster assistance or insurance payments for damages to property. This proposed information collection previously published in the **Federal Register** on February 27, 2018, at 83 FR 8493 with a 60-day public comment period. The comment period closed on April 30, 2018. FEMA received 92 comments in response to Information Collection 1660–0103, including comments that express both support and opposition to different parts of the collection. Many comments were similar, but they will be recorded as 102 distinct comments since they addressed multiple parts of the collection. Of the 102 comments received, 67 comments were opposed to language in the three new forms pertaining to the Severe Risk Property Acquisition (SRPA) direct grants to property owners that included an option identified as ''Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership.'' The Pathway allowed property owners to build new structures on the land after the existing structures were acquired and demolished by FEMA. A commitment to use the property as open space in perpetuity was not required. The new structures were required to meet current community flood management building codes, which presumably would be to a higher standard than the damaged structure was built to. Mitigation would

thus be accomplished by reducing the long-term risk to a natural hazard. In comparison, the other Pathway SRPA offered was that the subrecipient (local community) could acquire the property and commit the property to open space use in perpetuity. With either Pathway, the choice was up to the property owner, assuming the community was interested in acquisition if the property owner chose that option. A SRPA grant would only be offered under FEMA's Flood Mitigation Assistance (FMA) program.

Eleven comments were supportive of SRPA and the three new related forms. Three comments were neutral and recommended changes to provide support to SRPA. Three comments opposed using the public comment period for discussing the feasibility of SRPA. Six comments were beyond the scope of the information collection and twelve comments were not germane.

The 67 comments submitted in opposition to SRPA's Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership option came from a variety of sources, including State and local government, non-profit organizations, individuals, and anonymous sources. Commenters listed primary reasons for opposition such as:

- Inconsistency under the National Flood Insurance Act (NFIA) of 1968 42 U.S.C. 4104c since the forms only offered property owners one mitigation option, acquisition, and no other mitigation activities such as relocation, structure elevation, or mitigation reconstruction
- Inconsistency under 44 CFR part 80 Property Acquisition and Relocation for Open Space, which restricts post-acquisition land use to outdoor recreational activities, wetlands management, nature reserves, farming (*i.e.,* cultivation, grazing), camping and other uses FEMA determines are compatible with open space and limits the type of new structures that can be built on the property
- Inconsistency with current Hazard Mitigation Assistance (HMA) Guidance for acquisition of properties, and inconsistency with the way FEMA has implemented acquisition projects for the past 30 years, which require the acquired property to be dedicated and maintained in perpetuity as open space for the conservation of natural floodplain functions

Several comments cited additional reasons for opposition to the SRPA forms for Pathway 2: Demolition of Structure(s) Only, Property Owner(s) Retains Ownership, including:

- New structures would endanger first responders in the flood prone area
- Direct grants discourage conversion of developed land to open space
- Direct grants fail to reduce the risk posed to property and human lives
- Lack of robust codes in many communities would not guarantee a rebuild to a higher standard
- Lack of information justifying how Pathway 2 would be cost-effective (an eligibility requirement for all HMA projects), and demonstrate savings over alternative mitigation options
- Risk that direct grants would be abused to spur coastal development

Commenters also noted that the new forms were not clear on who would be responsible for monitoring these properties post-acquisition to ensure that new structures and improvements conform to grant requirements. Without clear identification of responsibilities, there was concern that new structures would not be constructed to meet community flood building standards.

The 11 comments in support of SRPA also came from a variety of sources, including local government, a non-profit organization and individuals. Commenters in support of SRPA provided the following reasons:

- Expedited access to funding that will help survivors recover more quickly
- Reduced risk of experiencing another flood at the same property in the short-term
- Increase in or maintenance of a community's tax base
- SRPA would result in reconstruction to a higher building code
- Provides a good alternative when a state does not prioritize substantially damaged homes, or does not expedite an acquisition project

Of the comments that expressed support, several of them had reservations. For example, one commenter expressed strong support for the property owner to retain land after a demolition but expressed concern regarding what would happen if the local government did not want the property owner to do this. Additionally, the commenter was unsure how the property would be maintained in perpetuity and reported every three years. The comment reflects a misconception about a SRPA direct grant as the property owner who retains ownership would not be required to commit the property to open space in perpetuity. Another commenter supported SRPA but opined that a property owner should only be eligible when neither the local jurisdiction nor state have a flood mitigation plan in place. One association supported SRPA but only if elevation is included in the eligible project list.

Three comments neutral to SRPA came from individuals. The commenters offered recommendations that if followed would make SRPA acceptable to them. One commenter wanted the added option of elevation, in addition to the demolition and property owner retention option. According to the commenter, elevations would address the removal of tax bases and provide more flexibility in areas impacted by flooding.

One individual recommended that to make NFIP more fiscally secure, individuals should be denied NFIP insurance if they reject the options for a buyout, elevation, and mitigation reconstruction project after flooding multiple times in a set number of years and once flood insurance payments total the value of the house. While FEMA recognizes that denying flood insurance to property owners who reject the option to mitigate may incentivize mitigation, FEMA does not have statutory authority to implement such a measure.

Another commenter indicated a spelling error in the header of a form, recommended language change in the Statement of Voluntary Participation form to align more with what is written in the FEMA FORM 086–0–31C and inquired about why the acquisition and demolition process must be done by FEMA and not by the local community. The form with the spelling error is no longer an instrument of this information collection.

Three comments opposed using the public comment period for discussing the feasibility of SRPA. One commenter expressed concern about making a fundamental change to buyout programs through ''the obscure context and mechanism of reinstating and changing a series of federal forms.'' The comment reflects a misconception that adding the forms to the information collection alone would be enough to implement this new type of grant. Adding the forms was a means of FEMA preparing to implement the SRPA grant if FEMA received an appropriation for it. However, FEMA did not receive an appropriation to implement a SRPA grant and has no plans to implement a SRPA grant currently.

Another commenter felt the information collection lacked ''explanatory material for the assumptions and procedures in which the proposed forms are expected to be used . . .'' Specifically, the commenter wanted access to the proposed forms.

FEMA is not able to publicly post the forms because they have not yet been approved by OMB. However, if the commenter reaches out to HMA's Point of Contact for this information collection (Jennie Orenstein), they will be provided access to the forms.

Lastly, one commentator wanted to ''extend and expand the public comment period to allow more knowledgeable evaluation.'' A standard Paperwork Reduction Act information collection requires both a 60-day public comment period, followed by a 30-day public comment period. The program office is responsible for responding to all comments during these two comment periods. The commenter's remark was part of the 60-day comment period and, thus, there will be another 30-day comment period following adjudication of responses and potential changes to forms.

Six comments were beyond the scope of the information collection and involved the following topics:

- Inquire into specific mechanisms used to compel local governments to participate in SRPA grants
- Inquire about funding streams, which do not currently exist for SRPA grants
- Inquire about how to determine if a State and/or community would not have the capacity to manage direct grants
- Inquire about addressing urban flooding by redefining flood zones and providing a socially equitable solution to low to middle income communities when experiencing flooding
- Express a belief that current floodplains are based on best guesses and anecdotal evidence, which leads to inaccuracies

Following Hurricane Harvey, to address the dire circumstances of property owners with substantially damaged homes, FEMA explored implementing a statutory provision in the National Flood Insurance Act, 42 U.S.C 4104c(a)(3), which authorizes FEMA to provide direct grants to property owners with severe repetitive loss (SRL) properties under FMA. After considering the 102 comments submitted mostly in opposition to SRPA but with some supporting it, in some cases with reservations, FEMA has decided not to implement SRPA and to withdraw the three forms related to the SRPA grant, consisting of FEMA Form 086–0–31a, FEMA Form 086–0–31b, and FEMA Form 086–0–31c from the information collection.

FEMA appreciated the input provided, and felt the commenters raised many worthy issues for discussion concerning a direct grant to property owners. Consequently, FEMA intends to pursue an ongoing dialogue with stakeholders, non-governmental organizations, and other entities or individuals, as appropriate, to address the merits and problems with implementing this type of grant.

In response to comments, FEMA has withdrawn three previously proposed forms (FEMA Form 086–0–31a, FEMA Form 086–0–31b, and FEMA Form 086–0–31c) from the information collection included in the initial 60-day public comment period regarding the Severe Risk Property Acquisition (SRPA) direct grant to property owners for acquisition and demolition of severe repetitive loss structures. After reviewing all the comments submitted, FEMA has determined there is no need for SRPA direct grant-related forms at this time. At this time, FEMA has decided not to implement the SRPA direct to property owners grant.

With the withdrawal of the three SRPA-related forms, the information collection contains only three new forms necessary to obtain information for HMA's usual grants: Real Property Status Report, SF–429, Declaration and Release (Declaracion Y Autorizacion) (FEMA Form 009–0–3 or 009–0–4 (Spanish)), and FEMA Form 086–035a (Pages 9–10) NFIP Repetitive Loss Update Worksheet. The fourth form, the Property Owners' Voluntary Participation Statement (FEMA Form 86–0–31) is necessary for FEMA to ensure compliance with regulatory requirements that the property owner's participation in an acquisition is voluntary. See 44 CFR 80.13. This form was published in previous information collections.

The Real Property Status Report, SF–429 is a standard, OMB-approved form under OMB Collection 4040–0016, with a current expiration date of 02/28/2022. It is used to certify that the subrecipient has inspected properties to ensure consistency with the terms of the deed restrictions committing the properties to open space in perpetuity. The SF–429 is an addition to this collection as part of the 2 CFR 200.311 requirements for property management and disposition. While FEMA has always collected property management reports every three years for acquired properties, the SF–429 form was not included in previous collections. Historically, some recipients and subrecipients used the SF–429 forms, and others used their own formats. FEMA is now proposing to use the SF–429 to have a uniform and consistent format.

FEMA collects Declaration and Release, FEMA Form 009–0–3 or Declaracion Y Autorizacion FEMA Form 009–0–4 (Spanish) (OMB No. 1660–0002), to certify an individual's information and eligibility. FEMA will be adding this form to this information collection to obtain necessary information for its eligibility determinations. This form is already approved under OMB Collection 1660–0002, Disaster Assistance Registration, which expires on August 31, 2022.

FEMA Form 086–0–35a (Pages 9–10) NFIP Repetitive Loss Update Worksheet, is a form used by the State, Tribe or local community when acquiring a property to update the status of properties classified as NFIP repetitive loss to indicate if they have been previously acquired, retrofitted, or mitigated through a different eligible project type. These pages are included in an already approved OMB Collection No. 1660–0022, Community Rating System (CRS) Program—Application Letter and CRS Quick Check, Community Annual Recertification and Environmental and Historic Preservation Certifications, which expires on March 31, 2020. This form is necessary to keep records for flood insurance purposes, which allows the NFIP to modify its flood insurance policies.

This proposed information collection previously published in the **Federal Register** on August 9, 2019, at 84 FR 39356 with a 60 day public comment period. FEMA received one comment that did not require a response from the agency. This information collection, OMB No. 1660–0103, expired on January 31, 2018. FEMA is requesting a reinstatement, with change, of a previously approved information collection for which approval has expired. The purpose of this notice is to notify the public that FEMA will submit the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

Title: Property Acquisition and Relocation for Open Space.

Type of Information Collection: Reinstatement, with change, of a previously approved information collection for which approval has expired.

OMB Number: 1660–0103.

Form Titles and Numbers: FEMA Form 086–0–31, Statement of Voluntary Participation for Acquisition of Property for Purpose of Open Space, (OMB No.1660–0103); 009–0–3 (English) and 009–0–4 (Spanish), Declaration and Release, (OMB No. 1660–0002); 086–0–35a (Pages 9–10), NFIP Repetitive Loss Update Worksheet (OMB No. 1660–

0022); SF–429, Real Property Status Report (OMB No. 4040–0016).

Abstract: FEMA and State, Tribal and local recipients of FEMA mitigation grant programs will use the information collected to meet the Property Acquisition requirements to implement acquisition activities under the terms of grant agreements for acquisition and relocation activities. FEMA and State/local grant recipients will also use the information to monitor and enforce the open space requirements for all properties acquired with FEMA mitigation grants.

Affected Public: State, local or Tribal Government; Individuals or Households.

Estimated Number of Respondents: 2,773.

Estimated Total Annual Burden Hours: 11,528.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $696,085.

Estimated Respondents' Operation and Maintenance Costs: There are no annual costs to respondents' operations and maintenance costs for technical services.

Estimated Respondents' Capital and Start-Up Costs: There is no annual start-up or capital costs.

Estimated Total Annual Cost to the Federal Government: The cost to the Federal Government is $687,687.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Maile Arthur,

Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2019–24347 Filed 11–6–19; 8:45 am]

BILLING CODE 9111–47–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0056]

Automated Solutions for the Submission of REAL ID Source Documents

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security.

ACTION: Request for comments.

SUMMARY: The Department of Homeland Security is issuing this request for information to receive input on technologies that could assist states and their residents in the digital submission, receipt, and authentication of documents and information applicants must provide when applying for a REAL ID compliant driver's license or identification card.

DATES: Interested persons are invited to submit comments on or before December 9, 2019. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by docket number DHS–2019–0056 through the *Federal eRulemaking Portal: http://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Director, Identity and Credentialing/REAL ID Program, U.S. Department of Homeland Security, Office of Policy, Strategy, and Plans, Washington, DC 20528, 202–447–3274.

SUPPLEMENTARY INFORMATION: The Department of Homeland Security (DHS) is issuing this request for information to receive input on technologies that could assist states and their residents in the digital submission, receipt, and authentication of documents and information applicants must provide when applying for a REAL ID compliant driver's license or identification card.

I. Public Participation and Request for Comments

Interested persons are invited to comment on this notice by submitting written comments, data, or views using the method identified in the **ADDRESSES** section. DHS encourages you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If you cannot submit your material by using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this notice for alternate instructions. All comments received will be posted without change to *http://www.regulations.gov.*

II. Background and Purpose

The REAL ID Act, passed by Congress in 2005, prohibits federal agencies from accepting for official purposes, a state issued driver's license or identification card, unless the state is meeting minimum security requirements in the Act and implementing regulations. The REAL ID Act requires applicants for a REAL ID-compliant license or card to present certain identity, and citizenship or lawful status, documentation and for states to verify and retain copies of that information.

The REAL ID Act does not specify the mode for presenting the various identity and lawful status and citizenship documentation. However, the regulations include requirements for document authentication and in-person application. DHS is interested in all substantive business and technical proposals that could streamline REAL ID application requirements in a manner that continues to ensure the secure and reliable transmission and receipt of applicant information.

DHS is therefore seeking public comment on how the development and deployment of additional capabilities or technologies can assist in streamlining the process for individuals to submit the required documentation and information when applying for a REAL ID-compliant driver's license or identification card. We are interested in concepts that reduce application burden, processing time, and administrative workload, and that effectively ensure security, protect privacy, and manage risk of fraud. We are also interested in concepts that identify the extent to which the additional capabilities or technologies will increase the adoption rate of individuals obtaining REAL ID-compliant identification. In addition, we are interested in any cost data on the purchase, installation, or implementation of these concepts.

DHS requests comments from the public and interested stakeholders—including entities engaged in the development, testing, and integration of these concepts—for near, medium, and long-term solutions.

DHS will afford significantly greater weight to feedback that identifies specific capabilities and technologies, includes actionable data, or provides viable alternatives that meet statutory objectives and regulatory requirements. Feedback that simply states that a

stakeholder feels strongly that DHS make a change, but that does not contain specific information on how the proposed change would streamline the process or reduce burdens, is much less useful to DHS. DHS is looking for new information or new economic (*i.e.,* cost) data to support any proposed changes.

DHS will review all submissions to determine the viability of specific proposals to meet the objective of streamlining the application process in accordance with the REAL ID Act and implementing regulations. DHS may contact individual submitters for more information. DHS reserves the right to use and share the information submitted with other federal agencies for purposes related to administering the REAL ID Act and implementing regulations.

III. Lists of Questions for Commenters

We provide the below list of non-exhaustive questions to assist in the formulation of comments. However, we do not intend for the list to restrict the issues that commenters may address.

1. What capabilities or technologies are available to allow applicants for REAL ID-compliant credentials to submit digitally, or have digitally submitted on their behalf by a trusted third party, the required documents and information to state driver's licensing agencies?

2. How would states use such capabilities or technologies to authenticate the validity of submitted documents and information?

3. How would states use such capabilities or technologies to verify an applicant's identity from the documents and information submitted?

4. What would be the cost to a stakeholder to purchase, install, or implement these capabilities or technologies?

5. What is the technical readiness level of the potential capabilities or technologies, where have they already been deployed, for what purposes, and what are the performance results?

6. How would states use such capabilities or technologies to ensure that the information is submitted by the genuine applicant?

7. How would the capabilities or technologies protect against fraud or identity theft?

8. How would such capabilities or technologies protect the privacy of any submitted personally identifiable information?

9. What, if any, new risks may result from the use of these new capabilities or technologies and how can they be effectively be managed?

10. What security standards should the described capabilities or technologies meet?

11. How would the capabilities or technologies be integrated into existing state application processes and systems?

12. How quickly could the capabilities or technologies be developed and deployed by the states?

13. How will the new capabilities or technologies increase the adoption rate of individuals obtaining REAL ID-compliant identification?

The Department issues this notice solely for information and program planning purposes. Responses to this notice do not bind DHS to any further actions related to the response.

Dated: November 1, 2019.

Chad Wolf,

Senior Official Performing the Duties of Under Secretary, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security.

[FR Doc. 2019–24330 Filed 11–6–19; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2019–N158; FXES11140400000–190–FF04EF2000]

Receipt of Incidental Take Permit Application and Proposed Habitat Conservation Plan for the Sand Skink, Blue-Tailed Mole Skink, Eastern Indigo Snake, and Gopher Tortoise; Polk County, FL; Categorical Exclusion

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment and information.

SUMMARY: We, the Fish and Wildlife Service (Service), announce receipt of an application from Vulcan Industries, Florida Rock Division, doing business as Florida Rock Industries, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act. The applicant requests the ITP to take the federally listed sand skink, blue-tailed mole skink, and eastern indigo snake and also the gopher tortoise, which is a candidate for Federal listing, incidental to land clearing and excavation of sand in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded, under the National Environmental Policy Act. To make this determination, we used our environmental action statement and low-effect screening form, both of which are also available for public review.

DATES: We must receive your written comments by December 9, 2019.

ADDRESSES:

Obtaining Documents: You may obtain copies of the documents by any of the following methods:

- *Telephone:* Elizabeth Landrum, 772–469–4304.
- *Email: Elizabeth_landrum@fws.gov.*
- *U.S. mail:* Elizabeth Landrum, South Florida Ecological Services Field Office, Attn. Vulcan Industries Permit TE16399D–0, U.S. Fish and Wildlife Service, 1339 20th Street, Vero Beach, FL 32960–3559.
- *In-person:* The documents may be reviewed by appointment during normal business hours at the above address. Please call to make an appointment.
- *Fax:* Elizabeth Landrum, 772–562–4288, Attn.: Permit number ''TE16399D–0.''

Submitting Comments: If you wish to submit comments on any of the documents, you may do so in writing via the above email address, U.S. mail address, or fax number, or you may hand-deliver comments to the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Elizabeth Landrum, by U.S. mail (see **ADDRESSES**) or via phone at 772–469–4304. Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the Fish and Wildlife Service, announce receipt of an application from Vulcan Industries, Florida Rock Division, doing business as Florida Rock Industries, Inc. (applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The applicant requests the ITP to take the federally listed sand skink (*Neoseps reynoldsi*), blue-tailed mole skink (*Eumeces egregius lividus*), and eastern indigo snake (*Drymarchon corais couperi*), and also one candidate for Federal listing, the gopher tortoise (*Gopherus polyphemus*) (covered species), incidental to land clearing and sand mining (project) in Polk County, Florida. We request public comment on the application, which includes the applicant's proposed habitat conservation plan (HCP), and the Service's preliminary determination that this HCP qualifies as ''low-effect,'' categorically excluded under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). To make this determination, we used our

environmental action statement and low-effect screening form, both of which are also available for public review.

Project

The applicant requests a 20-year ITP to take the covered species incidental to the clearing of vegetation, grading, construction of berms and access roads, and the excavation and removal of sand within a 314.56-acre (ac) parcel in Sections 29, 30, and 32, Township 29S, Range 28E, Polk County, Florida. The applicant will take approximately 246.14 ac of occupied skink habitat, 250 ac of occupied indigo snake habitat, and 249.2 ac of occupied gopher tortoise habitat within the parcel. The project will be implemented in phases.

Prior to each phase, skink and gopher tortoise surveys will be conducted along with permitting and relocation, when necessary, in accordance with Florida Fish and Wildlife Conservation Commission guidelines. Gopher tortoise guidelines also will be implemented as applicable prior to each phase. The applicant proposes to mitigate for take of the skinks by purchasing credits in a Service-approved conservation bank in the amounts specified by the Service. The applicant will mitigate for take of the Eastern indigo snake by contributing $180.00 to the Eastern Indigo Snake Fund (Fund) for each ac of habitat unoccupied by skinks as determined through surveys for the species. The snake also is expected to benefit from the applicant's purchase of conservation bank credits for take of the skinks. The applicant would be required to purchase the required skink credits, contribute to the Fund, and implement gopher tortoise guidelines, as applicable, prior to engaging in any phase of the project.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, be aware that your entire comment—including your personal identifying information—may be made available to the public. While you may request that we withhold your personal identifying information, we cannot guarantee that we will be able to do so.

Our Preliminary Determination

The Service has made a preliminary determination that the applicant's project, including land clearing, construction of berms and access roads, excavation and removal of sand, and the proposed mitigation measures, would individually and cumulatively have a minor or negligible effect on the covered species and the environment. Therefore, we have preliminarily concluded that the ITP for this project would qualify for categorical exclusion and the HCP would be low effect under our NEPA regulations at 43 CFR 46.205 and 46.210. A low-effect HCP is one that would result in

(1) Minor or negligible effects on federally listed, proposed, and candidate species and their habitats;

(2) Minor or negligible effects on other environmental values or resources; and

(3) Impacts that, when considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not over time result in significant cumulative effects to environmental values or resources.

Next Steps

The Service will evaluate the application and the comments received to determine whether to issue the requested permit. We will also conduct an intra-Service consultation pursuant to section 7 of the ESA to evaluate the effects of the proposed take. After considering the above findings, we will determine whether the permit issuance criteria of section 10(a)(1)(B) of the ESA have been met. If met, the Service will issue ITP number TE16399D–0 to the applicant.

Authority

The Service provides this notice under section 10(c) (16 U.S.C. 1539(c)) of the ESA and NEPA regulation 40 CFR 1506.6.

Roxanna Hinzman,

Field Supervisor, South Florida Ecological Services Office.

[FR Doc. 2019–24341 Filed 11–6–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–MB–2019–N124; FF09M21200–190–FXMB1231099BPP0; OMB Control Number 1018–0167]

Agency Information Collection Activities; Eagle Take Permits and Fees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing to reinstate a previously approved information collection with revisions.

DATES: Interested persons are invited to submit comments on or before January 6, 2020.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: JAO/1N PRB/PERMA, 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0167 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

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 information collection request (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 Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service 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: Information collection requirements associated with the Federal fish and wildlife permit applications and reports for both migratory birds and eagles are currently approved under a single OMB control number, 1018–0022, ''Federal Fish and Wildlife Permit Applications and Reports—Migratory Birds and Eagles; 50 CFR 10, 13, 21, 22.'' With this submission to OMB, we are proposing to reinstate OMB Control Number 1018–0167, ''Eagle Take Permits and Fees, 50 CFR 22,'' in order transfer the eagle requirements back in to a separate information collection. This transfer will facilitate easier management of the information collection requirements associated with eagles. We are not proposing any changes to the currently approved eagle requirements. This request will simply transfer the information collection requirements associated with eagles back in to their original collection under OMB Control Number 1018–0167.

The Bald and Golden Eagle Protection Act (Eagle Act; 16 U.S.C. 668–668d) prohibits take of bald eagles and golden eagles except pursuant to Federal regulations. The Eagle Act regulations at title 50, part 22 of the Code of Federal Regulations (CFR) define the ''take'' of an eagle to include the following broad range of actions: To ''pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, or disturb.'' The Eagle Act allows the Secretary of the Interior to authorize certain otherwise prohibited activities through regulations.

All Service permit applications associated with eagles are in the 3–200 and 3–202 series of forms, each tailored to a specific activity based on the requirements for specific types of permits. For this reinstatement, we combined Forms 3–200–10c and 3–200–10d into one form (3–200–10c) to reduce the number of application forms and help streamline the application process. Since both forms dealt with possession for education purposes, and asked virtually the same questions of the applicant, there was no need to have separate forms. We collect standard identifier information for all permits. The information that we collect on applications and reports is the minimum necessary for us to determine if the applicant meets/continues to meet issuance requirements for the particular activity.

In addition to reinstating this information collection, the Service will request OMB approval to automate certain eagle permit forms. The Service's new ''ePermits'' initiative is an automated permit application system that will allow the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of the ePermits initiative is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This new system will enhance the user experience by allowing users to enter data from any device that has internet access, including personal computers, tablets, and smartphones. It will also link the permit applicant to the Pay.gov system for payment of the associated permit application fee.

We anticipate including the following Service forms in the ePermits initiative: FWS Forms 3–200–14, 3–200–15a, 3–200–15b, 3–200–16, 3–200–18, 3–200–69, 3–200–72, 3–200–77, 3–200–78, 3–200–82, and 3–202–11 through 3–202–16.

Title of Collection: Eagle Take Permits and Fees, 50 CFR 22.

OMB Control Number: 1018–0167.

Form Number: FWS Forms 3–200–14, 3–200–15a, 3–200–15b, 3–200–16, 3–200–18, 3–200–71, 3–200–72, 3–200–77, 3–200–78, 3–200–82, 3–202–11 through 3–202–16, and 3–2480.

Type of Review: Reinstatement of a previously approved information collection with revisions.

Respondents/Affected Public: Individuals and businesses. We expect the majority of applicants seeking long-term permits will be in the energy production and electrical distribution business.

Total Estimated Number of Annual Respondents: 11,273.

Total Estimated Number of Annual Responses: 11,520.

Estimated Completion Time per Response: Varies from 15 minutes to 650 hours, depending on activity.

Total Estimated Number of Annual Burden Hours: 258,996.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for applications; annually or on occasion for reports.

Total Estimated Annual Nonhour Burden Cost: $1,725,500 (primarily associated with application processing fees).

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.*).

Dated: November 4, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–24300 Filed 11–6–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2019–N121; FF07CAMM00–178–FXES111607MRG01; OMB Control Number 1018–0070]

Agency Information Collection Activities; Incidental Take of Marine Mammals During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service, we), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before January 6, 2020.

ADDRESSES: Send your comments on the information collection request by mail to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB/PERMA (JAO/1N), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0070 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503.

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 information collection request (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 Service; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Service enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Service 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: This information collection includes requirements associated with specified oil and gas industry activities and their incidental taking of polar bears, Pacific walruses, and northern sea otters in Alaska. The Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), imposed, with certain exceptions, a moratorium on the taking of marine mammals. Section 101(a)(5)(A) of the MMPA directs the Secretary of the Interior to allow, upon request by citizens of the United States, the taking of small numbers of marine mammals incidental to specified activities (other than commercial fishing) if the Secretary makes certain findings and prescribes specific regulations that, among other things, establish permissible methods of taking.

Applicants seeking to conduct activities must request a Letter of Authorization (LOA) for the specific activity and submit on-site monitoring reports and a final report of the activity to the Secretary. This is a nonform collection. Respondents must comply with the regulations at 50 CFR 18.27, which outline the procedures and requirements for submitting a request. Specific regulations governing authorized incidental take of marine mammals activities are contained in 50 CFR 18, subparts J (Beaufort Sea) and K (Cook Inlet). These regulations provide the applicant with a detailed description of information that we need to evaluate the proposed activity and determine if it is appropriate to issue specific regulations and, subsequently, LOAs.

We use the information to verify the findings required to issue incidental take regulations, to decide if we should issue an LOA, and (if an LOA is issued) what conditions should be included in the LOA. In addition, we analyze the information to determine impacts to polar bears, Pacific walruses, northern sea otters, and the availability of those marine mammals for subsistence purposes of Alaska Natives.

Title of Collection: Incidental Take of Marine Mammals During Specified Activities, 50 CFR 18.27 and 50 CFR 18, Subparts J and K.

OMB Control Number: 1018–0070.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Oil and gas industry companies.

Respondent's Obligation: Required to Obtain or Retain a Benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

Type of action	Number of annual respondents	Number of responses each	Total annual responses	Average completion time (hours)	Total annual burden hours
Polar Bear Den Detection Report:					
Private Sector	4	1	4	50	200
Incidental Take of Marine Mammals—Final Monitoring Report:					
Private Sector	20	1.25	25	10	250
Incidental Take of Marine Mammals—Onsite Monitoring and Observation Reports:					
Private Sector	20	15	300	1.5	450
Incidental Take of Marine Mammals—Application for Regulations: [1]					
Private Sector	20	0.1	2	150	300
Incidental Take of Marine Mammals—LOA Requests:					
Private Sector	20	1.25	25	24	600
Total	84		356		1,800

[1] Occurs once every 5 years.

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.*).

Dated: November 4, 2019.

Madonna L. Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2019–24298 Filed 11–6–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

Fee Rate and Fingerprint Fees

AGENCY: National Indian Gaming Commission, DOI.

ACTION: Notice.

SUMMARY: Notice is hereby given, that the National Indian Gaming Commission has adopted its annual fee rates of 0.00% for tier 1 and 0.062%

(.00062) for tier 2, which remain the same as current fee rates. The tier 2 annual fee rate maintains the lowest fee rate of the last nine years. These rates shall apply to all assessable gross revenues from each gaming operation under the jurisdiction of the Commission. If a tribe has a certificate of self-regulation, the fee rate on Class II revenues shall be 0.031% (.00031) which is one-half of the annual fee rate.

The National Indian Gaming Commission has also adopted its fingerprint processing fee of $22 per card effective November 1, 2019. These new fee represent a $4 increase from the current fingerprint processing fee of $18 per card which have been in effect since 10/1/2016. The increase for this year's fingerprint fee is a result of bolstering information security systems and additional measures necessary to ensure compliance with Federal Bureau of Investigation requirements. The annual fee rates and fingerprint fee being adopted here are effective November 1, 2019, and will remain in effect until the Commission adopts new rates and fee.

FOR FURTHER INFORMATION CONTACT: Yvonne Lee, National Indian Gaming Commission, 1849 C Street NW, Mail Stop #1621, Washington, DC 20240; telephone (202) 632–7003; fax (202) 632–7066.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act (IGRA) established the National Indian Gaming Commission, which is charged with regulating gaming on Indian lands.

Commission regulations (25 CFR 514) provide for a system of fee assessment and payment that is self-administered by gaming operations. Pursuant to those regulations, the Commission is required to adopt and communicate assessment rates and the gaming operations are required to apply those rates to their revenues, compute the fees to be paid, report the revenues, and remit the fees to the Commission. All gaming operations within the jurisdiction of the Commission are required to self-administer the provisions of these regulations, and report and pay any fees that are due to the Commission.

Pursuant to 25 CFR 514, the Commission must also review regularly the costs involved in processing fingerprint cards and set a fee based on fees charged by the Federal Bureau of Investigation and costs incurred by the Commission. Commission costs include Commission personnel, supplies, equipment costs, and postage to submit the results to the requesting tribe.

Dated: November 1, 2019.

Kathryn C. Isom-Clause,

Vice Chair.

Dated: November 1, 2019.

E. Sequoyah Simermeyer,

Associate Commissioner.

[FR Doc. 2019–24266 Filed 11–6–19; 8:45 am]

BILLING CODE 7565–01–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–039]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: November 14, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. Nos. 731–TA–1438 and 1440 (Final) (Acetone from Singapore and Spain). The Commission is currently scheduled to complete and file its determinations and views of the Commission by November 29, 2019.
5. *Outstanding action jackets:* None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: November 4, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–24377 Filed 11–5–19; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–19–040]

Sunshine Act Meetings

Agency Holding the Meeting: United States International Trade Commission.

TIME AND DATE: November 15, 2019 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agendas for future meetings:* None.
2. Minutes.
3. Ratification List.
4. Vote on Inv. No. 731–TA–1444 (Final) (Carbon and Alloy Steel Threaded Rod from Thailand). The Commission is currently scheduled to complete and file its determination and views of the Commission by December 5, 2019.
5. *Outstanding action jackets:* None.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: November 4, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–24379 Filed 11–5–19; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0031]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory

Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Campus Program Grantee Needs and Progress Assesment Tool.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0031. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes current grantees under the Grants to Reduce Sexual Assault, Domestic Violence, Dating Violence, and Stalking on Campus Program. The Campus Program strengthens the response of institutions of higher education to the crimes of sexual assault, domestic violence, dating violence and stalking on campuses and enhances collaboration among campuses, local law enforcement, and victim advocacy organizations. Eligible applicants are institutions of higher education. The affected public includes the approximately 100 institutions of higher education currently funded through the Campus program.

The Grantee Needs and Progress Assessment Tool will be used to determine the training and technical assistance needs of Campus Program grantees—both new and continuation grantees—throughout the life of the grant award as well measure the development of the capacity of grantees to respond and prevent violence against women on their campuses. In addition, the tool will help campuses and OVW document the impact of their grant-funded work, promote sustainability of important intervention and prevention activities, and provide outcome-based information throughout the life of the grant to help OVW-funded technical assistance providers and grantees make changes to the goals and objectives necessary to achieve the Congressional purpose of the Campus Program.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 100 respondents (Campus Program grantees) approximately 30 minutes to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Justice for Families Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 140 hours, that is 70 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 4, 2019.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2019–24290 Filed 11–6–19; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[CPCLO Order No. 012–2019]

Privacy Act of 1974; Systems of Records

AGENCY: United States Department of Justice.

ACTION: Notice of a new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A–108, notice is hereby given that the United States Department of Justice (DOJ or Department), proposes to develop a new system of records titled ''DOJ Identity, Credential, and Access Service Records System,'' JUSTICE/DOJ–020. DOJ proposes to establish this system of records as a part of the Department's Enterprise Identity, Credential, and Access Management services, which will serve as a central and authoritative identity management data repository for DOJ identity information. JUSTICE/DOJ–020 combines user information from various data sources to provide a centralized and authoritative identity governance solution.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this system of records is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by December 9, 2019.

ADDRESSES: The public, OMB, and Congress are invited to submit any comments by mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Two Constitution Square, 145 N Street NE, Suite 8W.300, Washington, DC 20530; by facsimile at (202) 307–0693; or by email at *privacy.compliance@usdoj.gov.* To ensure proper handling, please reference the above CPCLO Order No. on your correspondence.

FOR FURTHER INFORMATION CONTACT: Nickolous Ward, DOJ Chief Information Security Officer, (202) 514–3101, 145 N Street NE, Washington, DC 20530.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Information Security Modernization Act of 2014, DOJ is responsible for complying with policies and procedures issued by the OMB and implementing information security protections commensurate with the risk and magnitude of harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems. 44 U.S.C. 3554. OMB policy requires agencies to properly identify, credential, monitor, and manage subjects that access Federal resources, including information, information systems, facilities, and secured areas. *See* Office of Management and Budget M–19–17, Enabling Mission Delivery through Improved Identity, Credential,

and Access Management (May 21, 2019). DOJ's compliance with the Federal Identity, Credential, and Access Management (ICAM) policy is essential to meeting DOJ's information security and privacy risk management responsibilities.

JUSTICE/DOJ–020 will serve as DOJ's central and authoritative ICAM record repository for DOJ Identity Services, a program that allows DOJ management and information system staff to monitor and manage enterprise identities (*e.g.,* DOJ employees, contractors, mission or business partners, devices, etc.) to DOJ information and information systems. DOJ will collect and maintain identity records in order to manage enterprise accounts across DOJ components and business units within DOJ. Such activities can include, but are not limited to, account request, creation, modification, removal, and annual account recertification across DOJ components and business units within DOJ.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: November 1, 2019.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

JUSTICE/DOJ–020

SYSTEM NAME AND NUMBER

DOJ Identity, Credential, and Access Service Records System, JUSTICE/DOJ–020.

SECURITY CLASSIFICATION:

The system is unclassified.

SYSTEM LOCATION:

Records will be maintained electronically at one or more of the Department's data centers, including, but not limited to, one or more of the Department's Core Enterprise Facilities (CEF), including, but not limited to, the Department's CEF East, Clarksburg, WV 26306, or CEF West, Pocatello, ID 83201. Records within this system of records may be transferred to a Department-authorized cloud service provider within the Continental United States. Access to these electronic records may occur at any location at which the DOJ, Justice Management Division, Office of the Chief Information Officer, Cybersecurity Services Staff (DOJ CSS) operates or where DOJ CSS operations are supported, including the Two Constitution Square building, 145 N Street NE, Washington, DC 20530. Some or all of the information in the system may be duplicated at other locations where the Department has granted direct access to support DOJ CSS operations, system backup, emergency preparedness, and/or continuity of operations. To determine the location of a particular record maintained in this system of records, contact the system manager, whose contact information is listed in the ''SYSTEM MANAGER(S)'' paragraph, below.

SYSTEM MANAGER(S):

DOJ Chief Information Security Officer, (202) 514–3101, 145 N Street NE, Washington, DC 20530.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.;* 44 U.S.C 3504; Homeland Security Presidential Directive 12: Policy for a Common Identification Standard for Federal Employees and Contractors (Aug. 2015); FIPS 201–2, Personal Identity Verification (PIV) of Federal Employees and Contractors (Aug. 2013); OMB Circular A–130, Managing Information as a Strategic Resource (July 2016); OMB Memorandum M–10–28, Clarifying Cybersecurity Responsibilities and Activities of the Executive Office of the President and the Department of Homeland Security (July 6, 2010); OMB Memorandum M–14–03, Enhancing the Security of Federal Information and Information Systems (Nov. 18, 2013); OMB Memorandum M–19–17, Enabling Mission Delivery through Improved Identity, Credential, and Access Management (May 21, 2019).

PURPOSE(S) OF THE SYSTEM:

DOJ establishes this system of records to support the information and information systems serving as the central and authoritative identity management data repository for DOJ enterprise identities. This system of records will allow management and IT staff to monitor and manage user access to DOJ information systems across departments and business units within DOJ. Such activities include, but are not limited to, account requests, creation, modification, removal, and annual account recertification.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DOJ employees and contractors, DOJ information system users, and individuals granted access to DOJ information.

CATEGORIES OF RECORDS IN THE SYSTEM:

User identity information, such as name and associated identities; user identification information (*e.g.,* username); home and/or work address(es); personal and/or work email address(es); personal and/or work telephone numbers; duty city, county, state, and/or station information; Social Security Number; sponsorship information; employee identification information; employment and enrollment information; assigned government furnished equipment information (mobile device identifiers); and biometric identifiers (*e.g.,* fingerprints and high-resolution photographs).

Identity investigation and adjudication information.

Assigned card information, such as associated identity information; card activated date; card delivered date; credential and certificate information; card reissue request and replacement information; card replacement status; card reprint request status; card suspended and termination dates; and user account flags.

Training information, including but not limited to, date training is required to be completed, date training was assigned, and date training was completed.

Access management information, such as information system roles held by an identity.

RECORD SOURCE CATEGORIES:

Information will feed into this system of records from a number of source systems: USAccess (including records in GSA/GOVT–7, Personal Identity Verification Identity Management System (PIV IDMS), last published in full at 71 FR 56983 (Sept. 28, 2006)); National Finance Center (NFC); Justice Security Tracking and Adjudication Record System (JSTARS) (including records in JUSTICE/DOJ–006, Personnel Investigation and Security Clearance Records for the Department of Justice, last published in full at 67 FR 59864 (Sept. 24, 2002)); and LearnDOJ.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system of records may be disclosed as a routine use, pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected.

(A) Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or

regulatory in nature—the relevant records may be referred to the appropriate federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

(B) To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

(C) To any person or entity that the DOJ has reason to believe possesses information regarding a matter within the jurisdiction of the DOJ, to the extent deemed to be necessary by the DOJ in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

(D) In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when DOJ determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(E) To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or informal discovery proceedings.

(F) To the news media and the public, including disclosures pursuant to 28 CFR. 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(G) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(H) To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

(I) To appropriate officials and employees of a Federal agency or entity that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail, or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract, or the issuance of a grant or benefit.

(J) To a former employee of the Department for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(K) To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

(L) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

(M) To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(N) To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(O) To another Federal agency or Federal entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach, or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

(P) To any agency, organization, or individual for the purpose of performing the Department's authorized audit or oversight operations and meeting related reporting requirements.

(Q) To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

All records in this system of records are maintained electronically and are in compliance with applicable executive orders, statutes, and agency implementing recommendations. Electronic records are stored in databases and/or on hard disks, removable storage devices, or other electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records can be retrieved through the system portal or through a connecting system via a connector or application program interface (API). The records are searchable using First Name, Last Name, Email Address, Social Security Number, Birth Date, Components, Process Status, and Person ID.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 3.2, for records created and maintained by Federal agencies related to protecting the security of information technology systems and data, and responding to computer security incident.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The system meets all DOJ requirements for authorization to operate per DOJ Order 0904, Cybersecurity Program. Specifically, information in this system is maintained in accordance with applicable laws, rules, and policies on protecting individual privacy. The servers storing electronic data and the backup tapes stored onsite are located in locked rooms with access limited to authorized agency personnel. Backup tapes stored offsite are maintained in accordance with a government contract that requires adherence to applicable laws, rules, and

policies. Internet connections are protected by multiple firewalls. Security personnel conduct periodic vulnerability scans using DOJ-approved software to ensure security compliance and security logs are enabled for all computers to assist in troubleshooting and forensics analysis during incident investigations. Users of individual computers can only gain access to the data by a valid user identification and authentication.

RECORD ACCESS PROCEDURES:

All requests for access to records must be in writing and should be mailed to the Justice Management Division, ATTN: FOIA Contact, Robert F. Kennedy Department of Justice Building, Room 1111, 950 Pennsylvania Avenue NW, Washington, DC 20530, sent by facsimile to (202) 616–6695, or emailed to *JMDFOIA@usdoj.gov.* The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request must describe the records sought in sufficient detail to enable Department personnel to locate them with a reasonable amount of effort. The request must include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury.

Although no specific form is required, requesters may obtain sample request forms from the FOIA/Privacy Act Mail Referral Unit, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530, or on the Department of Justice website: *https://www.justice.gov/oip/oip-request.html.*

More information regarding the Department's procedures for accessing records in accordance with the Privacy Act can be found at 28 CFR part 16 subpart D, ''Protection of Privacy and Access to Individual Records Under the Privacy Act of 1974.''

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend records maintained in this system of records must direct their requests to the address indicated in the ''RECORD ACCESS PROCEDURES'' paragraph, above. All requests to contest or amend records must be in writing, with the envelope and letter clearly marked ''Privacy Act Amendment Request.''

All requests must state clearly and concisely what record is being contested, the reasons for contesting it, and the proposed amendment to the record.

More information regarding the Department's procedures for amending or contesting records in accordance with the Privacy Act can be found at 28 CFR 16.46, ''Requests for Amendment or Correction of Records.''

NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the ''RECORD ACCESS PROCEDURES'' paragraph, above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2019–24246 Filed 11–6–19; 8:45 am]

BILLING CODE 4410–NW–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0032]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** on June 28, 2019 allowing for a 60 day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until December 9, 2019.

FOR FURTHER INFORMATION CONTACT: Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.* Written comments and/or suggestions can also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20530 or sent to *OIRA_submissions@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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: Extension of a currently approved collection.

(2) Title of the Form/Collection: Semi-Annual Progress Report for Justice for Families Program.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: 1122–0032. U.S. Department of Justice, Office on Violence Against Women.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: The affected public includes the current grantees under the Justice for Families Program. The Justice for Families Program improves the response of all aspects of the civil and criminal justice system to families with a history of domestic violence, dating violence, sexual assault and stalking, or in cases involving allegations of child sexual abuse. Eligible applicants are states, units of local government, courts, Indian tribal governments, nonprofit organizations, legal service providers, and victim services providers. The affected public includes the approximately 70 Justice for Families Program grantees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 70 respondents

(Justice for Families Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Justice for Families Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 140 hours, that is 70 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 4, 2019.

Melody Braswell,

Department Clearance Officer, PRA U.S. Department of Justice.

[FR Doc. 2019–24289 Filed 11–6–19; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Pre-Implementation Planning Checklist for State Unemployment Insurance Information Technology Modernization Projects

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed revision for the authority to conduct the information collection request (ICR) titled ''Pre-Implementation Planning Checklist for State Unemployment Insurance Information Technology Modernization Projects.'' 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 January 6, 2020.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Jagruti Patel by telephone at (202) 693–3059 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *patel.jagruti@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, Room S–4524, 200 Constitution Avenue NW, Washington, DC 20210; by email: *patel.jagruti@dol.gov;* or by Fax at (202) 693–3975.

FOR FURTHER INFORMATION: Contact Jagruti Patel by telephone at (202) 693–3059 (this is not a toll-free number) or by email at *patel.jagruti@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

Building on lessons learned from previous state implementations of modernized Unemployment Insurance (UI) Information Technology (IT) systems, ETA facilitated the development of a UI IT Modernization Pre-Implementation Planning Checklist for states to use prior to ''going live'' with a new system. In 2017, ETA implemented the Pre-Implementation Planning Checklist for State UI IT Modernization Projects, ETA 9177 report. Subsequently, ETA received comments from State Workforce Agencies (SWAs) and other entities recommending additional items to be included in the checklist and seeking clarification on the instructions for using the report. In addition, the Bureau of Labor Statistics recommended an eleventh project category to address labor market information (LMI) Federal reporting functions. ETA has enhanced the ETA 9177 report and the accompanying instructions to address these comments. This enhanced version of the ETA 9177 report improves the document's structure, provides additional clarity on the verification steps for the ten existing project categories, and adds a new category to address verification steps for LMI Federal reporting functions. Like the original 2017 implementation, the updated checklist will validate that all necessary system functions are available and/or that alternative workarounds are developed prior to the production launch of a new UI IT system to help states avoid major disruption of services to UI customers and to prevent delays in making UI benefit payments when due.

This comprehensive checklist denotes critical functional areas that states must verify prior to launching new UI IT systems including, but not limited to, technical IT functions and UI business processes that interface with the new system.

The list of critical areas identified in the checklist includes:

- Functionality and Workarounds;
- External Alternate Access Options and Usability Issues Addressed;
- Policies and Procedures;
- Technical Preparation for System Implementation;
- Call Center/Customer Service Operations;
- Business Process;
- Help Desk;
- Management Oversight;
- Vendor Support/Communications;
- Communication Processes and Procedures; and
- Labor Market Information Federal Reporting Functions.

This information will include the UI IT Modernization project title (*e.g.* State project or Consortium name) and the associated report on Pre-Implementation Planning Checklist results. For each sub-element identified in the ETA 9177 report, the SWA is to provide:

- An overall status report;
- A brief report explaining the status of the project as it relates to the particular sub-element;
- Attached explanations of any workarounds concerning the processes in the sub-element;
- Attached explanations if implementation of the new system concerning specific processes for the sub-element will be delayed or deferred;
- Attached explanations for added clarity and/or to support a narrative;
- Mitigation proposals for addressing any problems;
- New project timelines if applicable; and/or
- Any discussion of identified technical assistance needs for the successful completion of the project.

ETA requires the use of this checklist report to help SWAs ensure the

availability of mission critical functions as the state prepares for the launch of a new system and following the launch of a new system. In addition, the collection will enable ETA to identify and provide appropriate technical assistance on issues in the checklist and ensure SWAs have plans for addressing critical issues prior to launching a new UI IT system. Section 303(a)(6) of the Social Security Act, codified at 42 U.S.C. 503(a)(6), 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 1205–0527.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Revision.

Title of Collection: Pre-Implementation Planning Checklist for State Unemployment Insurance Information Technology Modernization Projects.

Form: ETA 9177.

OMB Control Number: 1205–0527.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 24.

Frequency: Once per incident.

Total Estimated Annual Responses: 3.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 576 hours.

Total Estimated Annual Other Cost Burden: $0

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–24260 Filed 11–6–19; 8:45 am]

BILLING CODE 4510–FW–P

MORRIS K. UDALL AND STEWART L. UDALL FOUNDATION

Sunshine Act Meetings

TIME AND DATE: 8:30 a.m. to 2:40 p.m., Thursday, November 21, 2019.

PLACE: The offices of the Morris K. Udall and Stewart L. Udall Foundation, 130 South Scott Avenue, Tucson, AZ 85701.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: (1) Call to Order, Chair's Remarks & Vote to go into Executive Session; (2) Executive Director's & Deputy Executive Director's Remarks; (3) Consent Agenda Approval (Minutes of the June 26–28, 2019, Board of Trustees Meeting; Board Reports submitted for Education Programs, Finance and Management, Udall Center for Studies in Public Policy-Native Nations Institute-Udall Archives and their Workplan, and U.S. Institute for Environmental Conflict Resolution; resolutions regarding Allocation of Funds to the Udall Center for Studies in Public Policy and Creation of Deputy Executive Director Position for the Udall Foundation; and Board takes notice of any new and updated personnel policies and internal control methodologies); (4) Discussion of Amendments to the Operating Procedures of the Board of Trustees of the Morris K. Udall and Stewart L. Udall Foundation and a resolution to adopt the amendments; (5) Finance and Internal Controls; (6) Udall Center for Studies in Public Policy; (7) U.S. Institute for Environmental Conflict Resolution; (8) Education Programs; (9) Trustee Ethics Training Instructions; and (10) Executive Session to Discuss Internal Personnel Rules and Practices of the Udall Foundation.

PORTIONS OPEN TO THE PUBLIC: All agenda items except as noted below.

PORTIONS CLOSED TO THE PUBLIC: Executive Session to Discuss Internal Personnel Rules and Practices of the Udall Foundation.

CONTACT PERSON FOR MORE INFORMATION: David P. Brown, Executive Director, 130 South Scott Avenue, Tucson, AZ 85701, (520) 901–8500.

Dated: November 4, 2019.

David P. Brown,

Executive Director, Morris K. Udall and Stewart L. Udall Foundation, and Federal Register Liaison Officer.

[FR Doc. 2019–24368 Filed 11–5–19; 11:15 am]

BILLING CODE 6820–FN–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Request Received and Permit Issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated and permits issued under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification and permit issued.

FOR FURTHER INFORMATION CONTACT: Nature McGinn, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8224; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection.

1. NSF issued a permit (ACA 2015–010) to Lockheed Martin Corporation on October 31, 2014. The issued permit allows the permit holder to, as the contractor providing operational support for the United States Antarctic Program (USAP), be responsible for waste management activities for the USAP.

A modification to this permit, dated November 7, 2016, allowed a change in permit holder from Lockheed Martin Corporation to Leidos Innovations Group (Leidos), 7400 South Tucson Way, Centennial, CO 80112. Another, recent modification to this permit extended the expiration date from September 30, 2019 to October 31, 2019.

This modification would be to extend the expiration date of the permit from October 31, 2019 to November 8, 2019. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Date of Permitted Activities: October 31, 2014–November 8, 2019.

The permit modification was issued on November 1, 2019.

2. On October 23, 2015, the National Science Foundation (NSF) issued a waste management permit to David Rootes, Environmental Manager of Antarctic Logistics and Expeditions, LLC (ALE). Under that permit (ACA #2016–008), ALE was permitted to operate a remote camp at Union Glacier, Antarctica, and provide logistical support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators. The permit expires February 28, 2020. On September 3, 2019, Mr. Rootes provided NSF an update based on activities planned for the 2019–2020 field season. ALE's activities are the same or similar as those detailed in the original permit (and previous modifications) and the estimates for emissions and waste generation are updated based on the planned activities for this season. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Date of Permitted Activities: October 23, 2015–February 28, 2020.

The permit modification was issued on November 1, 2019.

3. On November 2, 2017, the National Science Foundation (NSF) issued a waste management permit to Brandon Harvey, Director, Expedition Operations, Polar Latitudes, Inc. Under that permit (ACA #2018–015), Polar Latitudes was permitted to conduct waste management activities associated with coastal camping and operating remotely piloted aircraft systems (RPAS) In the Antarctic Peninsula region. Coastal overnight camping of no more than 30 campers and two expedition staff for a maximum of 10 hours ashore. Camping must be away from vegetated sites and at least 150 meters from wildlife concentrations or lakes, protected areas, historical sites, and scientific stations. The permit holder engages experienced pilots to fly small, battery-operated, remotely controlled quadcopter equipped with cameras to capture aerial footage for commercial and educational uses. The permit expires March 30, 2022.

On September 4, 2018, Polar Latitudes provided NSF an update based on activities planned for the 2018–2019 field season. The activities are the same or similar as those detailed in the original permit. Hayley Shephard now holds the position of Director of Expedition Operations. In addition, coastal camping should no longer occur in close proximity to Almirante Brown/Brown Base. On February 25, 2019, NSF issued a modification to allow waste management activities associated with whale tagging research aboard the MS ISLAND SKY, led by Daniel Zitterbart as part of an expedition within an expedition.

On August 30, 2019, Polar Latitudes provided NSF an update based on activities planned for the 2019–2020 field season (attached). The activities are the same or similar as those detailed in the original permit and previous modifications. On October 14, 2019, Polar Latitudes provided NSF an update (attached) on the support of whale tagging activities this season aboard the MC Hebridean Sky in March 2020.The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

Date of Permitted Activities: November 2, 2017—March 30, 2022.

The permit modification was issued on November 3, 2019.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2019–24283 Filed 11–6–19; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–19 and CP2020–18]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 12, 2019.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance

with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–19 and CP2020–18; *Filing Title:* USPS Request to Add Priority Mail Express & Priority Mail Contract 103 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 1, 2019; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 12, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–24309 Filed 11–6–19; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* November 7, 2019.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on November 1, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 103 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–19, CP2020–18.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–24262 Filed 11–6–19; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–10724; 34–87449; File No. 265–32]

SEC Small Business Capital Formation Advisory Committee

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting.

SUMMARY: The Securities and Exchange Commission Small Business Capital Formation Advisory Committee, established pursuant to Section 40 of the Securities Exchange Act of 1934 as added by the SEC Small Business Advocate Act of 2016, is providing notice that it will hold a public meeting. The public is invited to submit written statements to the Committee.

DATES: The meeting will be held on Tuesday, November 12, 2019, from 9:30 a.m. to 3:30 p.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Written statements should be received on or before November 12, 2019.

ADDRESSES: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC. The meeting will be webcast on the Commission's website at *www.sec.gov.* Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rule-comments@sec.gov.* Please include File Number 265–32 on the subject line; or

Paper Statements

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

All submissions should refer to File No. 265–32. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method. The Commission will post all statements on the SEC's website at *www.sec.gov.*

Statements also 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. (ET). All statements received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Julie Z. Davis, Senior Special Counsel, Office of the Advocate for Small Business Capital Formation, at (202) 551–5407, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Persons needing special accommodations because of a disability should notify the contact person listed in the section above entitled **FOR FURTHER INFORMATION CONTACT**. The agenda for the meeting includes matters relating to rules and regulations affecting small and emerging companies under the federal securities laws.

Dated: November 4, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24314 Filed 11–6–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87440; File No. SR–MIAX–2019–45]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 518, Complex Orders

November 1, 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, Miami International Securities Exchange, LLC (''MIAX Options'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

as described in Items I, II, and III 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 is filing a proposal to amend Exchange Rule 518, Complex Orders.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend subsection (c)(2)(iii) of Exchange Rule 518, Complex Orders, to remove the provision which provides that a component of a complex order [3] that legs into the Simple Order Book [4] may not execute at a price that is outside the NBBO.[5]

Currently, subsection (c)(2)(iii) provides that complex orders up to a maximum number of legs (determined by the Exchange on a class-by-class basis as either two or three legs and communicated to Members [6] via Regulatory Circular) may be automatically executed against bids and offers on the Simple Order Book for the individual legs of the complex order (''Legging''), provided the complex order can be executed in full or in a permissible ratio by such bids and offers, and provided that the execution price of each component is not executed at a price that is outside of the NBBO.

The Exchange now proposes to remove the provision of the rule which stipulates that a component of a complex order that legs into the Simple Order Book is not executed at a price that is outside of the NBBO. The Exchange believes removing this provision will improve liquidity on the Exchange's Strategy Book [7] and increase opportunities for execution of complex orders. Under the Exchange's proposal each component leg of a complex order may be executed at a price equal to or better than the MBBO [8] for that leg, but only if the net strategy price is not through the Complex MIAX Price Collar (''MPC'') Price [9] for the complex order.

The Exchange notes that at least one other competing options exchange allows component legs of a complex order to trade outside of the NBBO for the component leg. Specifically, BOX Exchange Rule 7240(b)(3)(iii)(A) provides that ''[i]f an inbound Complex Order is executable (against either opposite side Complex Orders on the Complex Order Book or interest on the BOX Book) on BOX, BOX will determine if the potential execution price is equal to or better than both Extended cNBBO and cBBO. If so, the inbound Complex Order will be executed to the extent possible according to the priority described in [BOX Exchange] Rule 7240(b)(3)(i).'' [10]

The BOX Exchange Extended cNBBO is similar to the MIAX Options MPC price protection and is intended to mitigate the potential risk of executions at prices that are extreme or potentially erroneous. The Extended cNBBO is the maximum net bid and offer execution price for a Complex Order Strategy.[11] Under Box Exchange Rule 7240(a)(5), the Extended cNBBO is calculated by subtracting the Extended cNBBO Limit [12] from the cNBB [13] and adding the Extended cNBBO Limit to the cNBO.[14] In calculating the Extended cNBBO, each side of the Extended cNBBO is rounded to the nearest penny within the Extended cNBBO (*i.e.* the cNBB is rounded up to the nearest penny and the cNBO is rounded down to the nearest penny). The Extended cNBBO Limit is a percentage or an amount, whichever provides the less restrictive range (*i.e.* the widest range) when calculating the Extended cNBBO.[15]

The Exchange will announce the implementation date of the proposed rule change by Regulatory Circular to be published no later than 90 days following the operative date of the proposed rule. The implementation date will be no later than 90 days following the issuance of the Regulatory Circular.

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[3] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

[4] The ''Simple Order Book'' is the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[5] The term ''NBBO'' means the national best bid or offer as calculated by the Exchange based on market information received by the Exchange from the appropriate Securities Information Processor (''SIP''). *See* Exchange Rule 518(a)(14).

[6] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[7] The ''Strategy Book'' is the Exchange's electronic book of complex orders and complex quotes. *See* Exchange Rule 518(a)(17).

[8] The term MBBO means the best bid or offer on the Simple Order Book. *See* Exchange Rule 518(a)(13).

[9] The MPC price protection feature is an Exchange-wide mechanism under which a complex order or complex eQuote to sell will not be displayed or executed at a price that is lower than the opposite side cNBBO bid at the time the MPC is assigned by the System (*i.e.,* upon receipt or upon opening) by more than a specific dollar amount expressed in $0.01 increments (the ''MPC Setting''), and under which a complex order or eQuote to buy will not be displayed or executed at a price that is higher than the opposite side cNBBO offer at the time the MPC is assigned by the System by more than the MPC Setting (each the ''MPC Price''). *See* Exchange Rule 518.05(f).

[10] *See* Securities Exchange Act Release No. 80917 (June 13, 2017), 82 FR 27920 (June 19, 2017) (SR–BOX–2017–20).

[11] The term ''Complex Order Strategy'' or ''Strategy'' means a particular combination of components of a Complex Order and their ratios to one another. *See* BOX Exchange Rule 7240(a)(9).

[12] The term ''Extended cNBBO Limit'' means a percentage or an amount, whichever provides for the greatest chance of execution (*i.e.* the widest range) when calculating the Extended cNBBO. The Extended cNBBO Limit for all classes will be a minimum of 3% and a maximum of 50% of the cNBB or cNBO as applicable; or a minimum amount of $0.00 and a maximum amount of $1.00. The default Extended cNBBO Limit for all classes will be 5% of the cNBB or cNBO as applicable, or $0.05. The Exchange will communicate the Extended cNBBO Limit with prior notice to Participants via Circular. The Exchange may modify the Extended cNBBO Limit on all classes with prior notice to Participants via Circular. *See* BOX Exchange Rule 7240(a)(6).

[13] The term ''cNBB'' means the best net bid price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy. *See* BOX Exchange Rule 7240(a)(2).

[14] The term ''cNBO'' means the best net offer price for a Complex Order Strategy based on the NBBO for the individual options components of such Strategy. *See* BOX Exchange Rule 7240(a)(4).

[15] *See supra* note 12.

2. Statutory Basis

MIAX believes that its proposed rule change is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes its proposal promotes just and equitable principles of trade, removes impediments to and perfects the mechanisms of a free and open market and a national market system, and in general, protects investors and the public interest by removing the provision that prevents a component of a complex order that legs into the Simple Order Book from executing at a price that is outside the NBBO. The Exchange believes that removing this provision will result in increased opportunities for the execution of complex orders, leading to increased liquidity on the Strategy Book, which benefits all Exchange participants by providing more trading opportunities. Further, although the proposal will allow component legs of a complex order to execute outside of the NBBO for that component, the Exchange believes that the MPC price protection feature will mitigate the potential risk of executions occurring at prices that are extreme or potentially erroneous. Moreover, the proposed rule change is consistent with rules regarding complex order handling and execution on at least one other exchange.[18]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to increase liquidity on the Exchange's Strategy Book by removing the provision that prevents a component of a complex order that legs into the Simple Order Book from executing at a price that is through the NBBO for that component. Implementation of the proposed rule change will facilitate additional executions and enable greater competition among other competing exchanges that provide similar complex order handling.

The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition as the proposed rule change applies equally to all Exchange Members. All Exchange Members who submit complex orders to the Exchange may benefit from the proposal.

The Exchange does not believes that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, conversely the Exchange believes that its proposal will increase intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) [20] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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-MIAX–2019–45 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–MIAX–2019–45. 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–MIAX–2019–45 and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24253 Filed 11–6–19; 8:45 am]

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[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See* BOX Exchange Rule 7240(b)(3)(iii)(A).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 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.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87444; File No. SR–NYSEAMER–2019–38]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change To Allow Certain Flexible Exchange Equity Options To Be Cash Settled

November 1, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 17, 2019, NYSE American LLC (''NYSE American'' or the ''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 Rules 903G and 906G related to Flexible Exchange (''FLEX'') Options. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rules 903G and 906G related to FLEX Options.

FLEX Options are customized equity or index contracts that allow investors to tailor contract terms for exchange-listed equity and index options. The Exchange proposes to amend NYSE American Rule 903G(c) to allow for cash settlement of certain FLEX Equity Options.[4] Generally, FLEX Equity Options are settled by physical delivery of the underlying security,[5] while all FLEX Index Options are currently settled by delivery in cash.[6] As proposed, FLEX Equity Options would be permitted to be settled by delivery in cash if the underlying security meets prescribed criteria.

To permit cash settlement of certain FLEX Equity Options, the Exchange proposes new paragraph (c)(3)(ii) to Rule 903G. Proposed Rule 903G(c)(3)(ii) would provide that the exercise settlement for FLEX Equity Options may be by physical delivery of the underlying security or by delivery in cash if the underlying security, measured over the prior six-month period, has an average daily notional value of $500 Million or more and a national average daily volume (ADV) of at least 4,680,000 shares.[7]

The Exchange also proposes new sub-paragraph (A) to Rule 903G(c)(3)(ii), which would provide that the Exchange will determine bi-annually the underlying securities that satisfy the notional value and trading volume requirements in Rule 903G(c)(3)(ii) by using trading statistics for the previous six-months.[8] Proposed new sub-paragraph (B) to Rule 903(c)(3)(ii) would further provide that if the Exchange determines pursuant to the bi-annual review that an underlying security ceases to satisfy the requirements under Rule 903G(c)(3)(ii), any new FLEX Equity Options overlying such security entered into will be required to have exercise settlement by physical delivery and any open positions in cash-settled FLEX Equity Options overlying such security may be traded to only close the position.[9]

The Exchange believes it is appropriate to introduce cash settlement as an alternative contract term to the select group of equity securities because they are the most highly liquid and actively-traded securities. As described more fully below, the Exchange believes that the deep liquidity and robust trading activity in securities identified by the Exchange as meeting the criteria mitigate against historic concerns regarding susceptibility to manipulation.

The Exchange believes that average daily notional value is an appropriate proxy for selecting underlying securities that are not readily susceptible to manipulation for purposes of establishing a settlement price. Average daily notional value takes into account both the trading activity and the price of an underlying security. As a general matter, the more expensive an underlying security's price, the less cost-effective manipulation could become. Further, manipulation of the price of a security encounters greater difficulty the more volume that is traded. To calculate average daily notional value (provided in the table below), the Exchange summed the notional value of each trade for each symbol (*i.e.,* the number of shares times the price for each execution in the security) and divided that total by the number of trading days in the six-month period (from January 1, 2019 through June 30, 2019) reviewed by the Exchange.

Further, the Exchange proposes that qualifying securities also meet an ADV standard. The purpose for this second criteria is to prevent unusually expensive underlying securities from qualifying under the average daily notional value standard while not being one of the most actively traded securities. The Exchange believes an ADV requirement of 4,680,000 shares a day is appropriate because it represents average trading in the underlying security of 200 shares per second. While no security is immune from all manipulation, the Exchange believes that the combination of average daily

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] A ''FLEX Equity Option'' is an option on a specified underlying equity security that is subject to the rules of Section 15. *See* NYSE American Rule 900G(b)(10).

[5] *See* Rule 903G(c)(3)(i).

[6] *See* Rule 903G(b)(2) and (3). Pursuant to Exchange rules, Binary Return Derivatives (''ByRDs'') are also settled in cash. *See* Rule 900ByRDs(b). As discussed below, cash settlement is also permitted in the over-the-counter (''OTC'') market.

[7] *See* proposed Rule 903G(c)(3)(ii). The Exchange also proposes a non-substantive amendment to Rule 903G to renumber current Rule 903G(c)(3)(ii) as new Rule 903G(c)(3)(iii).

[8] *See* proposed Rule 903G(c)(3)(ii)(A). The Exchange plans to conduct the bi-annual review on January 1 and July 1 of each year. The results of the bi-annual review will be announced via a Trader Update.

[9] *See* proposed Rule 903G(c)(3)(ii)(B). Pursuant to Rule 920NY, an ATP Holder that is acting as a Market Maker may enter into an opening transaction in order to facilitate closing transactions of another market participant. *See https://www.nyse.com/publicdocs/nyse/markets/arca-options/rule-interpretations/2017/NYSE%20Arca%20Options%20RB%2017-01.pdf.* The Exchange will revise its guidance to reflect that an ATP Holder acting as a Market Maker in cash-settled FLEX Equity Options can enter into an opening transaction to facilitate closing only transactions of another market participant.

notional value and ADV as prerequisite requirements would limit cash settlement of FLEX Options to those underlying securities that would be less susceptible to manipulation in order to establish a settlement price.

The Exchange believes that the proposed objective criteria would ensure that only the most robustly traded and deeply liquid securities would qualify to have cash settlement as a contract term. As provided in the table below, as of June 30, 2019, the Exchange would be able to provide cash settlement as a contract term for FLEX Equity Options on only 84 underlying securities,[10] as only this group of securities would currently meet the requirement of $500 Million or more average daily notional value and a minimum ADV of 4,680,000 shares. The table below provides the list of the 84 securities that, as of June 30, 2019, would be eligible to have cash settlement as a FLEX Equity option contract term.

Symbol	Security name	Average daily notional value (1/1/19–6/30/19)	Average daily volume (1/1/19–6/30/19)
SPY	SPDR S&P 500 ETF Trust	$21,297,533,471	76,562,281
QQQ	Invesco QQQ Trust	6,226,236,315	35,419,606
AAPL	Apple Inc.	5,411,433,661	29,938,826
FB	Facebook, Inc. Class A	3,167,063,717	18,656,551
IWM	iShares Russell 2000 ETF	3,138,717,375	20,697,570
MSFT	Microsoft Corporation	3,081,463,649	26,298,765
EEM	iShares MSCI Emerging Markets ETF	2,986,071,029	70,901,336
NFLX	Netflix, Inc.	2,817,672,156	8,073,403
BABA	Alibaba Group Holding Ltd. Sponsored ADR	2,742,711,789	16,314,223
TSLA	Tesla Inc	2,592,804,463	10,051,182
BA	Boeing Company	2,268,537,891	6,044,214
NVDA	NVIDIA Corporation	2,219,441,287	13,960,292
AMD	Advanced Micro Devices, Inc.	1,978,829,372	77,758,854
HYG	iShares iBoxx High Yield Corporate Bond ETF	1,847,494,422	21,622,743
EFA	iShares MSCI EAFE ETF	1,716,385,479	26,804,412
BAC	Bank of America Corp	1,638,846,503	57,551,084
DIS	Walt Disney Company	1,392,946,023	11,366,690
JPM	JPMorgan Chase & Co.	1,360,283,575	12,813,819
XLF	Financial Select Sector SPDR Fund	1,347,599,180	51,114,805
LLY	Eli Lilly and Company	1,327,459,452	10,818,852
EWZ	iShares MSCI Brazil ETF	1,257,290,585	29,953,519
V	Visa Inc. Class A	1,232,449,824	8,048,719
FXI	iShares China Large-Cap ETF	1,227,285,973	28,755,070
QCOM	QUALCOMM Incorporated	1,211,880,121	18,122,059
INTC	Intel Corporation	1,198,554,195	24,128,671
UNH	UnitedHealth Group Incorporated	1,193,149,098	4,912,081
LQD	iShares iBoxx Investment Grade Corporate Bond ETF.	1,168,122,337	9,875,174
MU	Micron Technology, Inc.	1,160,129,353	30,258,968
CSCO	Cisco Systems, Inc.	1,132,706,882	21,792,441
TLT	iShares 20+ Year Treasury Bond ETF	1,065,481,174	8,544,169
XLV	Health Care Select Sector SPDR Fund	1,032,614,044	11,541,565
WFC	Wells Fargo & Company	1,013,529,161	21,121,609
PFE	Pfizer Inc.	1,006,294,983	24,005,060
C	Citigroup Inc.	982,855,307	15,366,407
GLD	SPDR Gold Trust	976,890,275	7,874,831
XLK	Technology Select Sector SPDR Fund	969,785,314	13,386,498
XLU	Utilities Select Sector SPDR Fund	967,875,035	16,964,325
GDX	VanEck Vectors Gold Miners ETF	960,166,813	43,153,879
TQQQ	ProShares UltraPro QQQ	958,273,952	18,016,817
JNJ	Johnson & Johnson	948,157,843	6,979,483
T	AT&T Inc.	934,843,776	30,151,377
XOM	Exxon Mobil Corporation	912,399,075	11,897,796
XLI	Industrial Select Sector SPDR Fund	909,904,734	12,333,853
CRM	salesforce.com, Inc.	892,331,750	5,755,675
XLE	Energy Select Sector SPDR Fund	890,001,122	13,936,008
MRK	Merck & Co., Inc.	873,282,259	11,076,401
ROKU	Roku, Inc. Class A	862,649,855	13,145,273
CVX	Chevron Corporation	855,496,380	7,162,794
BMY	Bristol-Myers Squibb Company	844,047,840	17,505,197
PG	Procter & Gamble Company	833,084,059	8,233,044
IEMG	iShares Core MSCI Emerging Markets ETF	830,706,450	16,373,454
VZ	Verizon Communications Inc.	815,667,485	14,307,832
CELG	Celgene Corporation	810,028,905	9,035,758
SQ	Square, Inc. Class A	789,909,124	11,168,998
GE	General Electric Company	787,956,324	80,931,248
ORCL	Oracle Corporation	765,161,710	14,549,748
CMCSA	Comcast Corporation Class A	764,325,100	19,255,694
XLP	Consumer Staples Select Sector SPDR Fund	750,217,134	13,589,124

[10] The Exchange notes that TVIX (VelocityShares Daily 2x VIX Short-Term ETN) would qualify under the proposed standards. However, options on TVIX are not currently available for trading.

Symbol	Security name	Average daily notional value (1/1/19–6/30/19)	Average daily volume (1/1/19–6/30/19)
SMH	VanEck Vectors Semiconductor ETF	743,322,164	7,153,365
WMT	Walmart Inc.	691,395,239	6,908,002
CVS	CVS Health Corporation	690,109,969	11,982,610
PYPL	PayPal Holdings Inc.	688,906,111	6,810,430
KO	Coca-Cola Company	686,132,671	14,420,676
IYR	iShares U.S. Real Estate ETF	685,454,820	8,098,239
SBUX	Starbucks Corporation	680,679,995	9,382,107
XOP	SPDR S&P Oil & Gas Exploration & Production ETF.	631,231,318	21,460,429
JNK	SPDR Bloomberg Barclays High Yield Bond ETF	618,600,709	12,555,596
VWO	Vanguard FTSE Emerging Markets ETF	612,134,544	14,761,429
APC	Anadarko Petroleum Corporation	584,576,356	9,450,731
PEP	PepsiCo, Inc.	583,005,057	4,850,035
ABBV	AbbVie, Inc.	570,266,307	7,293,122
TXN	Texas Instruments Incorporated	568,173,321	5,315,649
TWTR	Twitter, Inc.	567,732,862	16,636,561
NKE	NIKE, Inc. Class B	555,303,367	6,684,500
EA	Electronic Arts Inc.	548,493,648	5,757,202
XLY	Consumer Discretionary Select Sector SPDR Fund.	529,385,536	4,721,216
MO	Altria Group Inc.	529,141,650	10,327,466
IEFA	iShares Core MSCI EAFE ETF	524,284,734	8,762,457
MDT	Medtronic Plc	519,945,258	5,773,585
VNQ	Vanguard Real Estate ETF	517,290,726	6,129,594
EMB	iShares JP Morgan USD Emerging Markets Bond ETF.	516,226,468	4,739,195
AGG	iShares Core U.S. Aggregate Bond ETF	513,543,324	4,749,278
DWDP	DuPont de Nemours, Inc.	510,133,624	11,183,061
IEF	iShares 7–10 Year Treasury Bond ETF	506,548,585	4,785,984

The Exchange believes that permitting cash settlement as a contract term for FLEX Equity Options for the securities in the above table would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

Today, generally equity options are settled physically at The Options Clearing Corporation (''OCC''), *i.e.,* upon exercise, shares of the underlying security must be assumed or delivered. Physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. Cash settlement may be preferable to physical delivery in some circumstances as it does not present the same risk. If an issue with the delivery of the underlying security arises, it may become more expensive (and time consuming) to reverse the delivery because the price of the underlying security would almost certainly have changed. Reversing a cash payment, on the other hand, would not involve any such issue because reversing a cash delivery would simply involve the exchange of cash. Additionally, with physical settlement, market participants that have a need to generate cash would have to sell the underlying security while incurring the costs associated with liquidating their position in the underlying security as well as the risk of an adverse movement in the price of the underlying security. The Exchange notes that cash settlement for options is not a unique feature and other options exchanges have previously received approval that allow for the trading of cash-settled options.[11]

With respect to position limits, cash-settled FLEX Equity Options would be subject to the position limits set forth in Rule 906G. Accordingly, the Exchange proposes new Rule 906G(b)(ii) which would provide that positions for FLEX Equity Options settled in cash pursuant to Rule 903G(c)(3)(ii) would be subject to the limits set forth in Rule 904, and the exercise limits set forth in Rule 905.[12] Given that each of the underlying securities that would currently be eligible to have cash-settlement as a contract term have established position and exercise limits applicable to physically-settled options, the Exchange believes it is appropriate for the same position and exercise limits to also apply to cash-settled options. Accordingly, of the 84 underlying securities that would currently be eligible to have cash settlement as a contract term, 76 would have a position limit of 250,000 contracts pursuant to Rule 904, Commentary .07(a).[13] Further, pursuant to Rule 904, Commentary .07(f), the position limit for the other eight underlying securities would be as follows: For QQQ and SPY, 1,800,000 contracts; for IWM and EEM, 1,000,000 contracts; and for FXI, EFA, EWZ and TLT, 500,000 contracts.[14]

[11] *See e.g.* PHLX FX Options traded on Nasdaq PHLX and S&P 500® Index Options traded on Cboe Options Exchange. More recently, the Commission approved, on a pilot basis, the listing and trading of RealDay™ Options on the SPDR S&P 500 Trust on the BOX Options Exchange LLC (''BOX''). *See* Securities Exchange Act Release No. 79936 (February 2, 2017), 82 FR 9886 (February 8, 2017) (''RealDay Pilot Program''). The RealDay Pilot Program was extended until February 2, 2019. *See* Securities Exchange Act Release No. 82414 (December 28, 2017), 83 FR 577 (January 4, 2018) (SR–BOX–2017–38). The RealDay Pilot Program was never implemented by BOX. *See also* Securities Exchange Act Release Nos. 56251 (August 14, 2007), 72 FR 46523 (August 20, 2007) (SR–Amex–2004–27) (Order approving listing of cash-settled Fixed Return Options (''FROs'')); and 71957 (April 16, 2014), 79 FR 22563 (April 22, 2014) (SR–NYSEMKT–2014–06) (Order approving name change from FROs to ByRDs and re-launch of these products, with certain modifications).

[12] *See* proposed Rule 906G(b)(ii). The Exchange also proposes a non-substantive amendment to Rule 906G to renumber current Rule 906G(b)(ii) as new Rule 906G(b)(iii).

[13] Rule 904, Commentary .07(a) provides that the position limit shall be 250,000 contracts for options: (i) On an underlying security that had trading volume of at least 100,000,000 shares during the most recent six-month trading period; or (ii) on an underlying security that had trading volume of at least 75,000,000 shares during the most recent six-month trading period and has at least 300,000,000 shares currently outstanding. 76 of the 84 underlying securities currently meet the requirements under Commentary .07(a).

[14] *See* Rule 904, Commentary .07(f).

The Exchange understands that cash-settled FLEX Equity Options are currently traded in the OTC market by a variety of market participants, *e.g.,* hedge funds, proprietary trading firms, and pension funds. The Exchange believes some of these market participants would prefer to trade these instruments on an exchange, where they would be cleared and settled through a regulated clearing agency. The Exchange expects that users of these OTC products would be among the primary users of exchange-traded cash-settled FLEX Equity Options. The Exchange also believes that the trading of cash-settled FLEX Equity Options would allow these same market participants to better manage the risk associated with the volatility of underlying equity positions given the enhanced liquidity that an exchange-traded product would bring.

Cash-settled FLEX Equity Options traded on the Exchange would have three important advantages over the contracts that are traded in the OTC market. First, as a result of greater standardization of contract terms, exchange-traded contracts should develop more liquidity.

Second, counter-party credit risk would be mitigated by the fact that the contracts are issued and guaranteed by OCC. Finally, the price discovery and dissemination provided by the Exchange and its members would lead to more transparent markets. The Exchange believes that its ability to offer cash-settled FLEX Equity Options would aid it in competing with the OTC market and at the same time expand the universe of products available to interested market participants. The Exchange believes that an exchange-traded alternative may provide a useful risk management and trading vehicle for market participants and their customers.

The Exchange notes that cash-settled FLEX Equity Options would not be available for trading until OCC represents to the Exchange that it is fully able to clear and settle such options. The Exchange has also analyzed its capacity and represents that it and The Options Price Reporting Authority (OPRA) have the necessary systems capacity to handle the additional traffic associated with the listing of cash-settled FLEX Equity Options. The Exchange believes any additional traffic that would be generated from the introduction of cash-settled FLEX Equity Options would be manageable. The Exchange represents that ATP Holders will not have a capacity issue as a result of this proposed rule change. The Exchange also represents that it does not believe this proposed rule change will cause fragmentation of liquidity. The Exchange will monitor the trading volume associated with the additional options series listed as a result of this proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.

The Exchange has an adequate surveillance program in place for cash-settled FLEX Equity Options and intends to apply the same program procedures that it applies to the Exchange's other options products. FLEX options products and their respective symbols are integrated into the Exchange's existing surveillance system architecture and are thus subject to the relevant surveillance processes. As a result, the Exchange believes it would be able to effectively police the trading of cash-settled FLEX Equity Options using means that include its surveillance for manipulation. The Exchange believes that manipulating the settlement price of cash-settled FLEX Equity Options would be difficult based on the size of the market for the securities that are the subject of this proposed rule change. Additionally, the Exchange notes that each cash-settled FLEX Equity Option that is subject to this proposed rule change is sufficiently active so as to alleviate concerns about potential manipulative activity. Further, in the Exchange's view, the vast liquidity of the 84 underlying securities ensures a multitude of market participants at any given time. Given the high level of participation among market participants that enter quotes and/or orders in the options on these securities, the Exchange believes it would be very difficult for a single participant to alter the price of each of the underlying securities in any significant way without exposing the would-be manipulator to regulatory scrutiny. The Exchange further believes any attempt to manipulate the price of the underlying securities would also be cost prohibitive.

With respect to regulatory scrutiny, the Exchange believes its existing surveillance technologies and procedures adequately address potential concerns regarding possible manipulation of the settlement value at or near the close of the market. The Exchange notes that the regulatory program operated by and overseen by NYSE Regulation includes cross-market surveillance designed to identify manipulative and other improper trading, including spoofing, algorithm gaming, marking the close and open, as well as more general, abusive behavior related to front running, wash sales, quoting/routing, and Reg SHO violations, that may occur on the Exchange and other markets. These cross-market patterns incorporate relevant data from various markets beyond the Exchange and its affiliates and from markets not affiliated with the Exchange. The Exchange represents that its existing trading surveillances are adequate to monitor the trading in the underlying securities and subsequent trading of options on those securities on the Exchange, including cash-settled FLEX Equity Options.[15]

Additionally, for options, the Exchange utilizes an array of patterns that monitor manipulation of options, or manipulation of equity securities (regardless of venue) for the purpose of impacting options prices on the Exchange (*i.e.,* mini-manipulation strategies). That surveillance coverage is initiated once options begin trading on the Exchange. Accordingly, the Exchange believes that the cross-market surveillance performed by the Exchange or FINRA on behalf of the Exchange, coupled with NYSE Regulation's own monitoring for violative activity on the Exchange comprise a comprehensive surveillance program that is adequate to monitor for manipulation of the underlying security and overlying option. Furthermore, the Exchange believes that the existing surveillance procedures at the Exchange are capable of properly identifying unusual and/or illegal trading activity, which the Exchange would utilize to surveil for aberrant trading in cash-settled FLEX Equity Options.

The Exchange does not believe that allowing cash settlement as a contract term would render the marketplace for equity options more susceptible to manipulative practices. In addition to the surveillance procedures and processes described above, improvements in audit trails, recordkeeping practices, and inter-exchange cooperation over the last two decades have greatly increased the Exchange's ability to detect and punish attempted manipulative activities. The Exchange therefore believes that the decision of whether or not to allow cash settlement as a contract term should rest on the ability of the Exchange to monitor and detect manipulative activity, not on any perceived threat of

[15] Such surveillance procedures generally focus on detecting securities trading subject to opening price manipulation, closing price manipulation, layering, spoofing or other unlawful activity impacting an underlying security, the option, or both. The Exchange has price movement alerts, unusual market activity and order book alerts active for all trading symbols.

increased attempted manipulative activity.

Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement dated June 20, 1994. The ISG members work together to coordinate surveillance and investigative information sharing in the stock and options markets. For surveillance purposes, the Exchange would therefore have access to information regarding trading activity in the pertinent underlying securities.

The proposed rule change is designed to allow investors seeking to effect cash-settled FLEX Equity Options with the opportunity for a different method of settling option contracts at expiration if they choose to do so. As noted above, market participants may choose cash settlement because physical settlement possesses certain risks with respect to volatility and movement of the underlying security at expiration that market participants may need to hedge against. The Exchange believes that offering innovative products flows to the benefit of the investing public. A robust and competitive market requires that exchanges respond to member's evolving needs by constantly improving their offerings. Such efforts would be stymied if exchanges were prohibited from offering innovative products for reasons that are generally debated in academic literature. The Exchange believes that introducing cash-settled FLEX Equity Options would further broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC markets for customized options, where settlement restrictions do not apply. The proposed rule change is also designed to encourage market makers to shift liquidity from the OTC market onto the Exchange, which, it believes, will enhance the process of price discovery conducted on the Exchange through increased order flow. The Exchange also believes that this may open up cash-settled FLEX Equity Options to more retail investors. The Exchange does not believe that this proposed rule change raises any unique regulatory concerns because existing safeguards—such as position limits, exercise limits, and reporting requirements—would continue to apply.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[16] in general, and furthers the objectives of Section 6(b)(5) of the Act,[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, 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. Specifically, the Exchange believes that introducing cash-settled FLEX Equity Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.

The Exchange believes that the proposal to permit cash settlement as a contract term for options on the specified group of equity securities would remove impediments to and perfect the mechanism of a free and open market as cash-settled FLEX Equity Options would enable market participants to receive cash in lieu of shares of the underlying security, which would, in turn provide greater opportunities for market participants to manage risk through the use of a cash-settled product to the benefit of investors and the public interest. The Exchange does not believe that allowing cash settlement as a contract term for options on the specified group of equity securities would render the marketplace for equity options more susceptible to manipulative practices. As illustrated in the table above, each of the qualifying underlying securities is actively traded and highly liquid and thus would not be susceptible to manipulation because, over a six-month period, each security had an average daily notional value of at least $500 Million and an ADV of at least 4,680,000 shares, which indicates that there is substantial liquidity present in the trading of these securities, and that there is significant depth and breadth of market participants providing liquidity and of investor interest.

The Exchange believes that the data provided by the Exchange supports the supposition that permitting cash settlement as a FLEX term for the 84 underlying securities that would currently qualify to have cash settlement as a contract term would broaden the base of investors that use FLEX Options to manage their trading and investment risk, including investors that currently trade in the OTC market for customized options, where settlement restrictions do not apply.

The Exchange believes that the proposal to permit cash settlement would remove impediments to and perfect the mechanism of a free and open market because the proposed rule change would provide ATP Holders with enhanced methods to manage risk by receiving cash if they choose to do so instead of the underlying security. In addition, this proposal would promote just and equitable principles of trade and protect investors and the general public because cash settlement would provide investors with an additional tool to manage their risk. Further, the Exchange notes that its proposal to introduce cash-settled FLEX Equity Options is not novel in that other exchanges have previously received approval that allow for the trading of cash-settled options. The proposed rule change therefore should not raise issues for the Commission that have not been previously addressed.[18]

The proposed rule change to permit cash settlement as a contract term for options on the 84 underlying securities is designed to promote just and equitable principles of trade in that the availability of cash settlement as a contract term would give market participants an alternative to trading similar products in the OTC market. By trading a product in an exchange-traded environment (that is currently traded in the OTC market), the Exchange would be able to compete more effectively with the OTC market. The Exchange believes the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that it would lead to the migration of options currently trading in the OTC market to trading on the Exchange. Also, any migration to the Exchange from the OTC market would result in increased market transparency. Additionally, the Exchange believes the proposed rule change is designed to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest in that it should create greater trading and hedging opportunities and flexibility. The proposed rule change should also result in enhanced efficiency in initiating and closing out positions and heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of the proposed cash-settled options. Further, the proposed rule change would result in increased competition by permitting the Exchange to offer products that are currently available for trading only in the OTC market.

Finally, the Exchange represents that it has an adequate surveillance program in place to detect manipulative trading in cash-settled FLEX Equity Options.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] *See supra* note 11.

Regarding the proposed cash settlement, the Exchange would use the same surveillance procedures currently utilized for the Exchange's other FLEX Options. For surveillance purposes, the Exchange would have access to information regarding trading activity in the pertinent underlying securities. The Exchange believes that limiting cash settlement to options on the 84 underlying securities that would currently be eligible to have cash-settlement as a contract term would minimize the possibility of manipulation due to the robust liquidity in both the equities and options markets.

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 proposal is designed to increase competition for order flow on the Exchange in a manner that is beneficial to investors because it is designed to provide investors seeking to transact in FLEX Equity Options with the opportunity for an alternative method of settling their option contracts at expiration.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues who offer similar functionality. The Exchange believes the proposed rule change encourages competition amongst market participants to provide tailored cash-settled FLEX Equity Option contracts.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–NYSEAMER–2019–38 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–NYSEAMER–2019–38. 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 such 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–NYSEAMER–2019–38, and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24256 Filed 11–6–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87442; File No. SR–NYSEAMER–2019–41]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing of Proposed Rule Change Regarding the Applicability and Functionality of Certain Order Types on the Exchange

November 1, 2019.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 22, 2019, NYSE American LLC (''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to clarify the applicability and functionality of certain order types on the Exchange. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 900.3NY(Orders Defined) to clarify the applicability and functionality of certain order types. Specifically, the Exchange proposes to amend the definitions of Stop Orders, Stop Limit Orders and All-or None (''AON'') Orders, as set forth in Rule 900.3NY(d), which describes the Contingency Orders or Working Orders. The Exchange is not proposing to change or alter any obligations, rights, policies or practices enumerated within its rules. Rather, this proposal is designed to reduce any potential investor confusion as to the functionality and applicability of certain order types presently available on the Exchange.

Proposed Changes to Order Type Definitions

Rule 900.3NY (the ''Rule'') contains certain definitions of options order types available on the Exchange. Paragraph (d) of the Rule defines Contingency Orders or Working Orders as orders that are ''contingent upon a condition being satisfied or an order with a conditional or undisplayed price and/or size.'' Contingency Orders and Working Orders are maintained in the Working Order File of the Consolidated Book until they are eligible for execution and/or display.[4] The Exchange proposes to amend the definitions of Stop Orders, Stop Limit Orders and AON Orders, which are Contingency Orders/Working Orders.

Rule 900.3NY(d)(1)–(2) Stop Orders and Stop Limit Orders. A Stop Order is an order that becomes a Market Order when the market for a particular option contract reaches a specified price.[5] A Stop Limit Order is an order that becomes a Limit Order when the market for a particular option contract reaches a specified price.[6] Stop Orders and Stop Limit Orders (collectively, ''Stop Orders'' herein unless otherwise specified) track the price of an option and are generally used to limit losses as prices move up, in the case of buy orders, or down in the case of sell orders. In each case, the ''triggering event,'' which converts the order type (to a Market Order or Limit Order, as applicable) occurs once the option trades or is quoted at, or above for a buy (below for a sell), the specified stop price.[7] Thus, Stop Orders to buy (sell) may be triggered as the price of an option rises (falls). The current rule provides that a Stop Order to buy (sell) will be rejected if, at the time of arrival, the stop price is below (above) the bid (offer).[8] Regarding priority, Stop Orders (including Stop Limit Orders) are not displayed and have no standing in any Order Process in the Consolidated Book.[9] As such, Stop Orders ''are not eligible to execute against incoming orders and will become eligible to execute via the Display Order Process only after the incoming order is executed in full or rests in the book or the working order is sent to the Display Order Process at the end of a triggering event.'' [10]

The Exchange proposes to modify the description of Stop Orders to enhance the clarity of the rule text, including by streamlining some of the existing text and adding new text, as appropriate, and deleting existing text to correct an inaccuracy regarding current functionality. First, the Exchange proposes to streamline the description of the order types as follows. The Exchange proposes to revise the first sentence describing each order type (*i.e.,* Rule 900.3NY(d)(1),(2)) to state that the order type converts to a Market or Limit Order, respectively—or ''is triggered''—when the market for a particular option contract reaches a specified price.[11] The Exchange also proposes to modify Rule 900.3NY(d)(1),(2) to combine into one sentence the description of both buy and sell Stop Orders without modifying current functionality. The current rule addresses buy and sell Stop Orders in two sentences and the Exchange thinks the proposed change would streamline the rule and make it easier to navigate. Specifically, proposed Rule 900.3NY(d)(1),(2) would provide that a Stop Order (or Stop Limit Order) ''to buy (sell) is triggered'' such that it becomes a Market Order or Limit Order, respectively, ''when the option contract trades at a price equal to or greater (less) than the specified 'stop' price on the Exchange or another Market Center or when the Exchange bid (offer) is quoted at a price equal to or greater (less) than the stop price.'' [12]

The Exchange also proposes to address the display and standing of each type of Stop Order for which information is currently contained only in paragraph (d)(1) of Rule 900.3NY.[13] Specifically, the Exchange proposes to modify the current rules to reflect that each type of Stop Order ''is not displayed and has no standing in any Order Process in the Consolidated Book, unless or until it is triggered (*i.e.,* same-side incoming interest trades or quotes at a price equal to or better than the stop price).'' [14] The Exchange also proposes to add new rule text to clarify that ''[a]fter the triggering event,'' a Stop Order (per Rule 900.3NY(d)(1)) becomes a new Market Order, and a Stop Limit Order (per Rule 900.3NY(d)(2)) becomes a new Limit Order, and each converted order is processed accordingly.[15]

Finally, the Exchange proposes to delete as inaccurate the last two sentences in the description of each type of Stop Order, which provides for the rejection of such orders to buy (sell) if entered with a stop price below the bid (or above the offer). This language is not accurate as the Exchange does not reject Stop Orders so priced, but instead would execute such orders once triggered. This proposed change would reflect current functionality and therefore add clarity and consistency to Exchange rules.[16]

Rule 900.3NY(d)(4) All-Or-None Orders (''AON Orders''). An AON Order is a Market or Limit Order that is to be executed in its entirety or not at all.[17]

[4] *See* Rule 900.3NY(d). *See* Rule 964NY(b)(2)(E) (regarding priority of orders in the Working Order File once eligible for execution and stating that such orders ''do not have any priority or standing until they are eligible for execution and/or display'') and Rule 964NY(a) (providing, in relevant part, that the Exchange will display ''all non-marketable limit orders in the Display Order Process, unless indicated otherwise'').

[5] *See* Rule 900.3NY(d)(1).

[6] *See* Rule 900.3NY(d)(2).

[7] *See* Rule 900.3NY(d)(1),(2).

[8] *See* Rule 900.3NY(d)(1),(2).

[9] *See* Rule 900.3NY(d)(1) (setting forth details about both Stop Orders and Stop Limit Orders, even though paragraph (d)(1) pertains solely to Stop Orders). *See also* Rule 964NY(b)(2)(E) (regarding priority of orders in the Working Order File once eligible for execution and stating that such orders ''do not have any priority or standing until they are eligible for execution and/or display'') and Rule 964NY(a) (providing, in relevant part, that the Exchange will display ''all non-marketable limit orders in the Display Order Process, unless indicated otherwise'').

[10] *See* Rule 900.3NY(d)(1) (settings forth details about both Stop Orders and Stop Limit Orders, even though paragraph (d)(1) pertains solely to Stop Orders).

[11] *See* proposed Rule 900.3NY(d)(1), (2).

[12] *See* proposed Rule 900.3NY(d)(1), (2). Consistent with this proposed change to address both buy and sell Stop Orders and Stop Limit Orders in one sentence, the Exchange proposes to delete as unnecessary the sentences in the current definitions that describes the functionality for sell Stop Orders and sell Stop Limit Orders. *See id.*

[13] *See* Rule 900.3NY(d)(1) (which provides that ''Stop Orders (including Stop Limit Orders) shall not have standing in any Order Process in the Consolidated Book and shall not be displayed'').

[14] *See* proposed Rule 900.3NY(d)(1), (2). The Exchange notes that this proposed text modifies the existing text in paragraph (d)(1) and is new text for paragraph (d)(2) of the Rule. *See id.*

[15] *See* proposed Rule 900.3NY(d)(1), (2). *See also* Rule 900.3NY(a), (b) (defining Market Order and Limit Order, respectively).

[16] *See* proposed Rule 900.3NY(d)(1), (2).

[17] *See* Rule 900.3NY(d)(4).

The Exchange is not proposing to modify the functionality of an AON Order, but rather proposes to amplify the definition of an AON Order to clarify its current functionality. Specifically, the Exchange proposes to make clear that an AON Order that does not execute on arrival will not be displayed or routed to another Market Center (*i.e.,* AON Orders may only be executed on the Exchange) and would have no standing in any Order Process in the Consolidated Book.[18] Further, the Exchange proposes to clarify that AON Orders are not eligible to execute against incoming interest but rather may execute solely against interest resting in the Consolidated Book when sufficient size is available.[19] Finally, the Exchange proposes to specify that the System monitors the Consolidated Book for AON Order execution opportunities.[20] The Exchange believes the proposed changes would add transparency to the operation of this order type, without altering the current functionality.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[21] of the Act, in general, and furthers the objectives of Section 6(b)(5),[22] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes that deleting inaccurate language (regarding Stop Orders) and enhancing the descriptions as to the functionality of Stop Orders and AON Orders types (*i.e.,* the Contingency Orders or Working Orders) would add transparency and clarity to the Exchange's rules, without altering current functionality. In addition, the Exchange believes that clarifying the definitions and current operation of Stop Orders and AON Orders removes impediments to, and perfects the mechanism of a free and open market by helping to ensure that investors better understand the current functionality of certain orders types available for trading on the Exchange.

The Exchange further believes that the proposal removes impediments to, and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand certain order types available for trading on the Exchange.

Technical Changes

The Exchange notes that the proposed organizational and non-substantive changes to the rule text would provide clarity and transparency to Exchange rules and would 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather revise or amplify incomplete or inaccurate rule text or remove language pertaining to unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes the proposed changes would add transparency to the operation of certain order types, without altering the current functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–NYSEAMER–2019–41 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–NYSEAMER–2019–41. 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–NYSEAMER–2019–41 and should be submitted on or before November 29, 2019.

[18] *See* proposed Rule 900.3NY(d)(4). *See also* Rule 964NY(b)(2)(E) (regarding priority orders in the Working Order File and noting that such orders (*i.e.,* AON Orders) have no priority or standing until eligible for execution and/or display).

[19] *See* proposed Rule 900.3NY(d)(4).

[20] *See id.*

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24254 Filed 11–6–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87443; File No. SR–NYSEArca–2019–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Regarding the Applicability and Functionality of Certain Order Types on the Exchange

November 1, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 22, 2019, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to clarify the applicability and functionality of certain order types on the Exchange. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 6.62–O (Certain Types of Orders Defined) to clarify the applicability and functionality of certain order types. Specifically, the Exchange proposes to amend the definitions of Contingency Orders, Working Orders, Stop Orders, Stop Limit Orders and All-or None (''AON'') Orders, as set forth in Rule 6.62–O(d). The Exchange is not proposing to change or alter any obligations, rights, policies or practices enumerated within its rules. Rather, this proposal is designed to reduce any potential investor confusion as to the functionality and applicability of certain order types presently available on the Exchange.

Proposed Changes to Order Type Definitions

Rule 6.62–O (the ''Rule'') contains certain definitions of options order types available on the Exchange. Paragraph (d) of the Rule defines Contingency Orders or Working Orders as orders that are ''contingent upon a condition being satisfied or an order with a conditional or undisplayed price and/or size.'' Although not explicitly stated in the current rule, such Contingency Orders are maintained in the Working Order File of the Consolidated Book until they are eligible for execution and/or display. Because such information would add clarity and transparency to the handling of such orders, the Exchange proposes to add it to the Rule.[4] The Exchange also proposes to amend the definitions of Stop Orders, Stop Limit Orders and AON Orders, which are Contingency Orders/Working Orders.

Rule 6.62–O(d)(1)–(2) Stop Orders and Stop Limit Orders. A Stop Order is an order that becomes a Market Order when the market for a particular option contract reaches a specified price.[5] A Stop Limit Order is an order that becomes a Limit Order when the market for a particular option contract reaches a specified price.[6] Stop Orders and Stop Limit Orders (collectively, ''Stop Orders'' herein unless otherwise specified) track the price of an option and are generally used to limit losses as prices move up, in the case of buy orders, or down in the case of sell orders. In each case, the ''triggering event,'' which converts the order type (to a Market Order or Limit Order, as applicable) occurs once the option trades or is (locally) quoted at, or above for a buy (below for a sell), the specified stop price.[7] Thus, Stop Orders to buy (sell) may be triggered as the price of an option rises (falls). The current rule provides that a Stop Order to buy (sell) will be rejected if, at the time of arrival, the stop price is below (above) the bid (offer).[8] Regarding priority, Stop Orders (including Stop Limit Orders) are not displayed, have no standing in any Order Process in the Consolidated Book.[9]

The Exchange proposes to modify the description of Stop Orders to enhance the clarity of the rule text, including by streamlining some of the existing text and adding new text, as appropriate, and deleting existing text to correct an inaccuracy regarding current functionality. First, the Exchange proposes to streamline the description of the order types as follows. The Exchange proposes to revise the first sentence describing each order type (*i.e.,* Rule 6.62–O(d)(1),(2)) to state that the order type converts to a Market or Limit Order, respectively—or ''is triggered''—when the market for a particular option contract reaches a specified price.[10] The Exchange also proposes to modify Rule 6.62–O(d)(1),(2) to combine into one sentence the description of both buy and sell Stop Orders without modifying current functionality. The current rule addresses buy and sell Stop Orders in two sentences and the Exchange thinks the proposed change would streamline the rule and make it easier to navigate. Specifically, proposed Rule 6.62–O(d)(1),(2) would provide that a Stop Order (or Stop Limit Order) ''to buy (sell) is triggered'' such that it becomes a Market Order or Limit Order, respectively, ''when the option contract trades at a price equal to or greater (less) than the specified 'stop' price on the Exchange or another Market Center or when the Exchange bid (offer) is quoted at a price equal to or greater (less) than the stop price.'' [11]

[4] *See* proposed Rule 6.62–O(d). *See* Rule 6.76–O(b) (providing, in relevant part that, unless otherwise specified, the Exchange will display ''all bids and offers at all price levels in the Display Order Process of the OX'').

[5] *See* Rule 6.62–O(d)(1).

[6] *See* Rule 6.62–O(d)(2).

[7] *See* Rule 6.62–O(d)(1),(2).

[8] *See* Rule 6.62–O(d)(1),(2).

[9] *See* Rule 6.62–O(d)(1) (setting forth details about both Stop Orders and Stop Limit Orders, even though paragraph (d)(1) pertains solely to Stop Orders). *See also* Rule 6.76–O(a)(2)(D) (providing that Stop Orders within the Working Order Process are ''ranked based on the specified stop price and the time of order entry'').

[10] *See* proposed Rule 6.62–O(d)(1), (2).

[11] *See* proposed Rule 6.62–O(d)(1), (2). Consistent with this proposed change to address both buy and

The Exchange also proposes to address the display and standing of each type of Stop Order for which information is currently contained only in paragraph (d)(1) of Rule 6.62–O.[12] Specifically, the Exchange proposes to modify the current rules to reflect that each type of Stop Order ''is not displayed and has no standing in any Order Process in the Consolidated Book, unless or until it is triggered (*i.e.,* same-side incoming interest trades or quotes at a price equal to or better than the stop price).'' [13] The Exchange also proposes to add new rule text to clarify that ''[a]fter the triggering event,'' a Stop Order (per Rule 6.62–O(d)(1)) becomes a new Market Order, and a Stop Limit Order (per Rule 6.62–O(d)(2)) becomes a new Limit Order, and each converted order is processed accordingly.[14]

Finally, the Exchange proposes to delete as inaccurate the last two sentences in the description of each type of Stop Order, which provides for the rejection of such orders to buy (sell) if entered with a stop price below the bid (or above the offer). This language is not accurate as the Exchange does not reject Stop Orders so priced, but instead would execute such orders once triggered. This proposed change would reflect current functionality and therefore add clarity and consistency to Exchange rules.[15]

Rule 6.62–O(d)(4) All-Or-None Orders (''AON Orders''). An AON Order is a Market or Limit Order that is to be executed in its entirety or not at all.[16] The Exchange is not proposing to modify the functionality of an AON Order, but rather proposes to amplify the definition of an AON Order to clarify its current functionality. Specifically, the Exchange proposes to make clear that an AON Order that does not execute on arrival will not be displayed or routed to another Market Center (*i.e.,* AON Orders may only be executed on the Exchange) and would have no standing in any Order Process in the Consolidated Book.[17] Further, the Exchange proposes to clarify that AON Orders are not eligible to execute against incoming interest but rather may execute solely against interest resting in the Consolidated Book when sufficient size is available.[18] Finally, the Exchange proposes to specify that the System monitors the Consolidated Book for AON Order execution opportunities.[19] The Exchange believes the proposed changes would add transparency to the operation of this order type, without altering the current functionality.

Rule 6.76A–O: Order Execution

The Exchange proposes to make a clarifying change to Rule 6.76A–O, which details how bids and orders are executed. In particular, current Rule 6.76A–O(b)(1)(A) provides that ''[a]n incoming marketable bid or offer shall be matched against orders in [sic] the Working Order Process in the order of their ranking, at the price of the displayed portion (or in the case of an All-or-None Order, or at the limit price for AON Orders [sic]), for the total amount of option contracts available at that price or for the size of the incoming bid or offer, whichever is smaller.'' [20] The Exchange proposes to add ''of Reserve Orders'' to make clear that reference to ''the price of the displayed portion'' refers to such orders. [21] In addition, the Exchange proposes to amend and reorganize the language regarding AON Orders to add clarity and coherence to the paragraph. Proposed Rule 6.76A–O(b)(1)(A) would provide that incoming interest is ''matched against orders within the Working Order Process in the order of their ranking, at the price of the displayed portion of Reserve Orders, or at the limit price of AON Orders, for the total amount of option contracts available at that price or for the size of the incoming bid or offer, whichever is smaller.'' [22] As noted herein, Stop Orders have no standing unless or until triggered, hence the reason the Working Order Process does not address the execution of such orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [23] of the Act, in general, and furthers the objectives of Section 6(b)(5),[24] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system.

In particular, the Exchange believes that deleting inaccurate language (regarding Stop Orders) and enhancing the descriptions as to the functionality of Contingency Orders, Working Orders, Stop Orders and AON Orders types would add transparency and clarity to the Exchange's rules, without altering current functionality. In addition, the Exchange believes that clarifying the definitions and current operation of Contingency Orders, Working Orders, Stop Orders and AON Orders removes impediments to, and perfects the mechanism of a free and open market by helping to ensure that investors better understand the current functionality of certain orders types available for trading on the Exchange.

The Exchange further believes that the proposal removes impediments to, and perfects the mechanism of a free and open market by ensuring that members, regulators and the public can more easily navigate the Exchange's rulebook and better understand certain order types available for trading on the Exchange.

Technical Changes

The Exchange notes that the proposed organizational and non-substantive changes to the rule text, including to Rule 6.76A–O, would provide clarity and transparency to Exchange rules and would 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather revise or amplify incomplete or

sell Stop Orders and Stop Limit Orders in one sentence, the Exchange proposes to delete as unnecessary the sentences in the current definitions that describe the functionality for sell Stop Orders and sell Stop Limit Orders. *See id.* For internal consistently, the Exchange also proposes to replace reference to NYSE Arca with the ''Exchange.'' *See id.*

[12] *See* Rule 6.62–O(d)(1) (which provides that ''Stop Orders (including Stop Limit Orders) shall not have standing in any Order Process in the Consolidated Book and shall not be displayed'').

[13] *See* proposed Rule 6.62–O(d)(1), (2). The Exchange notes that this proposed text modifies the existing text in paragraph (d)(1) and is new text for paragraph (d)(2) of the Rule. *See id.*

[14] *See* proposed Rule 6.62–O(d)(1), (2). *See also* Rule 6.62–O(a), (b) (defining Market Order and Limit Order, respectively).

[15] *See* proposed Rule 6.62–O(d)(1), (2).

[16] *See* Rule 6.62–O(d)(4).

[17] *See* proposed Rule 6.62–O(d)(4). *See also* Rule 6.76–O(a)(2)(C) (providing that AON Orders within the Working Order File [sic] are ''ranked based on the specified limit price and the time of order entry'').

[18] *See* proposed Rule 6.62–O(d)(4).

[19] *See id.*

[20] *See* Rule 6.76A–O(b)(1)(A).

[21] *See* proposed Rule 6.76A–O(b)(1)(A).

[22] *See id.*

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(5).

inaccurate rule text or remove language pertaining to unavailable functionality in the Exchange's rulebook, thereby reducing confusion and making the Exchange's rules easier to understand and navigate. The Exchange believes the proposed changes would add transparency to the operation of certain order types, without altering the current functionality.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or *up to 90 days* (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be 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–NYSEArca–2019–71 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–NYSEArca–2019–71. 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–NYSEArca–2019–71 and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24255 Filed 11–6–19; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87445; File No. SR–NASDAQ–2019–060]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rules 4120 and 4753

November 1, 2019.

I. Introduction

On July 18, 2019, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rules 4120 and 4753 to permit the Exchange to declare a regulatory halt in a security that traded in the over-the-counter (''OTC'') market prior to the initial pricing on the Exchange and to allow for the initial pricing of such a security through the IPO Cross. The proposed rule change was published for comment in the **Federal Register** on August 6, 2019.[3] On September 19, 2019, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On September 19, 2019, the Exchange also filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[6] The Commission received no comment letters on the proposed rule change. The Commission is publishing this notice and order to solicit comments on the proposed rule change, as modified by Amendment No. 1, from interested persons and to institute proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

Currently, a security that traded in the OTC market immediately prior to listing on the Exchange is released for initial trading on the Exchange by utilizing the Opening Cross pursuant to Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 86537 (July 31, 2019), 84 FR 38321.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 87012, 84 FR 50490 (September 25, 2019). The Commission designated November 4, 2019 as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1, the Exchange revised the proposal to: (1) Clarify that when a security previously traded in the OTC market is initially priced using the IPO Cross, the fourth tie-breaker for each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator and the price at which the cross will occur will be the price that is closest to the most recent transaction price in the OTC market; (2) specify that, for purposes of this proposed rule change, the use of the term ''regulatory halt'' refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7); (3) clarify that, currently, a security that traded in the OTC market immediately prior to listing on Nasdaq is released for initial trading on Nasdaq through the Opening Cross under Rule 4752(d) and, pursuant to the proposal, if such an issuer does not retain a financial advisor, the initial pricing will continue to be effected through the Opening Cross; (4) include additional justification in support of the proposed rule change; and (5) make technical and conforming changes. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nasdaq-2019-060/srnasdaq2019060-6163792-192369.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

4752(d).[8] The Exchange proposes to amend Rule 4120 to permit the Exchange to declare a regulatory halt[9] in a security that traded in the OTC market prior to its initial pricing on the Exchange.[10] The Exchange also proposes to amend Rules 4120 and 4753 to allow for the initial pricing on the Exchange of such a security through the IPO Cross (described in Rules 4120(c)(8) and 4753) if a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter in an initial public offering.[11] If the issuer does not retain a financial advisor, the initial pricing on the Exchange of such a security will continue to be effected through the Opening Cross.[12] Moreover, the Exchange proposes to adopt Rules 4753(a)(3)(A)(iv)(e) and 4753(b)(2)(D)(v) to provide that, in the case of the initial pricing of a security that traded in the OTC market pursuant to FINRA Form 211 immediately prior to its initial pricing, the fourth tie-breaker used in calculating each of the Current Reference Price disseminated in the Nasdaq Order Imbalance Indicator for purposes of the IPO Cross and the price at which the IPO Cross will occur will be the price that is closest to the most recent transaction price in the OTC market.[13]

[8] *See* Amendment 1, *supra* note 6, at 4 n.4.

[9] For purposes of this proposed rule change, the term ''regulatory halt'' refers to Nasdaq's authority to halt trading in a security under Rule 4120(a)(7). *See id.* at 4 n.3.

[10] The Exchange states that its proposal would facilitate a more orderly start to trading by permitting the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange, before trading on the Exchange begins, which the Exchange believes would avoid potential price disparities or anomalies that may occur during any unlisted trading privileges (''UTP'') trading before the first transaction on the primary listing exchange. *See id.* at 7.

[11] Rule 4120(c)(9) currently provides that the IPO Cross process is available for the initial pricing of a security that has not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to the initial pricing where a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering. The Exchange states that the IPO Cross will be a better mechanism to open trading in securities that traded in the OTC market given that these companies may attract significant interest upon listing on the Exchange from investors who previously could not invest in such securities, and that it will be beneficial to allow significant financial advisor involvement in determining when to launch trading. *See id.* at 8–9.

[12] *See id.* at 4 n.4.

[13] The Exchange states that the most recent transaction price in the OTC market is predictive of the price that will develop upon the listing of the security on the Exchange. *See id.* at 8. This proposed change to the fourth tie-breaker will not affect the pricing of a security if the issuer does not retain a financial advisor. *See id.* at 4 n.5.

III. Proceedings To Determine Whether To Approve or Disapprove SR–NASDAQ–2019–060, as Modified by Amendment No. 1, and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[14] to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposal, as discussed below. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Act,[15] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the consistency of the proposal with Section 6(b)(5) of the Act.[16] Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed, among other things, 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 discussed above, the proposal would allow the Exchange to declare a regulatory halt in a security that traded in the OTC market prior to its initial pricing on the Exchange. The proposal would also allow the Exchange to use the IPO Cross to initially price such a security provided that a broker-dealer serving in the role of financial advisor to the issuer is willing to perform the functions under Rule 4120(c)(8) that are performed by an underwriter with respect to an initial public offering, and would establish the fourth tie-breaker used in calculating the Current Reference Price and the IPO Cross price. Currently, the functions performed by an underwriter with respect to an initial public offering under Rule 4120(c)(8) include, for example, providing notice to the Exchange that the security is ready to trade, selecting price bands for the price validation test, and determining to postpone and reschedule the initial public offering. The underwriter functions under Rule 4120(c)(8) currently also apply to a broker-dealer serving in the role of financial advisor to the issuer of a security that has not been listed on a national securities exchange or traded in the OTC market pursuant to FINRA Form 211 immediately prior to its initial pricing on the Exchange, if the IPO Cross is used for the initial pricing of such a security on the Exchange. In the current proposal, the Exchange states that the IPO Cross will be a better mechanism to open trading in securities that traded in the OTC market given that these companies may attract significant interest upon listing on the Exchange from investors who previously could not invest in a security that was traded in the OTC market, and it would be beneficial to allow significant financial advisor involvement in determining when to launch trading.[17] The Commission seeks commenters' views on the sufficiency and merit of the Exchange's statements in support of the proposal, which are set forth in Amendment No. 1,[18] in addition to any other comments they may wish to submit about the proposed rule change.

[14] 15 U.S.C. 78s(b)(2)(B).

[15] *Id.*

[16] 15 U.S.C. 78f(b)(5).

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there does not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[19] any request for an opportunity to make an oral presentation.[20]

[17] *See* Amendment 1, *supra* note 6, at 8–9.

[18] *See* Amendment 1, *supra* note 6.

[19] 17 CFR 240.19b–4.

[20] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a

Continued

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by November 29, 2019. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 12, 2019.

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 No. SR–NASDAQ–2019–060 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 No. SR–NASDAQ–2019–060. The 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 No. SR–NASDAQ–2019–060 and should be submitted by November 29, 2019. Rebuttal comments should be submitted by December 12, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24257 Filed 11–6–19; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87441; File No. SR–FINRA–2019–026]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

November 1, 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 25, 2019, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend, to March 25, 2021, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would

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particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance[6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and medium-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration to reduce potential uncertainty in the Covered Agency Transaction market. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, to March 25, 2020 (the ''March 25, 2020 implementation date'').[8] FINRA noted that, as FINRA stated in Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA would monitor the impact of the requirements pursuant to that rulemaking and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, FINRA would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[9]

FINRA is considering, in consultation with industry participants and other regulators, potential amendments to the requirements of SR–FINRA–2015–036. FINRA believes that this is appropriate in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. As such, FINRA is proposing to extend the March 25, 2020 implementation date by an additional year, to March 25, 2021 while FINRA considers potential amendments. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016 and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change provides FINRA additional time to consider potential amendments to the requirements pursuant to SR–FINRA–2015–036 and helps to reduce potential uncertainty in the Covered Agency Transaction market while FINRA considers such amendments. FINRA believes that providing additional time is consistent with the Act because this provides FINRA, in consultation with industry participants and other regulators, additional opportunity to consider whether amendments to the requirements would improve their effectiveness and thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. FINRA believes that extending the March 25, 2020 implementation date to March 25, 2021, so as to provide additional time for FINRA to consider, in consultation with industry participants and other regulators, whether any amendments to the requirements pursuant to SR–FINRA–2015–036 are appropriate will benefit all parties.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule change is to allow FINRA additional time to consider potential revisions to the requirements of SR–FINRA–2015–036, and to consult with industry participants and other regulators whether any revisions are appropriate, in the interest of avoiding unnecessary disruption to the Covered Agency Transaction market. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: *www.finra.org*.

[6] Available at: *www.finra.org/rules-guidance/guidance/faqs*. Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: *www.finra.org/rules-guidance/guidance/faqs*.

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 29, 2017).

[8] *See* Securities Exchange Act Release No. 85083 (February 8, 2019), 84 FR 4109 (February 14, 2019) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2019–005).

[9] *See* Partial Amendment No. 3 to SR–FINRA–2015–036, available at: *www.finra.org*.

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

the implementation date of the requirements of Rule 4210 does not raise any new or novel issues and will help to facilitate the implementation of the margin requirements for Covered Agency Transactions. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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–FINRA–2019–026 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–FINRA–2019–026. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA.

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–FINRA–2019–026 and should be submitted on or before November 29, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–24252 Filed 11–6–19; 8:45 am]

BILLING CODE 8011–01–P

[15] For purposes 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).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exchange Commission will hold an Open Meeting on Wednesday, December 18, 2019 at 10:00 a.m.

PLACE: The meeting will be held in Auditorium LL–002 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will begin at 10:00 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

MATTERS TO BE CONSIDERED:

The subject matter of the Open Meeting will be:

- The Commission will consider whether to approve the 2020 budget of the Public Company Accounting Oversight Board and the related annual accounting support fee for the Board under Section 109 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman, Office of the Secretary, at (202) 551–5400.

Dated: November 4, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24357 Filed 11–5–19; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 84 FR 58772, 1 November 2019.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Tuesday, November 5, 2019 at 10:00 a.m.

CHANGES IN THE MEETING: The following item will not be considered during the Open Meeting on Tuesday, November 5, 2019:

- The Commission will consider whether to propose amendments under the Advisers Act of 1940 to the rules that prohibit certain investment adviser advertisements and payments to solicitors.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 4, 2019.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2019–24376 Filed 11–5–19; 11:15 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of 30-day reporting requirements submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act, agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before December 9, 2019. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Curtis Rich, Small Business Administration, 409 3rd Street SW, 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Curtis Rich, Agency Clearance Officer, (202) 205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: SBA Forms 1405 and 1405A are used by Small Business Administration (SBA) examiners as part of their examination of licensed small business investment companies (SBICs). This information collection provides independent third party confirmation of an SBIC's representations concerning its owners, and helps SBA to evaluate the SBIC's compliance with applicable laws and regulations concerning capital requirements.

Title: Stockholders Confirmation (Corporation): Ownership Confirmation (Partnership).

Frequency: On Occasion.

SBA Form Number's: 1405, 1405A.

Description of Respondents: Investment Companies.

Responses: 604.

Annual Burden: 604.

Curtis Rich,

Management Analyst.

[FR Doc. 2019–24313 Filed 11–6–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice10939]

Notice of Public Meeting of the International Telecommunication Advisory Committee and Preparations for Upcoming International Telecommunications Meetings

This notice announces a meeting of the Department of State's International Telecommunication Advisory Committee (ITAC). The ITAC will meet on Thursday, December 12, 2019 at AT&T 1120 20th Street NW, Washington, DC 20036, at 2:00 p.m., to review the results of international telecommunication policy related activities since the March 2019 ITAC and report on key results of the World Radiocommunication Conference 2019. The meeting will focus on the following topics:

1. International Telecommunication Union's Telecommunication Standardization Sector (ITU–T)
   a. Study Group (SG) 2 & 3
   b. SG17
2. Telecommunication Standardization Advisory Group (TSAG) SG–20
3. Inter-American Telecommunication Commission (CITEL)
   a. PCC–I
   b. Extraordinary 2019 Session of the Council—ITU HQ
4. Council Working Groups (CWG)
5. Organization for Economic Cooperation and Development (OECD) Committee on Digital Economy Policy (CDEP)
6. Asia Pacific Economic Corporation Telecommunications (APECTEL)
7. ITU Telecommunication Development Sector (ITU–D)

Attendance at the ITAC meeting is open to the public as seating capacity allows. The public will have an opportunity to provide comments at this meeting at the invitation of the chair. Persons wishing to request reasonable accommodation during the meeting should send their requests to *ITAC@state.gov* no later than December 6, 2019. Requests made after that time will be considered but might not be able to be accommodated.

Further details on this ITAC meeting will be announced through the Department of State's email list, *ITAC@lmlist.state.gov.* Use of the ITAC list is limited to meeting announcements and confirmations, distribution of agendas and other relevant meeting documents. The Department welcomes any U.S. citizen or legal permanent resident to remain on or join the ITAC listserv by registering by email via *ITAC@state.gov* and providing his or her name, email address, telephone contact and the company, organization, or community that he or she is representing, if any. Please send all inquiries to *ITAC@state.gov.*

Adam W. Lusin,

Office Director, Multilateral Affairs, International Communication and Information Policy, U.S. Department of State.

[FR Doc. 2019–24259 Filed 11–6–19; 8:45 am]

BILLING CODE 4710–AE–P

SURFACE TRANSPORTATION BOARD

[WB 19–57]

Release of Waybill Data

The Surface Transportation Board (Board) has received a request from the University of Wisconsin-Madison on behalf of the Mid America Freight Coalition. (WB 19–57—10/28/19) for permission to use data from the Board's 2017 Masked Carload Waybill Sample. A copy of this request may be obtained from the Board's website under docket no. WB19–57.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Alexander Dusenberry, (202) 245–0319.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2019–24299 Filed 11–6–19; 8:45 am]

BILLING CODE 4915–01–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: 30-Day notice of submission of information collection approval and request for comments.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Tennessee Valley Authority (TVA) will be requesting from the Office of Management and Budget (OMB) reinstatement, without change, of TVA's Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery. This generic clearance will fast-track the process for TVA to seek feedback from the public, through surveys and similar feedback instruments, regarding TVA services and programs.

DATES: Comments should be sent to the TVA Senior Privacy Program Manager, and the OMB Office of Information & Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority, Washington, DC 20503, or email: *oira_submission@omb.eop.gov,* no later than December 9, 2019.

ADDRESSES: Requests for information, including copies of the information collection proposed and supporting

documentation, should be directed to the Senior Privacy Program Manager: Christopher A. Marsalis, Tennessee Valley Authority, 400 W Summit Hill Dr. (WT 5D), Knoxville, Tennessee 37902–1401; telephone (865) 632–2467 (this is not a toll-free number) or by email at *camarsalis@tva.gov.*

SUPPLEMENTARY INFORMATION:

Type of Request: Reinstatement, without change, of a previously approved information collection for which approval has expired.

Title of Information Collection: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

OMB Approval Number: 3316–0114.

Abstract: Reinstatement of this information collection will enable TVA to obtain qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide TVA with insights into customer or stakeholder perceptions, experiences, and expectations; help TVA quickly identify actual or potential problems with how the agency provides services to the public; or focus attention on areas where communication, training, or changes in operations might improve TVA's delivery of its products or services. These collections will allow for ongoing, collaborative and actionable communications between TVA and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

TVA will solicit feedback in areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. TVA will use the responses to plan and inform its efforts to improve or maintain the quality of service and programs offered to the public. If this information is not collected, TVA will not have access to vital feedback from customers and stakeholders about the agency's services and programs.

TVA will only submit an information collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or who may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary, and is not retained;
- Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency (if released, TVA will indicate the qualitative nature of the information);
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information, and the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but will not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Type of Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Governments.

Small Businesses or Organizations Affected: Yes.

Estimated Number of Annual Responses: 10,000.

Estimated Annual Frequency per Response: Once per information collection request.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden Hours: 2,500 hours.

Request for Comments

TVA will make comments submitted in response to this notice, including names and addresses where provided, a matter of public record. TVA will summarize the comments and include them in the request for OMB approval. We are requesting comments on all aspects of this generic clearance request, including: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Andrea S. Brackett,

Director, TVA Cybersecurity.

[FR Doc. 2019–24243 Filed 11–6–19; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0898]

Agency Information Collection Activities: Requests for Comments: Clearance of Renewed Approval of Information Collection: Representatives of the Administrator

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA

invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves contact information along with the education and experience of a person seeking to be appointed as an FAA Designated Engineering Representative (DER). The information to be collected will be used to determine the eligibility and qualifications of the DER applicant.

DATES: Written comments should be submitted by January 6, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Scott Geddie, 6500 S MacArthur Blvd., ARB 308, Oklahoma City, OK 73169.

By fax: 405–954–2209.

FOR FURTHER INFORMATION CONTACT: Scott Geddie by email at: *Scott.Geddie@faa.gov,* phone: 405–954–6897.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0033.

Title: Representatives of the Administrator, 14 CFR part 183.

Form Numbers: FAA Form 8110–14.

Type of Review: Renewal of an information collection.

Background: Information in this collection is voluntarily submitted by persons applying to become an FAA Designated Engineering Representative (DER). DERs represent the FAA on aircraft certification projects. They examine engineering design data and determining whether aircraft built according to that data comply with published FAA airworthiness standards. Collecting this information allows the FAA to evaluate the eligibility and qualifications of the DER applicant.

This application form, 8110–14, Statement of Qualifications, provides the FAA with contact information for the applicant, along with the applicant's requested authorities. It outlines the applicant's education and pertinent experience that, in conjunction with additional narratives and other detailed information, allows the FAA to make an informed decision whether to appoint the applicant as an FAA representative.

Respondents: Persons applying to become an FAA Designated Engineering Representative.

Frequency: One time submittal.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: One time submittal. No annual burden.

Issued in Washington, DC.

Joy Wolf,

Directives & Forms Management Officer (DMO/FMO), Aircraft Certification Service.

[FR Doc. 2019–24316 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0899]

Special-Issuance Medical Certification: Diabetes Protocol for Applicants Seeking To Exercise Airline Transport, Commercial, or Private Pilot Privileges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice; request for comment.

SUMMARY: With this notice, the Federal Aviation Administration (FAA) informs applicants for airman medical certification with insulin-treated diabetes mellitus (ITDM) of a new protocol available to evaluate pilots seeking to exercise pilot privileges as airline transport, commercial, or private pilots. The FAA may only certificate pilots with ITDM through the special-issuance process with case-by-case assessment of overall risk and available risk mitigation. Previously available medical science, treatment, and monitoring have allowed the FAA to safely provide special issue third-class medical certificates for private pilot privileges since 1996, but was not sufficient to meet the higher levels of safety demanded for applicants considered for airline transport or commercial pilot duties. The new FAA risk assessment protocol, based on established advances in medical science since 1996, makes it possible to mitigate flight safety risk so that applicants seeking first- or second-class special-issuance medical certification may be considered for the exercise of either airline transport or commercial pilot privileges. Applicants for third-class special issuance may apply under the existing third-class-only protocol or the new protocol.

DATES: The protocol is effective November 7, 2019.

Send comments on or before January 6, 2020.

ADDRESSES: You may send comments identified by docket number FAA–2019–0899 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* 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 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov.*

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

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum, Office of Aerospace Medicine, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–9689, email. *Judi.M.Citrenbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

FAA Experience Applying Special-Issuance Procedures for Diabetes

Under Title 14 of the Code of Federal Regulations (14 CFR), §§ 67.113(a), 67.213(a), and 67.313(a), insulin-treated diabetes mellitus (ITDM) is considered medically disqualifying for pilots. The Federal Air Surgeon has discretion under 14 CFR 67.401 to authorize special issuance of airman medical certificates to applicants who are otherwise disqualified. Historically, the FAA has used this discretion to special issue only third-class medical certificates to applicants with ITDM

seeking to exercise private pilot privileges.

In determining whether an authorization for special issuance may be granted to an applicant, the Federal Air Surgeon considers whether the privileges permitted by the class of medical certificate requested can be performed without endangering public safety for the duration of the medical certificate. The FAA must always consider risk when implementing its licensing and credentialing programs, and the medical certification process is no exception. As specified in 14 CFR 67.401, the Federal Air Surgeon ''considers the freedom of an airman, exercising the privileges of a private pilot certificate, to accept reasonable risks to his or her person and property that are not acceptable in the exercise of commercial or airline transport pilot privileges, and, at the same time, considers the need to protect the safety of persons and property in other aircraft and on the ground.'' Much less risk is acceptable in the exercise of commercial or airline transport pilot privileges in order to protect public safety.

Long-term medical risks associated with diabetes include cardiovascular, neurological, ophthalmological, and renal complications. These factors pose additional hazards to aviation and require special scrutiny. Of particular concern with insulin-treated diabetes, more so than for oral hypoglycemic treated diabetes, is the short-term or immediate risks posed by hypoglycemia or low blood glucose. Hypoglycemia can produce impaired cognitive function, seizures, unconsciousness, and even death. The functional incapacitation associated with hypoglycemia may occur subtly and be undetected by the individual or others. Inadequately controlled diabetes (with resulting high blood sugar [hyperglycemia]) also can lead to impaired function and, effectively, incapacitation. Thus, the symptoms that result from both diabetes and its treatment can affect flight safety.

The FAA has incrementally updated the special-issuance medical certification protocol for applicants with diabetes. The FAA initially did so, in the early 1980's, for individuals who control their diabetes with diet and non-insulin hypoglycemic drugs. In 1996, the FAA began allowing insulin use for third-class medical certification, which limits the applicant to exercising private pilot privileges. This incremental approach has been very successful, and the FAA has now authorized approximately 500 ITDM pilots for third-class medical certification. The third-class special issuance protocol, in part, requires a process of finger-stick glucose testing before and during flight. The agency has a separate, internal program under FAA Order 3930.3B (Air Traffic Control Specialist Health Program) to permit FAA Air Traffic Control Specialists (ATCSs) with ITDM to continue their safety-related duties.

Applicants with diabetes considered for third-class, special-issuance medical certification are carefully evaluated and must submit to monitoring under a specific medical protocol, just as they would for any other specifically disqualifying medical condition under Part 67. Special-issuance conditions include careful evaluation of the individual's medical history, risk stratification, and the efficacy of the individual in controlling the disease. To develop diabetes protocols, the FAA considered the input of expert endocrinologists and diabetes specialists. The FAA continually reviews its protocols (for diabetes and other diseases) to ensure they remain viable and appropriate given ever-evolving medical advances. In this regard, the agency validates its experience and ensures that safety of flight is maintained.

Discussion

Recommendations To Expand the Protocol

Authorization for ITDM pilots to exercise pilot privileges beyond private pilot has been a topic of much discussion for several years within the aviation sector. While the FAA has discretion under § 67.401 to consider allowing ITDM special issuance for higher-rated pilots, it has chosen to proceed cautiously. The American Diabetes Association and several affected pilots have urged the FAA to update its special-issuance process for ITDM beyond third-class medical certification by developing an ITDM special-issuance protocol to allow the exercise of commercial and airline transport pilot privileges.

In 2013, the FAA suggested the American Diabetes Association consider convening a panel of experts to recommend how to risk stratify ITDM pilots for consideration beyond the private pilot certification level, to include recommending a protocol for identifying a subset of individuals at very low risk for hypoglycemia. The American Diabetes Association panel concluded that updating the protocol to airline transport and commercial pilots was justified. In their findings submitted to the FAA, the ADA panel indicated the following:

The treatment of insulin treated diabetes has improved dramatically over the past thirty-five years with the advent of accurate determinations of blood glucose levels using meters with sophisticated memory chips and built in analytical programs. These developments also include continuous glucose monitors, continuous subcutaneous insulin infusion pumps, and improvements in short and long acting insulin analogues. These improvements permit real-time measurement of blood glucose levels, and have made it far easier for people with insulin treated diabetes to maintain near-normal blood glucose levels. This, in turn, dramatically reduces the risk of both short and long term complications of diabetes with significant reduction in the rate of both hyper- and hypoglycemic glucose levels. Careful monitoring and management of insulin treated diabetes is now routine and the processes involved have become streamlined such that school children often self-manage their glucose levels with minimal or no adult intervention.

In addition, the ADA panel concluded the following:

After considering all the evidence and clinical experience, the expert panel concluded that there are pilots with insulin treated diabetes whose risk of incapacitation in flight is equivalent to, or lower than pilots who do not have insulin treated diabetes. Their risk, like the risk presented by pilots who do not have insulin treated diabetes, is nonzero, but extremely improbable. It is the recommendation of the Expert Panel that FAA policy should be updated to reflect current diabetes medicine and permit such pilots medical certification at the first, second, and third class level.

The FAA reviewed the ADA 2013 recommendations and determined they provided impetus for a way forward. At the time, however, FAA medical experts and consultants were not satisfied that the level of medical treatment and technology was sufficiently advanced to consider moving forward with higher-level ITDM certification. As such, the FAA continued to pursue identifying a protocol that could be used for identifying a subset of individuals at very low risk for hypoglycemia. Unable to identify such a subset, the FAA turned to its own data on third-class ITDM pilots.

FAA Study of Third-Class ITDM Protocol

In 2015, the FAA Civil Aerospace Medical Institute (CAMI) evaluated the experience of U.S. private pilots flying with ITDM in a study entitled: ''Risk Assessment in the U.S. Pilot Population from 1983 to 2005: Diabetes Prevalence and Flight Safety.'' [1] CAMI conducted this study to evaluate trends for obesity and diabetes as reflected in the U.S. pilot population and explore the effects on flight safety and longevity of pilots

[1] See DOT/FAA/AM–15/5; March 2015.

with these conditions. The study noted that the prevalence of diabetes and obesity has increased worldwide, almost doubling between 1980 and 2014. This study found that the number of pilots with diabetes in the U.S. active pilot population rose from 2,768 in 1983 to 10,806 in 2005, an almost four-fold increase, reflecting both the increased prevalence in the population and the 1996 change in FAA policy. Limited prior evidence had suggested that aviators with reported diabetes controlled by hypoglycemic medication and diabetes controlled by diet alone were at greater accident risk than aviators without these conditions. The study reviewed NTSB accident reports from 1997–2005, reporting only 18 general aviation events involving insulin-dependent pilots.[2] Two accidents resulted in fatalities; one resulted in non-fatal injuries, and only one was conducted under instrument flight rules. All but one incident (mechanical, not pilot-related) were human factors-related and attributed to pilot error. The study concluded that, overall, the NTSB data did not indicate that diabetes directly contributed to the accidents.

Monitoring Innovations

Subsequent to the 2015 CAMI study, the FAA continued to follow the advances in diabetes medical science, including innovative progress with diabetes treatment (*e.g.,* medications), but most particularly with an individual's ability to efficiently self-monitor using continuous glucose monitoring (CGM) devices. CGM is wearable technology that provides a reliable and accepted means for accurately monitoring blood sugar levels, and predicting when a change is occurring. CGM monitoring, along with standard clinical follow up, reduces the risk of hypoglycemia, both inflight and outside the flight environment. CGM technology allows affected pilots to address their particular situation with good reassurance regarding short- and long-term stability. CGM usage allows the FAA to identify a low-risk subset and consider applicants whose glycemic stability is sufficiently controlled for safety of flight, even for commercial operations. Whereas the existing third-class protocol of finger-stick glucose testing before and during flight has proven sufficient at the private pilot level, the FAA has determined that CGM monitoring sufficiently increases the level of safety necessary to effectively validate higher-level piloting. With CGM, the FAA has been able to develop evidence-based protocols that ensure that each applicant vetted and granted a special issuance to their medical certificate is capable of maintaining diabetic control appropriate for safety of flight.

Experience of Other Countries Allowing ITDM Pilots To Exercise Pilot Privileges Commercially

The FAA is aware of two civil aviation authorities (CAAs) with experience in allowing individuals with ITDM to exercise their equivalent of commercial and airline transport pilot privileges. The Canadian CAA has approximately two decades of experience implementing a more flexible ITDM policy for commercial operations. Pilots (both commercial and airline transport pilots) with ITDM also are considered for medical certification in the United Kingdom. These CAAs link operational limitations and protocols to the medical certificate that must be strictly followed. These protocols may include limiting flights to multi-crew operations; informing the other pilot of the diabetes diagnosis; and training the other pilot on the recognition and treatment of hypoglycemia. Commercial pilots with ITDM from other CAAs have been flying internationally, including in U.S. airspace, for many years with no reported adverse impact on safety.

While the ITDM protocols from other CAAs have resulted in safe operations, the FAA has decided to take a different approach that it believes will enhance safety. Rather than imposing operational limitations and protocols via the medical certificate,[3] the FAA has developed an approach that is focused on the applicant's health. The FAA's ITDM protocol employs updated and proven medical technologies and best practices that allow for continuous monitoring and oversight of the ITDM individual, thereby reducing the potential for incapacitation. Under the FAA's ITDM protocol, the FAA will issue a first- or second-class special issuance medical certificate to an ITDM applicant only if the FAA has determined that safety of flight can be maintained with the use of CGM technology.[4]

Exercising Pilot Privileges Internationally With an FAA Special-Issuance Medical Certificate

Under International Civil Aviation Organization (ICAO) standards, diabetes controlled by insulin is considered specifically disqualifying just as it is in the United States. However, ICAO Annex 1 standard 1.2.4.9 (like U.S. regulation 14 CFR 67.401) applies a flexibility clause allowing signatory states (like the United States) to use discretion in issuing medical certificates. U.S. regulation refers to this discretion as special issuance, whereas ICAO standard refers to it as ''accredited medical conclusion'' as follows:

1.2.4.9 If the medical Standards prescribed in [ICAO Annex 1] Chapter 6 for a particular license are not met, the appropriate Medical Assessment shall not be issued or renewed unless the following conditions are fulfilled:

(a) accredited medical conclusion indicates that in special circumstances the applicant's failure to meet any requirement, whether numerical or otherwise, is such that exercise of the privileges of the license applied for is not likely to jeopardize flight safety;

(b) relevant ability, skill and experience of the applicant and operational conditions have been given due consideration; and

(c) the license is endorsed with any special limitation or limitations when the safe performance of the license holder's duties is dependent on compliance with such limitation or limitations.

The ICAO Manual of Civil Aviation Medicine (Doc 8984) states:

The methods used to treat diabetic patients have improved over recent decades and individuals that require insulin to maintain satisfactory blood glucose levels may apply, or re-apply, for a license to fly or to undertake air traffic control work. Although Annex 1, 6.3.2.16 (and 6.4.2.16, 6.5.2.16 for Class 2 and 3, respectively) normally precludes certification of insulin-treated diabetic applicants for any class of Medical Assessment, several Contracting States permit such applicants to exercise license privileges, utilizing the flexibility Standard 1.2.4.9, and others may wish to consider doing so.

U.S. pilots flying under special issuance on U.S.-registered aircraft have always been recognized as ICAO-compliant. They have been accepted flying in airspace outside of the United States, just as the United States accepts foreign air carrier pilots with special issuance (including for ITDM) exercising pilot privileges within U.S. airspace.

[2] *Id.* at 11.

[3] The FAA notes that it may not condition the continued effect of any first-class medical certificate based on compliance with functional limitations. *See* 14 CFR 67.401(d)(4); *see also Delta Air Lines, Inc.,* 490 F. Supp. at 918–919 (finding the FAA cannot regulate, restrict, or place functional limitations on the cockpit duties an airline transport pilot may perform because it usurps the authority of the airline).

[4] As with all cases the FAA reviews, an authorization for special issuance will be based on a favorable determination that safety of flight can be maintained. *See* 14 CFR 67.401(a).

New FAA Protocol

Rationale for Considering ITDM Applicants Seeking To Exercise Higher-Rated Pilot Privileges

After extensive deliberation and careful consideration, the FAA has developed a new FAA ITDM protocol to allow special issuance, based on CGM technology, for any class of medical certificate for ITDM individuals who meet specific criteria. As discussed, several factors contributed to the FAA's decision to develop a new ITDM protocol: Input from the expert medical community; years of experience with private pilots being special-issued for ITDM; the 2015 CAMI study validating safety; the experience of other CAAs with no adverse impact on flight safety; medical advances in the treatment of diabetes; and maturation of CGM technology.

Individuals with ITDM seeking to exercise airline transport or commercial pilot privileges may submit an application via MedXpress for medical review and consideration. CGM use will be implemented for first- or second-class special issuance medical certification for ITDM applicants. As with all cases the FAA reviews, an authorization for special issuance will be based on a favorable determination that safety of flight can be maintained. Also, applicants for third-class special issuance may apply under the existing protocol or the new CGM-based protocol.

Interested applicants should work with their Aviation Medical Examiner, appropriate medical specialists (endocrinologist, cardiologist, ophthalmologist, etc.), and the FAA to coordinate submission of the appropriate documentation needed for consideration. For consideration, potential applicants will need to demonstrate stability and adequate control of ITDM using CGM technology for a minimum of at least 6 months. In keeping with 14 CFR 67.413 requirements to provide the FAA with medical history to ensure appropriate fitness for flight, applicants applying for the new protocol must be able to provide the following:

(1) Initial comprehensive report from the treating, board-certified endocrinologist
(2) Initial comprehensive laboratory panel
(3) Finger-Stick Blood Sugar (FSBS) glucose monitoring data
(4) Continuous Glucose Monitoring (CGM) data for at least the preceding 6-month period (using a device legally marketed in the United States in accordance with Food and Drug Administration requirements and containing protocol-specific features needed for appropriate in-flight monitoring.).
(5) Excel spreadsheet or similar that identifies CGM data for all flights for the past 6 months and any actions taken to address low or high glucose levels.
(6) Eye evaluation (from a board certified ophthalmologist)
(7) Cardiac risk evaluation (from a board certified cardiologist)

For more information, applicants interested in applying for an ITDM special issuance should consult the specific ITDM protocols, including CGM features needed for proper in-flight monitoring, by searching ''ITDM'' in the Guide for Aviation Medical Examiners at: *www.faa.gov/go/ITDM.*

Individuals who may have submitted an application to the FAA in advance of this announcement will be contacted if further information is needed to process their submission.

This notice is not legally binding in its own right and will not be relied on by FAA as a separate basis for affirmative enforcement action or other administrative penalty. Unless otherwise required by statute or regulation, conformity with the new protocol described here is voluntary only. Nonconformity will not affect rights or obligations under existing statutes and regulations.

Inviting Comments

The FAA is requesting comments on the new ITDM protocol described herein. The agency will consider comments received on or before January 6, 2020. The new ITDM protocol may be revised based on comments received.

Issued in Washington, DC, on October 30, 2019.

Michael A. Berry,

Federal Air Surgeon.

[FR Doc. 2019–24150 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2019–75]

Petition for Exemption; Summary of Petition Received; Elbe Flugzegwerke GmbH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before November 27, 2019.

ADDRESSES: Send comments identified by docket number FAA–2019–0565 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (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: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Michael H. Harrison, AIR–673, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198, phone and fax 206–231–3368, email *Michael.Harrison@FAA.gov.*

This notice is published pursuant to 14 CFR 11.85.

Issued in Des Moines, Washington, on November 4, 2019.

James E. Wilborn,

Acting Manager, Transport Standards Branch.

Petition for Exemption

Docket No.: FAA–2019–0565.

Petitioner: Elbe Flugzegwerke GmbH.

Section(s) of 14 CFR Affected: § 25.785(j), 25.791(b), 25.807(g)(1), 25.807(i)(1), 25.809(a), 25.812(e), 25.812(l), 25.857(e), 25.1447(c)(1), and 25.1449.

Description of Relief Sought: ST Engineering, on behalf of Elbe Flugzegwerke GmbH, is seeking relief in support of a supplemental type certificate project. The exemption, if granted would permit the carriage of non-crewmembers (commonly referred to as supernumeraries) in the redefined flight deck, forward of the 9g rigid cargo barrier on Airbus Model A320–200 and A321–200 series passenger airplanes converted to freighter airplanes.

[FR Doc. 2019–24315 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 2019–0599]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 13, 2019. The collection involves information applicants must provide on an application for an FAA medical certificate. The information to be collected will be used to evaluate an applicant's medical fitness.

DATES: Written comments should be submitted by December 9, 2019.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Judi Citrenbaum by email at: *judi.m.citrenbaum@faa.gov;* phone: 202–267–9689.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0034.

Title: Medical Standards and Certification.

Form Numbers: FAA Forms 8500–7, 8500–8, 8500–14.

Type of Review: Renewal of an information collection.

Background: The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 13, 2019 (84 FR 40125). The Secretary of Transportation collects this information under the authority of 49 U.S.C. 40113; 44701; 44510; 44702; 44703; 44709; 45303; and 80111. The FAA medical certification program is implemented by Title 14 Code of Federal Regulations (CFR) parts 61 and 67 (14 CFR parts 61 and 67). The Federal Aviation Administration (FAA) determines if applicants are medically qualified to perform the duties associated with the class of medical certificate sought by evaluating the information applicants provide on FAA Form 8500–8. Also, the agency uses two vision forms, as indicated, for individuals who may need further eye evaluation.

Respondents: 405,345 (all three forms).

Frequency: On occasion.

Estimated Average Burden per Response: 1.5 Hours.

Estimated Total Annual Burden: 585,517 Hours.

Issued in Washington, DC, on November 4, 2019.

Nicole Harrison,

Management and Program Analyst, Office of Aerospace Medicine, Management and Personnel Systems Branch, AAM–120.

[FR Doc. 2019–24338 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: San Diego and Orange Counties, California; Notice of Intent

AGENCY: Federal Highway Administration, U.S. Department of Transportation.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA), on behalf of the California Department of Transportation (Caltrans), is issuing this notice to advise the public that a Draft Environmental Impact Statement (Draft EIS) will be prepared for the South County Traffic Relief Effort, a proposed highway project in Orange County and San Diego County, California.

DATES: Formal scoping will occur from November 8, 2019 through December 9, 2019. The deadline for comments is 5:00 p.m. on December 9, 2019. Two public scoping meetings will be held on Wednesday, November 20, 2019, from 5:00 p.m. to 8:00 p.m. and on Wednesday, December 4, 2019 from 5:00 p.m. to 8:00 p.m.

ADDRESSES: The Wednesday, November 20, 2019 public scoping meeting will be held at Norman P. Murray Community Center, 24932 Veterans Way, Mission Viejo, CA 92692. The Wednesday, December 4, 2019 public scoping meeting will be held at the Ocean Institute, 24200 Dana Point Harbor Drive, Dana Point, CA 92629.

FOR FURTHER INFORMATION CONTACT: Caltrans District 12, 1750 East 4th Street, Santa Ana, CA 92705, Attn: Env/SCTRE Scoping. Formal scoping comments can also be submitted via email at *scoping@SCTRE.org.* More information can also be found at the project website at *http://www.SCTRE.org.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Caltrans as the assigned National Environmental Policy Act (NEPA) agency, in cooperation with the Foothill/Eastern Transportation Corridor Agency (F/ETCA), will prepare

a Draft EIS on a proposal for a highway improvement project in Orange County and San Diego County, California. The proposed improvements intended to address north-south regional mobility and accommodation of travel demand include the extension of the tolled State Route (SR) 241 lanes to Interstate (I) 5, the extension of Crown Valley Parkway to SR 241, new connections between Ortega Highway, Antonio Parkway, Avery Parkway, and SR–73, new general purpose lanes on I–5, new managed lanes on I–5, or combinations of these preliminary alternatives. Currently, the following alternatives are being considered, ranging from approximately 4 to 22 miles in length:

- Alternative 1/No Build Alternative; taking no action.
- Alternative 13; connect SR 241 to I–5 via a connection from Los Patrones Parkway to La Novia Avenue, I–5 widening and improvements, and the addition of HOT lanes in each direction on I–5
- Alternative 17; connect SR 241 to I–5 via a connection from Los Patrones Parkway to Avenida Vaquero, I–5 widening and improvements, and the addition of HOT lanes in each direction on I–5
- Alternative 14; connect SR 241 to I–5 via a connection from Los Patrones Parkway to Avenida Pico, I–5 widening and improvements, and the addition of HOT lanes in each direction on I–5
- Alternative 11; add I–5 general purpose lanes from I–405 to San Diego County
- Alternative 12; add I–5 HOT/toll lanes from I–405 to San Diego County
- Alternative 9; connect Ortega Highway and Antonio Parkway to Avery Parkway and SR 73
- Alternative 18; connect SR–241 to SR–73 and extend Crown Valley Parkway to SR 241
- Alternative 21; extend Los Patrones Parkway to Avenida La Pata and add HOT lanes in each direction on I–5
- Alternative 22; extend Los Patrones Parkway to Avenida La Pata
- Alternative 23; extend I–5 managed lanes from SR 73 to Basilone Road or from Avenida Pico to Basilone Road (depending on the design option)

Anticipated Federal approvals include permits under the National Pollutant Discharge Elimination System (NPDES), Clean Water Act (CWA) Section 401 Water Quality, CWA Section 404 Nationwide Permit from the United States Army Corps of Engineers (USACE), CWA Section 10 Permit from the USACE, California Fish and Game Code Section 1602 Lake or Streambed Alteration Agreement from the California Department of Fish and Wildlife (CDFW), Section 7 Consultation with the United States Fish and Wildlife Service (USFWS) for listed species under the Federal Endangered Species Act (FESA), CDFW 2080.1 Consistency Determination for listed species under the California Endangered Species Act (CESA), and Coastal Zone Management Act (CZMA) Consistency Determination from the California Coastal Commission (CCC).

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, Participating Agencies, tribal governments, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The public scoping process will officially begin in November 2019. In addition, a public hearing will be held once the Draft EIS is completed. Public notice will be given of the time and place of the meeting and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing to ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, and comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to Caltrans at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: October 31, 2019.

Tashia Clemons,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. 2019–24326 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0242]

Agency Information Collection Activities; Revision and Extension of a Currently-Approved Information Collection Request: Hazardous Materials Safety Permits

AGENCY: FMCSA, DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. The FMCSA requests approval to revise and extend an existing ICR titled, ''Hazardous Materials Safety Permits.'' This ICR requires companies holding permits to develop and implement communications plans that allow for the periodic tracking of the shipments. A record of the communications that includes the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, time and location of each contact may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or readily available to the employees at the company's principal place of business. This ICR is being revised only to the extent that the number of motor carriers with an active Hazardous Materials (HM) Safety Permit has decreased from 1,304 to 987.

DATES: We must receive your comments on or before January 6, 2020.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2019–0242 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or

comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Rach, Office of Enforcement and Compliance, Hazardous Materials Division, Department of Transportation, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202–385–2307; email *suzanne.rach@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is responsible for implementing regulations to issue safety permits for transporting certain HM in accordance with 49 U.S.C. 5101 *et seq.* Currently, the HM Safety Permit regulations (49 CFR part 385, subpart E) require companies applying for a HM Safety Permit that do not have a USDOT number to file online at the FMCSA website via the Unified Registration System (URS) before conducting operations in commerce that require a safety permit. Safety permit applications for companies that have a USDOT number and applications to update or renew a safety permit must be filed with FMCSA using the form MCS–150B (Combined Motor Carrier Identification Report and HMSP Application). The URS and MCS–150B are covered under the FMCSA's OMB Control Number 2126–0013, ''Motor Carrier Identification Report,'' information collection request. The FMCSA requires companies holding permits to develop a communications plan that allows for the periodic tracking of the shipment. This information collection request covers the record of communications that includes the name of the driver, identification of the vehicle, permitted material(s) being transported, and the date, location and time of each contact. The records may be kept by either the driver (*e.g.,* recorded in the log book) or the company. These records must be kept, either physically or electronically, for at least six months at the company's principal place of business or be readily available to employees at the company's principal place of business.

Title: Hazardous Materials Safety Permits.

OMB Control Number: 2126–0030.

Type of Request: Revision and extension of a currently-approved information collection.

Respondents: Motor carriers subject to the Hazardous Materials Safety Permit requirements in 49 CFR part 385, subpart E.

Estimated Number of Respondents: 987.

Estimated Time per Response: 5 minutes. The communication between motor carriers and their drivers must take place at least two times per day, and at the pickup and delivery of each permitted load. It is estimated that it will take 5 minutes to maintain a daily communication record for each driver.

Expiration Date: August 31, 2020.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 692,000 hours [8.3 million trips × 5 minutes per record ÷ 60 minutes per hour = 691,667 rounded to 692,000]

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued under the authority of 49 CFR 1.87 on: October 31, 2019.

Kelly Regal,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2019–24236 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0064; Notice 1]

Toyota Motor North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Toyota Motor North America, Inc., (Toyota) has determined that certain model year (MY) 2013–2019 Lexus motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Toyota filed a noncompliance report dated May 30, 2019. Toyota subsequently petitioned NHTSA on June 21, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Toyota's petition.

DATES: The closing date for comments on the petition is December 9, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy

form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. *Overview:* Toyota has determined that certain MY 2013–2019 Lexus motor vehicles do not fully comply with paragraph S8.1.11 and Table XVI-a of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). Toyota filed a noncompliance report for the motor vehicles dated May 30, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota subsequently petitioned NHTSA on June 21, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt, of Toyota's petition, is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercises of judgment concerning the merits of the petition.

II. *Vehicles Involved:* Approximately 502,034 of the following MY 2013–2019 Lexus motor vehicles, manufactured between July 19, 2011, and May 21, 2019, are potentially involved:

- MY 2013–2018 Lexus ES350
- MY 2013–2018 Lexus ES300h
- MY 2013–2019 Lexus GS200t/300/350
- MY 2013–2018 Lexus GS450h
- MY 2016–2019 Lexus GS–F

III. *Noncompliance:* Toyota explains that the noncompliance is that the subject vehicles are equipped with rear reflectors that do not meet the minimum photometry requirements specified in paragraph S8.1.11 and Table XVI-a of FMVSS No. 108. Specifically, the reflex reflector in the subject vehicles may contain a photometry value 18 percent below the required minimum.

IV. *Rule Requirements:* Paragraph S8.1.11 and Table XVI-a of FMVSS No. 108 includes the requirements relevant to this petition. Each reflex reflector must be designed to conform to the photometry requirements of Table XVI-a, when tested according to the procedure in paragraph S14.2.3 of FMVSS No. 108, for the reflex reflector color.

V. *Summary of Toyota's Petition:* The following views and arguments presented in this section, V. Summary of Toyota's petition, are the views and arguments provided by Toyota. They have not been evaluated by the agency and do not reflect the views of the agency.

Toyota described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety. Toyota submitted the following views and arguments in support of the petition:

1. The extent of the noncompliance for the subject reflex reflectors is such that the human eye is unable to differentiate the reflected light of noncompliant reflectors from the reflected light of ones that are compliant.

The technical cause of the noncompliance is related to the annealing process at the end of a day when reflectors were left in the oven as the oven cooled down. An assessment was made of the maximum deviation from the standard that could result from this circumstance. Based on the 60 piece parts study using the worst-case annealing process, Toyota calculated at 4.2 standard deviations from the mean that no part would deviate below 8.1 percent from the FMVSS standard. Considering the tolerance interval calculation method, the worst possible deviation from the standard would be −18 percent.

The NHTSA sponsored study ''Driver Perception of Just Noticeable Differences of Automotive Signal Lamp Intensities'' (DOT HS 808 209, September 1994) and The University of Michigan Transportation Research Institute (UMTRI) ''Just Noticeable Differences for Low-Beam Headlamp Intensities.'' (UMTRI–97–4, February 1997) found that a change in luminous intensity of 25 percent or less is not noticeable by most drivers. The agency noted in 1990 when it granted an inconsequentiality petition filed by Hella, Inc., ''a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps.'' *See* 55 FR 37601, 37602. In the Subaru petition, the agency stated that the same considerations can be applied to reflectors as to lamps.

To verify that a deviation of −18 percent is not detectable to the human eye, Toyota and the supplier conducted evaluations of the reflected light from the noncompliant part that was produced in the 60-piece study and another reflector that was approximately 20 percent higher in reflectivity. The reflectors were mounted in a dark tunnel and set up to simulate the FMVSS No. 108 test setup at 0.2 degrees. Ten panelists were instructed to stand at a specific location 100 feet from the reflectors at a height approximating at a 0.2-degree angle to the reflectors. They were asked if the reflector brightness was the same or different. After the ten panelists completed the survey, the same panelists were asked to repeat the activity; they were unaware that the parts and setup had not been changed. This survey activity was then repeated using two parts of equal reflectivity. In these surveys, none of the panelists were able to identify the noncompliant part or correctly identify differences in reflectivity.

In addition, Toyota installed the same two parts that were checked in the dark tunnel on a MY 2018 Lexus ES350. Using the headlamps from another vehicle that was aligned 100 feet behind the ES, Toyota members visually observed the reflectivity between the two parts at night and were unable to distinguish a difference between the two reflectors. They looked the same.

2. There are no known complaints related to the noncompliance.

Toyota conducted a search of consumer complaints, field reports, dealer reports, Vehicle Owner Questionnaires (VOQs), and legal claims for the subject vehicles and found no report alleging that the rear reflectors could not be seen or were not bright

enough. This search is current as of May 29, 2019.

3. In similar situations, NHTSA has granted petitions for inconsequential noncompliance relating to the subject requirement of FMVSS No. 108.

NHTSA has previously granted at least two similar petitions for inconsequential noncompliance, one for a tail lamp and one for a side reflex reflector assembly. A brief summary of the decisions is provided below:

- Hella, 55 FR 37601, (September 12, 1990)

In the petition, Hella argued that industry experience and supporting studies have established that the human eye in the vast majority of cases cannot detect a change in luminescence unless it is more than a 25 percent increase or decrease. NHTSA stated that a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps. Of the noncompliant lamps tested, the greatest disparity reported between a compliant lamp and a noncompliant lamp was 3.6 cd, which is a 20 percent higher luminous intensity than compliant lamps. According to the SAE Recommended Practice J576, this differential cannot be detected by the human eye. For this reason, the Hella petition was granted.

- Subaru, 56 FR 59971, (November 26, 1991)

Subaru submitted a petition for inconsequential noncompliance in 1991 concerning the failures of luminous intensity on the side reflex reflector. NHTSA considered the petitioner's statement that observers could not differentiate between the reflected light of complying and noncomplying reflectors at distances of 30m, 60m, and 100m. As the agency noted in 1990 when it granted an inconsequentiality petition filed by Hella, Inc., ''a reduction of approximately 25 percent in luminous intensity is required before the human eye can detect the difference between two lamps.'' *See* 55 FR 37601, 37602. The agency applied the same considerations to reflectors as to lamps. The luminous transmittance failures of the Subaru reflectors were all less than 20 percent of the minimum values specified by the standard, and, therefore, they were undetectable by the naked eye. For this reason, the petition was granted.

Toyota concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–24303 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2018–0110; Notice 1]

Great Dane, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Great Dane, LLC (Great Dane) has determined that certain model year (MY) 2019 Great Dane Freedom Platform trailers do not comply with Federal Motor Vehicle Safety Standards (FMVSS) No. 223, *Rear Impact Guards,* and FMVSS No. 224, *Rear Impact Protection.* Great Dane filed a noncompliance report dated January 2, 2019, and subsequently petitioned NHTSA on January 2, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Great Dane's petition.

DATES: The closing date for comments on the petition is December 9, 2019.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://*

www.regulations.gov by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000, (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview: Great Dane has determined that certain MY 2019 Great Dane Freedom Platform trailers do not fully comply with paragraph S5.3 of FMVSS No. 223, *Rear Impact Guards* (49 CFR 571.223), and paragraph S5.1 of FMVSS No 224, *Rear Impact Protection* (49 CFR 571.224). Great Dane filed a noncompliance report dated January 2, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports,* and subsequently petitioned NHTSA on January 2, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of their petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Trailers Involved: Approximately 72 MY 2019 Great Dane Freedom Platform trailers, manufactured between July 10, 2018, and November 8, 2018, are potentially involved.

III. Noncompliance: Great Dane explained that the noncompliance is that the subject trailers were manufactured with a rear impact guard that does not contain the certification plate as required by paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224.

IV. Rule Text: Paragraphs S5.3 of FMVSS No. 223 and S5.1 of FMVSS No. 224 include the requirements relevant to this petition. Each guard shall be permanently labeled with the information specified in paragraphs S5.3(a) through (c) of FMVSS No. 223. The information shall be in English and in letters that are at least 2.5mm high. The label shall be placed on the forward or rearward facing surface of the horizontal member of the guard, provided that the label does not interfere with the retroreflective sheeting required by S5.7.1.4.1(c) of FMVSS No. 108 (49 CFR 571.108), and is readily accessible for visual inspection and includes the following: (a) The guard manufacturer's name and address, (b) the statement: ''Manufactured in ____'' (inserting the month and year of guard manufacture), and (c) the letters ''DOT,'' constituting a certification by the guard manufacturer that the guard conforms to all requirements of this standard. FMVSS No. 224 requires that each vehicle shall be equipped with a rear impact guard certified as meeting FMVSS No. 223.

V. Summary of Great Dane's Petition: The following views and arguments presented in this section, V. Summary of Great Dane's Petition, are the views and arguments provided by Great Dane. They have not been evaluated by the agency and do not reflect the views of the agency.

Accordingly, Great Dane described the subject noncompliance and stated that the noncompliance is inconsequential as it relates to motor vehicle safety.

1. Great Dane believes that the lack of the impact guard certification plate, is an inconsequential type of noncompliance as it relates to vehicle safety. The fact that the certification plate was not installed on the rear impact guard on this particular group of trailers does not make these trailers any less safe.

2. Great Dane stated that these rear impact guards as manufactured and installed by Great Dane, are compliant as required by the Federal Standard.

3. The subject trailers have affixed to them certification plates, certifying that the entire trailer, including the rear impact guard, meet and/or exceed all the Federal Motor Vehicle Safety Standards in effect, on the date of manufacture as indicated.

4. To meet the standards of FMVSS 223 and 224, Great Dane has never installed a third party produced rear impact guard on any of its trailers.

5. The incident that lead to these trailers being produced without the plate attached was an isolated incident. It has since been investigated, resolved, and should not occur again in the future.

6. Great Dane believes that the extra certification plate required on the rear impact guard is redundant.

Great Dane concluded by expressing the belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject trailers that Great Dane no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trailers under their control after Great Dane notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8).

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2019–24302 Filed 11–6–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Their property and interests in property are no longer blocked, and U.S. persons are no longer 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 Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

OFAC previously determined on May 10, 2019, that the persons listed below met one or more of the criteria under E.O. 13850. On November 4, 2019, OFAC determined that circumstances no longer warrant the inclusion of the following persons on the SDN List under this authority. These persons are no longer subject to the blocking provisions of Section 1(a) of E.O. 13850.

Entity

1. MONSOON NAVIGATION CORPORATION, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands; Identification Number IMO 5403673 [VENEZUELA–EO13850].

Vessel

1. OCEAN ELEGANCE Crude Oil Tanker Panama flag; Vessel Reginstration Identification IMO 9038749 (vessel) [VENEZUELA–EO13850] (Linked To: MONSOON NAVIGATION CORPORATION).

Dated: November 4, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–24334 Filed 11–6–19; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Disability Compensation, Notice of Meeting

The Department of Veterans Affairs (VA) give notice under the Federal Advisory Committee Act that the Advisory Committee on Disability Compensation (the Committee) will meet Tuesday, December 3—Wednesday, December 4, 2019, at 1722 Eye Street, NW, Washington, DC, 20006. The meeting will be held in the Appeals Management Office (AMO) 3rd floor Training Complex. The meeting sessions will begin and end as follows:

Date	Time
December 3, 2019	8:30 a.m. to 4:30 p.m.
December 4, 2019	8:30 a.m. to 4:30 p.m.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising during service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule, and give advice on the most appropriate means of responding to the needs of Veterans relating to disability compensation.

On December 3, 2019, the Committee will receive briefings on issues related to compensation benefits for Veterans and transitioning Servicemembers to include National Guard and Reservice components from Office of Transition and Economic Development (TED); Office of Strategic Initiatives and Collaboration (OSIC); and Compensation Service. On December 4, 2019, the Committee will receive briefings on the progress of updating the Veterans Affairs Schedule for Rating Disabilities (VASRD) and an update on the Earnings and Loss Study associated with the VASRD. The afternoon session will include remarks by VA officials on new and ongoing VA initiatives and priorities.

Time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit a 1–2-page summary of their comments at the time of the meeting for inclusion in the official meeting record. This document will be published in the **Federal Register** at *https://federalregister.gov/d/2019–08685,* and on *govinfo.gov.*

The public may submit written statements for the Committee's review to Janice Stewart, Department of Veterans Affairs, Veterans Benefits Administration, Compensation Service, Policy Staff (211C), 810 Vermont Avenue NW, Washington, DC 20420 or email at *Janice.Stewart@va.gov.* Because the meeting is being held in a government building, a photo I.D. must be presented at the guard's Desk as a part of the screening process. Due to an increase in security protocols, you should arrive 30 minutes prior to the start of the meeting. A routine escort will be provided until 8:10 a.m. each day. Any member of the public wishing to attend the meeting or seeking additional information should email Janice Stewart or call her at (202) 461–9023.

Dated: November 4, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–24333 Filed 11–6–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act that the Advisory Committee on Minority Veterans will meet on December 3–5, 2019, at the Department of Veterans Affairs, 810 Vermont Avenue NW, Sonny Montgomery Conference Room 230, Washington, DC. The meeting sessions will begin and end as follows:

Dates	Times
December 3, 2019	8:00 a.m. to 5:00 p.m.—Eastern Standard Time (EST).
December 4, 2019	8:00 a.m. to 4:30 p.m. EST.
December 5, 2019	8:00 a.m. to 4:00 p.m. EST.

Note: On December 5th, the morning session will begin at 8:00 a.m. and adjourn at 11:00 a.m. The afternoon session will reconvene at 1:00 p.m. in room 530 and adjourn at 4:00 p.m.

All meeting sessions are open to the public.

The purposes of the Committee are to advise the Secretary on the administration of VA benefits and services to minority Veterans; assess the needs of minority Veterans; and evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On December 3, the Committee will receive briefings and updates from the Office of Transition and Economic Development, Center for Minority Veterans, National Cemetery Administration, Veterans Experience Office, National Center for Veterans Analysis, Office of Tribal Government Relations, Million Veteran Program and Veterans Benefits Administration. On December 4, the Committee will receive briefings and updates from the Board of Veterans Appeals, Veterans Health Administration, Center for Women Veterans, Women's Health Services, Mental Health, Office of Telehealth,

Office of Rural Health and Office of Health Equity. On December 5, the Committee will receive a briefing and update on Office of Diversity & Inclusion, Ex-Officio Update and hold an exit briefing with VBA, VHA and NCA. The Committee will receive public comments from 10:00 a.m. to 10:15 a.m. After the Leadership Exit Briefing, the Committee will continue to work on their report.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Ms. Juanita Mullen, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue NW, Washington, DC 20420, or email at *Juanita.Mullen@va.gov.* Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process. Any member of the public wishing to attend or seeking additional information should contact Ms. Mullen or Mr. Dennis May at (202) 461–6191 or by fax at (202) 273–7092.

Dated: November 4, 2019.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–24321 Filed 11–6–19; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 84 Thursday,

No. 216 November 7, 2019

Part II

Department of Labor

29 CFR Part 90
Employment and Training Administration

20 CFR Parts 617 and 618
Trade Adjustment Assistance for Workers; Proposed Rule

DEPARTMENT OF LABOR

29 CFR Part 90

Employment and Training Administration

20 CFR Parts 617 and 618

[Docket No. ETA–2019–0009]

RIN 1205–AB78

Trade Adjustment Assistance for Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) proposes to expand protection and support for U.S. workers adversely impacted by foreign trade by revising its Trade Adjustment Assistance (TAA) for Workers program (TAA Program) regulations. The proposed rule (NPRM) would, among other improvements, make it easier for workers to qualify for job search and relocation allowances, increase those allowances in line with statute, expand training to include more flexibility for apprenticeships, ensure workers have access to individualized assessments, make it easier for groups of workers to apply for benefits, and offer assistance to additional categories of workers, including by helping workers in jobs threatened by foreign trade to receive training and support to transition to new employment.

DATES: Send comments on or before December 9, 2019. Comments on the information collection determination described in Section V. D of the preamble (Paperwork Reduction Act) may be submitted (postmarked, sent, or received) by January 6, 2020 in Docket Number ETA–2019–0010.

ADDRESSES: You may send comments, identified by Docket No. ETA–2019–0009 and Regulatory Identification Number (RIN) 1205–AB78, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Instructions for how to submit public comments electronically on the Federal eRulemaking Portal can be found on the *http://www.regulations.gov* website under ''Help'' > ''How to use Regulations.gov'' > ''Submit a Comment.''
- *Mail:* Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.
- *Hand Delivery/Courier:* Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210.

Instructions: All submissions received must include the agency name and docket number for this rulemaking or ''RIN 1205–AB78.''

Please submit your comments by only one method. Please be advised that the Department will post all comments received that relate to this NPRM without changes to *http://www.regulations.gov,* including any personal information provided. The *http://www.regulations.gov* website is the Federal e-Rulemaking Portal and all comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information (either about themselves or others) such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the *http://www.regulations.gov* website. It is the responsibility of the commenter to safeguard personal information.

Also, please note that due to security concerns, postal mail delivery in Washington, DC may be delayed. Therefore, the Department encourages the public to submit comments on *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* (search using RIN 1205–AB78 or Docket No. ETA–2019–0009). The Department also will make all the comments it receives available for public inspection by appointment during normal business hours at the Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210. If you need assistance to review the comments, the Department will provide appropriate aids such as readers or print magnifiers. The Department will make copies of this NPRM available, upon request, in large print and electronic file. To schedule an appointment to review the comments or obtain the NPRM in an alternative format or both, contact OPDR at (202) 693–3700 (this is not a toll-free number). You may also contact this office at the address listed above.

Comments under the Paperwork Reduction Act (PRA): Send a copy of any comments that concern the information collection (IC) aspects of this NPRM to: Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Fax: (202) 395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

Comments on the information collection determination described in Section V. D of the preamble (Paperwork Reduction Act) also may be submitted (postmarked, sent, or received) by January 6, 2020 in Docket Number ETA–2019–0010. The Department will consider comments on the information collection determination submitted in either docket, but is providing additional time for commenters to submit relevant information collection comments to Docket Number ETA–2019–0010. See section V.D of this NPRM (''Paperwork Reduction Act'') for particular areas of interest.

FOR FURTHER INFORMATION CONTACT: Heidi Casta, Deputy Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number) or 1–800–326–2577 (Telecommunications Device for the Deaf).

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I. Acronyms and Abbreviations

AAIW(s) adversely affected incumbent worker(s)
AAW(s) adversely affected worker(s)
ABE adult basic education
ATAA Alternative Trade Adjustment Assistance
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
CSA(s) cooperating State agency(/ies)
Department Department of Labor
EB Extended Benefits
ECI Employment Cost Indices
ELA English language acquisition
E.O. Executive Order
ETA Employment and Training Administration
ETP(s) eligible training provider
EUCA Federal-State Extended Unemployment Compensation Act of 1970
FOIA Freedom of Information Act
FR Federal Register
FTR Federal Travel Regulation
FUTA Federal Unemployment Tax Act
FY Fiscal Year
GPA grade point average
GPRA Government Performance Results Act of 1993
HCTC Health Coverage Tax Credit
HEA Higher Education Act of 1965, as amended
HSE high school equivalency
IC information collection
IEP(s) individual employment plan(s)
IRS Internal Revenue Service
IT information technology
ITC International Trade Commission
JSP job search program
JTPA Job Training Partnership Act
LEP limited English proficient
local area local workforce development area
LWDB local workforce development board
MIS management information systems
NPRM Notice of Proposed Rulemaking
OECD Organisation for Economic Co-operation and Development
OJT on-the-job training
OMB Office of Management and Budget
OPDR Office of Policy Development and Research
OPM Office of Personnel Management
OTAA Office of Trade Adjustment Assistance
PCE Personal Consumption Expenditures
PII personally identifiable information
PIRL Participant Individual Record Layout
PRA Paperwork Reduction Act
PRWORA Personal Responsibility and Work Opportunity Reform Act
Pub. L. Public Law
RFA Regulatory Flexibility Act
RIN Regulatory Identification Number
RRUI Railroad Unemployment Insurance Act
RTAA Reemployment Trade Adjustment Assistance
Secretary Secretary of Labor
SSA Social Security Act
Stat. U.S. Statutes at Large
TAA Trade Adjustment Assistance
TAA Program
collective reference to the following three programs: TAA for Workers Program, ATAA, and RTAA
TAAEA Trade Adjustment Assistance Extension Act of 2011
TAARA 2002 Trade Adjustment Assistance Reform Act of 2002
TAARA 2015 Trade Adjustment Assistance Reauthorization Act of 2015
TaOA Training and Other Activities
TEGL(s) Training and Employment Guidance Letter(s)
TGAAA Trade and Globalization Adjustment Assistance Act of 2009
The Act chapter 2 of title II of the Trade Act of 1974, as amended
TRA Trade Readjustment Allowances
UI Unemployment Insurance
UIPL Unemployment Insurance Program Letter
UMRA Unfunded Mandates Reform Act of 1995
U.S.C. United States Code
USCIT United States Court of International Trade
WARN Worker Adjustment and Retraining Notice
WBA(s) weekly benefit amount(s)
WIA Workforce Investment Act of 1998
WIOA Workforce Innovation and Opportunity Act

II. Executive Summary

The Department proposes to streamline and consolidate three separate parts of the CFR that contain TAA Program regulations (20 CFR parts 617 and 618, 29 CFR part 90) into a single part (20 CFR part 618) with nine subparts. In addition, the proposed revisions would codify into regulation elements of the most recent TAA Program reauthorization and amendment, the Trade Adjustment Assistance Reauthorization Act of 2015 (Pub. L. 114–27, title IV) (TAARA 2015). This NPRM also incorporates existing operating instructions issued via administrative guidance into the TAA Program regulations, with some refinements. Further, the proposed revisions align the TAA Program regulations with the Workforce Innovation and Opportunity Act (WIOA) (Pub. L. 113–128), the 2014 comprehensive legislation that reauthorized the public workforce system.

The NPRM would increase efficiency and flexibility for States and trade-affected workers. Because subpart B (Petitions, Investigations, and Determinations) of this NPRM expressly proposes to permit workers employed by a leasing or staffing agency (termed ''staffed workers'') to be members of a worker group, even if they are not mentioned specifically within the determination document, the Department anticipates a substantial reduction in the number of requests to amend certifications. The Department also proposes to increase flexibility in subpart D (Job Search and Relocation Allowances) by making it easier for adversely affected workers (AAWs) to qualify for a job search allowance and ensuring that workers who qualify for relocation allowances are finding comparable or better paying jobs. Subpart F (Training Services) would expand work-based training to include apprenticeships for all or part of a trade-affected worker's training program. It also establishes a regulatory framework to provide assistance to workers who are currently employed but threatened with job loss resulting from trade, thereby enabling such workers to retrain and seek new employment before job separation occurs. And in subpart H (Administration by Applicable State Agencies), the Department would extend flexibility by removing the requirement that only State merit staff can be funded through employment and case management funding available under the TAA Program, allowing States more flexibility with program operations and creating better alignment with WIOA.

The NPRM seeks to improve service delivery, and thereby serve more trade-affected workers more effectively, by including service-delivery requirements that align with data-tested methods. The proposed subpart A (General) regulations better define certain investigations-based terms to add consistency at both the State and Federal level and improve program operations, including reducing burden and workload for TAA Program investigative reconsiderations and appeals related to these terms. In addition, the Department proposes to help provide positive outcomes for each trade-affected worker by including new data-driven requirements for assessments and individual employment plans (IEPs) in subpart C (Employment and Case Management Services).

Lastly, the NPRM would implement statutory provisions for Reemployment Trade Adjustment Assistance (RTAA) and would incorporate administrative guidance previously issued by the Department in subpart E since no

regulations covering the RTAA program exist. Proposed subpart G (Trade Readjustment Allowances (TRA)) would implement several statutory changes to TRA, including establishing deadlines to enroll in training, reducing the types of available waivers, allowing an election between Unemployment Insurance (UI) and TRA, and allowing AAWs to earn up to their weekly benefit amount without penalty. In addition, proposed subpart I (Allocation of Funds to States for Training and Other Activities) replaces the term ''training'' with ''Training and Other Activities'' (TaOA) to reflect the additional benefits and services covered by such funding.

The NPRM would reduce costs and legal burden from court proceedings by providing the public and courts with the Department's authoritative interpretation of the Act. Proposed subpart B (Petitions, Investigations, and Determinations) also would produce other cost savings by eliminating the two-step process for reconsiderations, which would reduce the processing time involved for all reconsiderations, and by clarifying ''final determinations'' for judicial appeals, which would reduce the number of those appeals. Lastly, proposed subpart H (Administration by Applicable State Agencies) would produce cost savings by revising the merit staff requirements to allow States to charge time for non-merit staff to TAA Program funds for the provision of employment and case management services.

The purposes of the proposed revisions are to ensure that the TAA Program regulations are modernized to reflect the program's current operation and make needed improvements. The proposed revisions also would provide clarity by eliminating confusing and overly technical language and update the TAA Program regulations by encouraging the use of paperless electronic mechanisms over paper-based methods.

The Department's preliminary regulatory impact analysis determines that this NPRM is a deregulatory action under E.O. 13771 because the cost savings associated with the rule would be larger than the anticipated costs of the rule. Cost savings associated with the rule are from revisions to the definition of ''final determination'' related to judicial appeals and from streamlining the reconsideration process. The costs of the NPRM are those associated with State staff needing to familiarize themselves with the new regulations, the development of IEPs for trade-affected workers seeking training or job search allowances, and the implementation of two IC forms (ETA Forms 8561, Study of Domestic Industry, and 9185, Application for Reconsideration). The Department expects the NPRM to have an average annual cost of $6,604 and a total 10-year cost of $46,383 (with 7-percent discounting). The Department estimates that the NPRM would have an annual cost savings of $79,654 and a total 10-year cost savings of $559,456 (with 7-percent discounting). In addition, the NPRM is estimated to result in annual transfer payments (*i.e.,* redistribution of resources from one group to another that do not affect total resources available to society) of $564,257 and total 10-year transfer payments of $3,963,105 (with 7-percent discounting). The Department estimates that the NPRM would result in net cost savings of $626,333 discounted at 3 percent and $513,073 discounted at 7 percent, both expressed in 2018 dollars. See section V.B, the economic analysis, for a detailed discussion of the Department's preliminary regulatory impact analysis.

III. Background

A. Introduction to the Trade Adjustment Assistance Program

The Trade Act of 1974 (Pub. L. 93–619), as amended (the Act) (codified at 19 U.S.C. 2271 *et seq.*), title II, chapter 2, established TAA for Workers program, Alternative Trade Adjustment Assistance (ATAA),[1] and RTAA programs. These programs, collectively referred to as the TAA Program, assist U.S. workers who have lost or may lose their jobs as a result of foreign trade (*i.e.,* trade-affected workers). The TAA Program provides AAWs and adversely affected incumbent workers (AAIWs) with opportunities to obtain skills, credentials, resources, and support to help them become reemployed. TAA Program benefits and services under TAARA 2015 include employment and case management services; training; out-of-area job search and relocation allowances; income support through TRA; the RTAA wage supplement benefit for AAWs aged 50 or older who find qualifying reemployment; and, if available, eligibility for assistance with health care premium costs under the Health Coverage Tax Credit (HCTC),[2] which is administered by the Internal Revenue Service (IRS).

There are two steps for trade-affected workers to obtain program benefits and services. First, a group of workers must file a petition or have a petition filed on their behalf with the Department to determine worker-group eligibility. Upon receiving a petition, the Department initiates an investigation to determine whether the circumstances of the layoff meet the group-eligibility criteria established by sec. 222 of the Act. Second, if the Department finds the group eligible and certifies the petition, individual trade-affected workers in the worker group may apply to their State for TAA Program benefits and services. Under agreements between the Secretary of Labor (Secretary) and each Governor, the States determine individual eligibility based on the statutory criteria and provide the TAA Program benefits and services to trade-affected workers with Federal funds allocated by the Department for that purposes. The TAA Program is a required one-stop partner under WIOA. One-stop centers—branded as American Job Centers under WIOA—deliver workforce development services to job seekers and businesses nationwide.

Since 1975, the TAA Program has served over two million trade-affected U.S. workers. In Fiscal Year (FY) 2017, an estimated 94,017 workers became eligible for TAA Program benefits and services. Nearly 75 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program, and over 90 percent of those who found work retained their jobs 6 months later.[3]

Trade-affected workers come from a variety of backgrounds and industries, so they enter the program with a wide array of skills and experience. Most trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, an average age of 49, and an average of 12 years of experience in a specific job that may no longer exist.[3] The TAA Program is designed to serve the needs of this unique population.

An ever-changing global marketplace drives the 21st-century economy. For America to compete in the global economy, its workers need to have the skills and support to take advantage of new opportunities. The TAA Program aims to do that by helping American workers retrain and reenter the workforce.

[1] ATAA is largely unaddressed in this NPRM because this NPRM codifies the TAARA 2015 Program and ATAA was replaced by RTAA. RTAA is newly codified in this NPRM.

[2] Because under TAARA 2015, the HCTC expires by January 1, 2020, references to the HCTC throughout this NPRM are coupled with ''if available'' or similar phrasing.

[3] U.S. Department of Labor, Employment and Training Administration. (2018). ''Trade Adjustment Assistance for Workers Program: Fiscal Year 2017.'' Retrieved from: *https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf.*

B. Statutory and Regulatory History of the Trade Adjustment Assistance Program

The foundation of the current TAA Program was established by chapter 2 of title II of the Trade Act of 1974 (Pub. L. 93–618).

Congress has since reauthorized and amended chapter 2, and thus the TAA Program, multiple times. The TAA Program was changed extensively by amendments in 1981 (Pub. L. 97–35, title XXV), 1984 (Pub. L. 98–369, secs. 2671 and 2672), 1986 (Pub. L. 99–272, title XIII, subtitle A, part 1), 1988 (Pub. L. 100–418, title I, subtitle D, part 3), and 1993 (Pub. L. 103–182, sec. 506). In 1987, the Department issued a final rule significantly revising the certification process in 29 CFR part 90 (52 FR 23403, June 19, 1987) and in 1994, the Department issued a final rule significantly revising the TAA Program regulations in 20 CFR part 617 to implement the 1988 amendments (59 FR 906, Jan. 6, 1994).

In 2002, Congress reauthorized and amended the TAA Program in the Trade Adjustment Assistance Reform Act of 2002 (TAARA 2002) (Pub. L. 107–210). TAARA 2002 expanded the scope of the TAA Program, increased its benefit amounts, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (or NAFTA–TAA) program, established the HCTC to subsidize private health-insurance costs for qualified workers, and created ATAA as a demonstration program.

The Department published two NPRMs in 2006, to implement the TAARA 2002 amendments (71 FR 50760, Aug. 25, 2006 and 71 FR 61618, Oct. 19, 2006). However, Congress in 2007 (Pub. L. 110–5), 2008 (Pub. L. 110–161), and 2009 (Pub. L. 111–8) prohibited the Department from further action until Congress reauthorized the TAA Program. The next reauthorization, the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA) (Pub. L. 111–5, div. B, title I, subtitle I), made such substantial amendments to the TAA Program that it rendered the two 2006 NPRMs obsolete. The Department withdrew the NPRMs in 2009 (74 FR 27262, June 9, 2009).

TGAAA, part of the American Recovery and Reinvestment Act (Pub. L. 111–5), reauthorized and substantially amended the TAA Program. It expanded the program's benefits and the types of trade-affected workers the Department could certify. Section 1893 of TGAAA provided that most of the TGAAA amendments would expire on December 31, 2010. Congress later extended that expiration date by 6 weeks (Pub. L. 111–344).

The Department revised the TAA Program regulations in 2010, by adding a new 20 CFR part 618 (75 FR 16988, Apr. 2, 2010). The revisions addressed the allocation of TAA Program training funds to the States. The revisions also required for the first time by regulation that State administration of the TAA Program be performed by merit staff.

The Trade Adjustment Assistance Extension Act of 2011 (TAAEA), enacted in 2011, for the most part restored the expanded certification criteria and benefits and services provided under TGAAA, but changed some provisions.

TAARA 2015 reauthorized the TAA Program through 2021. It primarily followed TAAEA, the 2011 law, but amended a few key provisions. The amendments included capped funding for TaOA at $450 million per fiscal year and establishment of new performance indicators to align with WIOA. TAARA 2015 reauthorized the RTAA and HCTC benefit programs. TAARA 2015 also continued to grandfather earlier versions of the TAA Program for trade-affected workers who had been certified under TAARA 2002, TGAAA, and TAAEA.

C. Need for the Notice of Proposed Rulemaking

The TAA Program regulations were last updated in 1994, with only minor changes made in 2006,[4] 2007,[5] and 2010.[6] Since that time, multiple TAA Program reauthorizations and amendments have required various changes to the program, which the Department has addressed through administrative guidance. This NPRM proposes to codify in regulation the most recent reauthorization and amendment (TAARA 2015) as well as significant elements of TAA Program administrative guidance. The NPRM is drafted to reflect how the TAA Program is currently operating under TAARA 2015, with some proposed adjustments that would improve the program. Once finalized, the Department will rescind redundant administrative guidance, as appropriate, based on the final rule.

The NPRM, if finalized, would help States and the public better understand the proper operation of the TAA Program. States would no longer have to use a combination of regulations and administrative guidance to guide the worker-group certification process at the Federal level and the administration of individual benefits and services at the State level. The NPRM would promote transparency by setting out, in binding regulation, the major principles by which the TAA Program operates. In addition, it provides the public and courts with the Department's authoritative interpretation of the Act.

In addition, the NPRM proposes clarifications that draw upon the Department's expertise gained from decades of experience operating the TAA Program. For example, the Department's litigation experience has provided insight into parts of the TAA Program regulations that need clarification to ensure more effective, efficient, and consistent operations of the TAA Program throughout the United States. In addition, since 2009, the Department has had the benefit of real-time data on trade-affected workers participating in the TAA Program, the analysis of which has driven some improvements to regulatory provisions included in this NPRM.

The NPRM also includes changes that would align the TAA Program regulations with WIOA. For example, WIOA further integrated the TAA Program with the public workforce and education systems by affirming the TAA Program as a required partner in the one-stop delivery system. The NPRM also would remove outdated references to the Job Training Partnership Act (JTPA) and the Workforce Investment Act of 1998 (WIA). The proposed TAA Program regulations would align with and reference the WIOA regulations where appropriate.

IV. Section-by-Section Discussion of the Proposed Changes

A. Subpart A—General

Proposed subpart A sets forth the purpose and scope of the TAA Program and defines relevant terms used throughout the rule. Proposed subpart A modifies and simplifies several definitions for greater clarity, eliminates definitions in response to statutory changes to the Act, and adds definitions of new terms based on statutory changes. The definitions used in this NPRM are intended to describe a modernized TAA Program, which has evolved since TAARA 2002, and ensure the TAA Program aligns with WIOA.

Section 618.100 Purpose and Scope

Proposed § 618.100 describes the purpose and scope of the TAA Program.

[4] 71 FR 35511 (June 21, 2006) (making technical amendments to update obsolete, nonsubstantive, or nomenclature references).

[5] 72 FR 37097 (July 9, 2007) (making minor changes to 29 CFR part 90).

[6] 75 FR 16988 (Apr. 2, 2010) (adding 20 CFR part 618 to include only subparts H and I relating to merit staffing of State administration and allocation of TAA Program training funds to States).

The Department proposes updates to the scope and purpose based on programmatic experience to reflect more realistically the achievable outcomes for trade-affected workers.

Proposed § 618.100(a) establishes the purpose of the TAA Program. Under the existing statement of purpose at 20 CFR 617.2, the stated goal of the TAA Program is to return trade-affected workers to ''suitable employment'' as quickly as possible. In this context, suitable employment means that after the trade-affected worker receives services under the TAA Program, the worker is reemployed at an equal or higher skill level, earning at least 80 percent of their former wages. This goal of attaining suitable employment has not changed.

Unfortunately, there are situations in which trade-affected workers may be unable to obtain suitable employment. Such difficulties in obtaining suitable employment may occur because (1) few, if any, jobs are available at the workers' former wages that require the trade-affected workers' experience; (2) the local labor market has few available jobs; or (3) the trade-affected workers have substantial barriers to reemployment. These factors can significantly limit trade-affected workers' employment opportunities. Yet offering appropriate training, especially in a stagnant labor market, may significantly increase a trade-affected worker's prospects of obtaining suitable employment.

The Department is committed to ensuring trade-affected workers have access to training that will allow them the best possible outcomes and ability to compete for work at the highest skill levels and highest wages achievable, given the trade-affected workers' preexisting skill levels, abilities, and education, and the current and projected labor market, and to do so as quickly as possible. This must be accomplished with prudence, careful management of limited TAA Program funds, and a practical understanding of labor market realities. States must ensure that they administer their programs equitably and reasonably. Proposed § 618.100(b) expands the scope of the TAA Program beyond the scope in 20 CFR 617.1 and lists the types of TAA Program benefits and services that will be addressed in this proposed part 618. Proposed § 618.100(c) carries forth a statement in 20 CFR 617.2 specifying that the regulations in this part are issued to implement the Act.

Section 618.110 Definitions

Proposed § 618.110 defines terms applicable to all other sections of the NPRM unless otherwise stated. The terms defined in the proposed rule are derived from the Act; 20 CFR part 617; 29 CFR part 90; and the WIOA Final Rule (81 FR 56072 (Aug. 19, 2016); 81 FR 55792 (Aug. 19, 2016)). Some definitions are taken from the Act, others interpret or expound upon terms in the Act, and others are terms that the Department will use in implementing the Act. The defined terms in the rule apply solely for purposes of this part 618.

The following section lists and explains proposed new terms and their definitions, revisions to definitions, and removal of defined terms.

Act—This NPRM modifies the definition of this term from 20 CFR 617.3(a) and 29 CFR 90.2, and updates the U.S. Code citation to 19 U.S.C. 2271–2323 and 2395. At the issuance of this NPRM, the most recent amendment, Public Law 114–27, applies.

Administrator—This NPRM adds this term and defines it for the first time to reflect the statutory change in sec. 249A(a) and (b) of the Act, which requires that the Division of Trade Adjustment Assistance be designated as the Office of Trade Adjustment Assistance (OTAA), and that the head of the OTAA be designated an Administrator rather than a Director. Also, this NPRM removes the defined term ''Director'' from 29 CFR 90.2.

Adversely affected employment—This NPRM modifies the definition of this term from 20 CFR 617.3(b) and is based on the statutory definition in sec. 247(1) of the Act. No substantive changes from those definitions are intended. This NPRM omits the explicit reference to agricultural firms from the definition in 20 CFR 617.3(b). Although agricultural firms may be identified as adversely affected employment, there were no other references to agricultural firms in 20 CFR part 617, and, other than in the definition of ''firm,'' which specifies that agricultural firms are included, there are no references to agricultural firms in the NPRM.

Adversely affected worker or *AAW*—This NPRM modifies the definition of this term from 20 CFR 617.3(c) to clarify the Department's interpretation of this term defined in sec. 247(2) of the Act. Specifically, an employer may be considered an AAW when the employer is also an employee of a business that closes or experiences a reduction in operation. For example, the president of the firm lays off everyone at the firm, including herself. In this circumstance, if the employer becomes totally or partially separated from their adversely affected employment, the employer is an AAW. Additionally, this NPRM omits the reference in the definition of this term from 20 CFR 617.3 to a subdivision of a firm since employment in an appropriate subdivision of a firm is part of the definition of the term ''adversely affected employment'' and including it in the definition of the term ''adversely affected worker'' is redundant. The combined terms ''adversely affected worker'' and ''adversely affected incumbent worker'' are also referred to as a trade-affected worker throughout the NPRM.

Adversely affected incumbent worker or *AAIW*—This NPRM adds this term and defines it for the first time. The proposed new definition is from sec. 247(18) of the Act. Under this proposed definition, workers who are part of a worker group that has been certified under subpart B as eligible to apply for the TAA Program, and are individually threatened to be, but who have not yet been, totally or partially separated from their adversely affected employment, may be eligible to receive certain benefits under the program. An AAIW, in combination with an AAW, is referred to as a trade-affected worker throughout this NPRM.

Agent State—This NPRM modifies the definition of this term from 20 CFR 617.3(aa)(2) and 617.16(e) by including the phrase ''trade-affected worker'' instead of the term ''individual.'' The term ''Liable State'' is now separately defined in this proposed subpart A.

Applicable State law—This NPRM adds this term and defines it for the first time to clarify that this term, which appears in secs. 232(a)(2), 239(e), and 247 of the Act, refers to State UI law. The definition is modified from 20 CFR 617.16(a) for clarity and procedures for determining applicable State law are provided in proposed § 618.898.

Appropriate subdivision—This NPRM adds this term and modifies the definition of this term from 29 CFR 90.2 (included as part of the definition of the term ''firm''). The phrase ''appropriate subdivision'' is also part of the definition of the term ''firm'' under sec. 247(3) of the Act. The terms ''physical facility,'' ''organizational department,'' ''product line,'' ''project team,'' ''operational unit,'' or ''part or combination thereof'' have been added to the terms ''establishment'' and ''auxiliary facilities operated in conjunction with (whether or not physically separate from) production facilities'' from 29 CFR 90.2. This proposed definition reflects that service workers are now eligible for benefits

and explains that the term is defined flexibly. Included are all workers at the location(s) who have been totally or partially separated or threatened with separation, including teleworkers who identify as reporting to that location(s), and may include workers at a satellite office or shared space who function as if they were at that location(s), identified in the petition, or subsequently identified during the course of the investigation, whose employment is dependent upon the production of the specific article or supply of the specific service identified in the petition, or identified during the course of the investigation. The proposed definition also clarifies that colocation is neither a requirement nor a presumption in determining an appropriate subdivision. Thus, an appropriate subdivision of a firm could include operational units that produce the article or provide the service in question, even if the units are not at the same physical location. Teleworkers, and staffed workers, may be part of the appropriate subdivision. In contrast, the fact that all of the workers are located at the same physical location does not necessarily mean that they are part of the appropriate subdivision. Additionally, when worker separations and trade effects are limited to a discrete, individually distinct organizational unit, it may be that only a particular subset of workers in the specific organizational unit meets the sec. 222 group-eligibility requirements. In these cases, and as described in the example below, a narrower interpretation focusing on where the trade effects are concentrated, informs the definition of ''appropriate subdivision.'' Identifying a discrete subset of workers makes for a clearer causal nexus between a trade effect and the worker separations, especially when an organization provides multiple services, produces multiple articles, or consists of multiple units. Consequently, a determination may consist of several appropriate subdivisions when each subdivision is impacted by a different trade effect, or it may consist of a certification of an appropriate subdivision and a denial of the remaining group(s) of workers.

Here is an example. The appliances division of a company produces both ovens and refrigerators. The division's 200 workers are separately identifiable, with 150 who produce refrigerators and 50 who produce ovens. The company shifts abroad some of its oven production and lays off eight oven-producing workers. The ''appropriate subdivision'' would be the oven product line, not the entire appliances division. If, however, the company's sales fell due to foreign imports of ovens and refrigerators, and it laid off 25 workers from both product lines, the appropriate subdivision would be the entire appliances division.

Here is another example. A petition is filed on behalf of a group of workers in the accounting division of a car-manufacturing facility. If the workers were being separated due to the manufacturer's decision to acquire the same accounting services abroad instead of performing them in-house, the appropriate subdivision would be the accounting division. If the workers were being separated as part of a larger set of layoffs across every unit in the manufacturing facility because of increased imports of foreign-made cars, the appropriate subdivision would be the entire facility.

The Department's experience in implementing the provisions covering workers in the service sector has demonstrated that the organizational structures that companies use to supply services may differ significantly from those used to manufacture a product. Service sector workers are more likely to be spread out geographically or to work remotely than are workers in a manufacturing environment. The proposed definition makes it clear that flexibility is needed to ensure that the Department can address new and varied organizational structures.

Appropriate week—This NPRM modifies the definition of this term from 20 CFR 617.3(d) by replacing ''individual'' with ''AAW.'' This term is used in the proposed definitions of the terms ''average weekly hours'' and ''average weekly wage.''

Approved training or *TAA approved training*—This NPRM adds this term and defines it for the first time. For training to be approved, the trade-affected worker must apply for training with the State and receive approval of the training program from the State after meeting the requirements of sec. 236(a)(1) of the Act, as described in proposed § 618.610. The other requirements and limitations of subpart F must also be met.

Article—This NPRM adds this term and defines it for the first time. The proposed term is in secs. 222 and 224 of the Act and the proposed definition is based on case law and current practice. An article may be tangible (including manufactured items, livestock, and commodities) or intangible (including software code and digital media). There is a distinction between an object produced for the purpose of sale (such as a book) and one produced incidental to the provision of a service (such as a ticket). While both objects may be tangible (paperback novel and paper ticket, respectively) or intangible (e-book and e-ticket, respectively), the paperback book and the e-book are articles because they were produced by a firm and moved from one party to another at the contract of sale and for which ownership rights are transferred from one party to another under the contract of sale. The ticket is not an article but is a token that represents the intent or completion of a service. Where the revenue of the firm or appropriate subdivision is generated from the sale or production of an article, the firm or appropriate subdivision is deemed to be engaged in activity related to the sale or production of an article.

Average weekly hours—This NPRM modifies the definition of this term from 20 CFR 617.3(e), and has been combined with the statutory definition in sec. 247(5) of the Act. The phrase ''consecutive calendar'' has been added to the word ''weeks'' to clarify that the 52 weeks that comprise the average are the 52 consecutive calendar weeks before the worker's first qualifying separation. Additionally, for consistency purposes, the word ''individual'' has been replaced with ''AAW.''

Average weekly wage—This NPRM modifies the definition of this term from 20 CFR 617.3(f) by incorporating the statutory definition provided in sec. 247(4) of the Act. For consistency purposes, the word ''individual'' has been replaced with ''AAW.''

Average weekly wage in adversely affected employment—This NPRM removes this defined term from 20 CFR 617.3(g) because it is unnecessary, as both terms ''average weekly wage'' and ''adversely affected employment'' are already defined.

Benefit period—This NPRM incorporates this defined term from 20 CFR 617.3(h) without change.

Certification or *affirmative determination* or *petition certification*– This NPRM modifies the definition of these terms from 20 CFR 617.3(j)(1) to clarify that the Department intends ''group of workers,'' the term used in 20 CFR 617.3(j)(1), to refer to workers pre certification, and the term ''worker group'' to refer to a group that has been certified as eligible to apply for TAA Program benefits and services. (The terms ''group of workers'' and ''worker group'' are defined in this proposed subpart A.) Otherwise, the definition is unchanged. This definition does not apply for purposes of the term ''certification'' in sec. 222(d)(3) (firm or customer must certify specific

information), 236(a)(5)(H) (training involving obtaining or completing a degree or certification), 239(a)(3) (certifications for training waivers under 231(c)(2)), or 247(19) (definition of ''recognized postsecondary credential'') of the Act. It also does not apply with respect to the term ''affirmative determination'' in sec. 222(e) (firms identified by the International Trade Commission (ITC)) or 224 (ITC notifications and investigations) of the Act.

Certification date or *date of certification*—This NPRM adds these terms and defines them for the first time. This NPRM removes the defined term ''date of issuance'' from 29 CFR 90.2. The change is intended to make clear that the date the Certifying Officer signs a certification is the date on which the certification takes effect.

Certification period—This NPRM modifies the definition of this term from 20 CFR 617.3(j)(2) to provide additional details to help clarify this specific time period. However, the meaning remains unchanged and is the period of time during which a worker group is covered by a certification.

Certifying Officer—This NPRM modifies the definition of this term from 29 CFR 90.2 to reflect the statutory change in sec. 249A of the Act, which changes the ''Division of Trade Adjustment Assistance'' to the ''Office of Trade Adjustment Assistance'' and the title of the head of that office from ''Director'' to ''Administrator.''

Co-enrollment—This NPRM adds this term and defines it for the first time. It refers to enrolling a trade-affected worker both in the TAA Program and also in another program administered through a State's one-stop delivery system.

Commission or *International Trade Commission* or *ITC*—This NPRM incorporates these defined terms from 29 CFR 90.2 without change.

Commuting area—This NPRM modifies the definition of this term from 20 CFR 617.3(k) by replacing the word ''individual'' with ''trade-affected worker.''

Completion of training or *complete training* or *completed training*—This NPRM adds these terms and defines them for the first time. It clarifies the Department's interpretation of when a trade-affected worker completes TAA approved training.

Component part—This NPRM adds this term and defines it for the first time. The proposed definition is based on the statutory text, case law, and current practice. The Act consistently uses the term ''component part'' in the context of articles and does not use it in the context of service. Consequently, the Department determines that there is no component part of a service. A component part is a tangible or intangible input that is directly incorporated into another article and that becomes a subunit of that other article, although it need not retain its original form or characteristics. Examples of a component part of an article include a button on a shirt, lacquer on a table, preservatives in processed food, and code embedded in a microchip. Examples of inputs that are not component parts include production equipment, molds and castings, energy to power the production facility, code in software to operate machinery, blueprints, and designs. A component part is neither like nor directly competitive with the article into which it is directly incorporated.

Confidential business information—This NPRM modifies the definition of this term from 29 CFR 90.33(a) by including a reference to the Trade Secrets Act, 18 U.S.C. 1905, and by omitting the phrase ''obtained from a person'' since the confidentiality exception applies regardless of its source. Title 29 CFR 90.33(a) identifies the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department's regulations implementing FOIA, 29 CFR part 70, as the bases for designating confidential business information as ''privileged or confidential.'' FOIA exemption (b)(4) exempts from mandatory disclosure under FOIA trade secrets and certain commercial or financial information. The Trade Secrets Act prohibits the disclosure of trade secrets and confidential business information without legal authority. The proposed definition also adds that confidential business information could be received by the Department, or by the States on the Department's behalf.

The proposed definition also reflects TGAAA's addition of paragraph (e)(3) to sec. 222 of the Act (now sec. 222(d)(3)), which in part requires the Department to protect the confidentiality of information obtained during an investigation ''that the Secretary considers to be confidential business information,'' unless the firm or customer submitting the information had notice, at the time of submitting the information, that the information would be released by the Department, or subsequently agrees to its disclosure.

Finally, the proposed definition is used in conjunction with investigations under proposed subpart B. The NPRM relocates the information provided by 29 CFR 90.33(b) and (c) to proposed subpart B.

Contributed importantly—This NPRM adds this term and defines it for the first time. The proposed definition adopts the statutory definition in sec. 222(c) of the Act and is used in the petition investigation process described in proposed subpart B.

Cooperating State agency or *CSA*—This NPRM adds these terms and defines them for the first time to accurately identify the agency at the State level that will act as an agent of the Department in receiving applications from and providing benefits and services to trade-affected workers. The proposed definition incorporates language that is used in Governor-Secretary Agreements, as further described in proposed subpart H.

Customized training—This NPRM adds this term and defines it for the first time to identify a type of training approvable under the Act and proposed subpart F. The proposed definition of ''customized training'' is taken from sec. 236(f) of the Act. Proposed subpart F addresses exclusions specific to AAIWs from sec. 236(a)(10)(B) of the Act.

Date of issuance—This NPRM removes this defined term from 29 CFR 90.2 because it is not used in the Act or in the NPRM and is therefore unnecessary.

Date of the petition—This NPRM removes this defined term from 29 CFR 90.2. In its place, the NPRM proposes a new term, ''petition date.''

Date of separation—This NPRM removes this defined term from 20 CFR 617.3(k)(1). In its place, the NPRM proposes a new term, ''separation date.''

Denial or *negative determination* or *petition denial*—This NPRM adds these terms and defines them for the first time. The proposed definition is derived from 29 CFR 90.16(f) and describes the result when a group of workers has not met the requirements for certification and so is not eligible for TAA Program benefits.

Department of Labor or *Department*—This NPRM adds this term and defines it for the first time. It is used to identify references to the U.S. Department of Labor.

Downstream producer—This NPRM adds this term and defines it for the first time. It incorporates the statutory definition at sec. 222(c)(3) of the Act. A downstream producer is a firm that performs additional value-added production processes or services directly for another firm for articles or services with respect to which a worker group in such other firm has been certified as eligible to apply for TAA Program benefits and services. Value-added production processes or services

include final assembly, finishing, testing, packaging, or maintenance or transportation services. Production processes are services provided directly for the primary firm even if ownership of the primary firm changes. Additionally, a firm can be a downstream producer even if the article for which the value-added production processes or services are carried out will become a component part of the article received from the primary firm, or if further value-added finishing or assembly of the article occurs downstream by another firm. Additionally, a downstream producer may be a firm that provides services to a primary firm that produces physical products. For example, a shipping company will be a downstream producer if a significant portion of its business is lost from a TAA certified primary firm.

Eligible RTAA recipient and *eligible TAA recipient*—This NPRM adds these terms and defines them for the first time to describe categories of persons who may be eligible to qualify for the HCTC (see proposed definition of ''HCTC''), if that benefit is available. These terms are defined in HCTC administrative guidance.

Employer—This NPRM incorporates this defined term from 20 CFR 617.3(n) without change.

Employment—This NPRM incorporates this defined term from 20 CFR 617.3(o) without change.

Enrolled in training—This NPRM modifies the definition of this term from 20 CFR 617.11(a)(2)(vii)(D)(*1*). This term is found at sec. 231(a)(5)(A) of the Act. The proposed definition is reworded from 20 CFR 617.11(a)(2)(vii)(D)(*1*). The proposed definition omits the instruction that a waiver is not required for a worker who is enrolled in training. That instruction is more clearly provided in proposed subpart G. The definition of this term is not the same definition used for the performance reporting under subpart H. Separate guidance, outside of this rule, is published on reporting requirements.

Exhaustion of UI—This NPRM removes this defined term from 20 CFR 617.3(p) and it is to be included in proposed subpart G rather than in this proposed subpart A.

Family—This NPRM modifies the definition of this term from 20 CFR 617.3(q), which was based on the Internal Revenue Code definition. The definition used in this NPRM is the definition of ''immediate family'' used in the Federal Travel Regulation (FTR) at 41 CFR 300–3.1.

Filing date—This NPRM modifies the definition of the term ''date of filing'' from 29 CFR 90.2. This term refers to the date on which petitions are deemed to be filed. OTAA, the office currently handling petitions under the TAA Program, is substituted for ''Division of Trade Adjustment Assistance.'' The phrase ''other documents'' has been replaced with the phrase ''attachments to the petition form'' to clarify that the definition applies to attachments to a petition, and not to other documents submitted to the Department. The phrase ''and determined to be valid'' has also been added. The Department would review a petition, including attachments, to determine if it is valid, in accordance with proposed § 618.205, within 2 business days of receipt of the petition to the Department. The date on which the petition is determined to be valid is the filing date. The Department would not initiate the investigation until the petition is deemed valid, in accordance with proposed § 618.205(f). Accordingly, this interpretation applies to sec. 221(a)(3) of the Act, which states that ''[u]pon receipt of the petition, [the Department] shall promptly publish notice in the **Federal Register** and on the website of the Department of Labor that the Secretary has received the petition and initiated an investigation.''

Firm—This NPRM modifies the definition of this term from 29 CFR 90.2 and adds some new language derived from sec. 247(3) of the Act, including ''[w]here the term 'firm' appears in this part, it means 'firm or appropriate subdivision.' '' This has been added to clarify that the term ''firm,'' as defined in sec. 247(3) of the Act, includes an appropriate subdivision thereof. Also included in the proposed definition is that ''firm'' includes ''an agricultural firm or service sector firm or an appropriate subdivision thereof.'' The Department also added a clarification that for purposes of determining group eligibility only, as described in subpart B, a firm does not include a public agency or any subdivision of a public agency. TAAEA modified sec. 247 of the Act (19 U.S.C. 2319) by striking ''public agency'' from the definition of a ''firm.'' Accordingly, individuals employed by a public agency, which the Department defines by reference to 29 U.S.C. 203(x), are not eligible for a certification of eligibility to apply for the TAA Program. This proposed definition of a ''firm'' is intended to encompass diverse organizations and to include closely related or affiliated organizations. The definition, however, follows basic rules of corporate and organizational law by limiting it to entities under common ownership or control.

First benefit period—This NPRM modifies the definition of this term from 20 CFR 617.3(r) by replacing ''individual'' with ''AAW'' to achieve consistency throughout the NPRM.

First exhaustion of UI—This definition is proposed for removal, as it is included in 20 CFR 617.3(s) and has been included in proposed subpart G, rather than in proposed subpart A.

First qualifying separation—This NPRM removes this defined term from 20 CFR 617.3(t)(3). The term is not necessary because the plain meaning of the term first qualifying separation is sufficient for use in the NPRM and additional clarifying language was added to the term ''qualifying separation.''

First separation—This NPRM removes this defined term from 20 CFR 617.3(t)(1). It was written to address pre-TAARA statutory provisions that are outdated due to subsequent statutory amendments. The proposed definitions for the terms ''partial separation,'' ''qualifying separation,'' and ''total separation'' make this term and definition unnecessary.

Full-time training—This NPRM adds this term and defines it for the first time. It is derived from 20 CFR 617.22(f)(4) and defines full-time training as attendance in training in accordance with the training provider's established full-time hours in a day (or credit hours) and days in a week. The Department has added an interpretation, originally published in TAAEA administrative guidance, that provides that in the last semester of training, if the remaining required courses to complete the approved training will not meet the training provider's normal definition of full-time training, the State must consider the AAW to be in full-time training, and otherwise eligible to apply for TRA benefits.

Group of workers—This NPRM adds this term and defines it for the first time. It relates to the workers who file a petition or for whom a petition is filed and means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The proposed definition includes teleworkers and staffed workers because they are frequently performing the same work as other trade-affected workers in the subject firm and are under the subject firm's operational control. Separated workers are included in the definition because they, too, may be trade-affected workers. This term is different from the term ''worker group.'' This NPRM also removes the defined term ''group,'' from 29 CFR 90.2, because it defines ''group'' as three or more workers in a firm. The Act does not define this term and ''group'' can be interpreted as two or

more. The Department is interested in comments related to this change.

Head of family—This NPRM removes this defined term from 20 CFR 617.3(u) because it is not used in this NPRM.

Health Coverage Tax Credit or *HCTC*—This NPRM adds these terms and defines them for the first time to describe the tax credit under sec. 35 of the Internal Revenue Code of 1986 (26 U.S.C. 35), which is available to eligible TAA recipients, eligible RTAA recipients, and other eligible recipients, including qualifying family members. The HCTC benefit is available under TAARA 2015 and was available under TAARA 2002, TGAAA, and TAAEA for a limited time.

Impact date—This NPRM modifies the definition of this term from 20 CFR 617.3(v) for clarity. Section 223(a) of the Act requires that each certification specify the date on which the total or partial separation began or threatened to begin. Section 223(b) requires that the impact date may not be more than 1 year before the petition date, with exceptions for certifications based in sec. 222(e) of the Act and those specified in proposed subpart B.

Increased imports—This NPRM incorporates this defined term from 29 CFR 90.2 without change.

Individual employment plan or *IEP*—This NPRM adds these terms and defines them for the first time. It describes an employment and case management service required by sec. 235(2) of the Act. The IEP is a dynamic document that may be changed based on comprehensive and specialized assessments, training program modifications, or other factors that emerge during program participation. Proposed subpart C describes development of an IEP in more detail.

Job finding club—This NPRM incorporates this defined term from 20 CFR 617.3(y) and sec. 247(16)(C) of the Act without change.

Job search program or *JSP*—This NPRM incorporates this defined term from 20 CFR 617.3(w) and sec. 247(16)(A) of the Act without change.

Job search workshop—This NPRM modifies the definition of this term from 20 CFR 617.3(x) to conform to the definition provided in sec. 247(16)(B) of the Act.

Lack of work—This NPRM adds this term and defines it for the first time. The proposed term is in sec. 247(2) of the Act and is also in the definitions of the terms ''adversely affected worker'' and ''layoff'' in this NPRM. The proposed definition incorporates the administrative guidance in TEGL No. 12–16 on ''strikes'' and ''lockouts'' and their effect on eligibility for TAA Program benefits and services. Specifically, a ''lack of work'' separation occurs when the employer initiates the unavailability of work—the employer either does not have work for the worker to perform or does not make that work available to the worker. A lack of work separation can be based on a lockout, because a lockout is initiated by the employer. Another example is when an employer provides a retirement package incentive or other bonus to reduce the workforce through voluntary separations. Some AAWs will meet this definition of a ''lack of work'' separation but may still be disqualified for UI in some States under their voluntary quit provisions. Although the UI disqualification will make these workers ineligible for TRA, they may qualify for other benefits and services under the TAA Program.

Layoff—This NPRM modifies the definition of this term from 20 CFR 617.3(z) and 29 CFR 90.2. The phrase ''suspension or separation from employment'' used in 20 CFR 617.3(z) is adopted instead of the phrase ''suspension from pay status'' used in 29 CFR 90.2 because the Department intends for ''layoff'' to include persons separated from employment who receive severance pay and, therefore, may be deemed in a pay status. Some of these workers may be eligible for TAA Program benefits and services, whether or not State law prevents them from qualifying for TRA. The words ''of time'' have been added to the 20 CFR 617.3(z) phrase ''expected to be for a definite or indefinite period,'' and this is a change from the 29 CFR 90.2 definition, which does not include the latter phrase. In addition, the language at 20 CFR 617.3(z) and 29 CFR 90.2 that requires that the layoff be expected to last for ''not less than seven consecutive days'' and ''no less than seven (7) consecutive calendar days,'' respectively, has not been included in the proposed definition, because that restriction is not supported by the Act. These changes will remove any ambiguity about whether a suspension or separation from employment may be for a definite or indefinite period and still be a ''layoff'' for TAA Program purposes.

Liable State—This NPRM modifies the definition of this term from 20 CFR 617.3(aa)(1) and 617.16(e) to provide more specific directions about identifying the liable State. It also includes the phrase ''trade-affected worker'' instead of ''individual'' and updates references to this NPRM. The term ''Agent State'' is now separately defined in this proposed subpart A.

Like or directly competitive—This NPRM modifies the definition of this term from 29 CFR 90.2 in order to accommodate the statutory changes to group eligibility, which now includes worker groups performing services, to address intangible articles and services, and to remove the second paragraph, which states, ''An imported article is *directly competitive with* a domestic article at an earlier or later stage of processing, and a domestic article is *directly competitive with* an imported article at an earlier or later stage of processing, if the importation of the article has an economic effect on producers of the domestic article comparable to the effect of importation of articles in the same stage of processing as the domestic article.'' The Department proposes the removal of the second paragraph of the definition because it was seldom used and the proposed changes to the definition maintain the Department's ability to determine whether an article at an earlier or later stage of production or a service at an earlier or later stage of supply are commercially interchangeable. In addition, the proposed definition clarifies that like and directly competitive articles and services can be tangible or intangible. Examples of ''like'' tangible articles could include jackets and coats; examples of ''like'' intangible articles could include programming software code and operating software code. Examples of ''like'' services could include payroll services and billing services. Examples of ''directly competitive'' articles could include corrective eyeglasses and corrective contact lens. Examples of ''directly competitive'' services could include physical fitness personal trainer services and virtual fitness training programs available online. A component part is neither like nor directly competitive with the article into which it is incorporated because the component part is a subunit of the article.

Office of Trade Adjustment Assistance or *OTAA*—This NPRM adds this term and defines it for the first time as authorized by sec. 249A of the Act. It refers to the name of the organization within the U.S. Department of Labor, Employment Training Administration with responsibility for administering the TAA Program, or OTAA's successor organization.

One-stop delivery system—This NPRM adds this term and defines it for the first time. It refers to the American Job Center network, which brings together workforce development, education, and other human resource services in a seamless, customer-focused

service delivery network that enhances access to partner programs' services and improves long-term employment outcomes for individuals receiving assistance. This includes coordination of services to eligible dislocated workers as defined under sec. 3(15) of WIOA. States operate the one-stop delivery system consistent with the requirements of WIOA and its implementing regulations. WIOA sec. 121(b)(1)(B)(vii) requires the TAA Program to be a partner in the one-stop delivery system.

On-the-job training or *OJT*—This NPRM modifies the definition of this term from sec. 247(15) of the Act and 20 CFR 617.3(bb). It adds that the training is work-based and performed under contract with an employer. The term ''AAW'' replaces ''individual.''

Partial separation or *partially separated*—This NPRM modifies the definition of this term from 20 CFR 617.3(cc), 29 CFR 90.2, and sec. 247(6) of the Act. The definition of this term in 29 CFR 90.2 applies to separations ''at the firm or appropriate subdivision thereof,'' referring to workers who have not yet been certified as eligible to apply for the TAA Program. After being determined eligible to apply for the TAA Program, the AAW's ''partial separation'' is referred to in 20 CFR 617.3(cc) as being ''in adversely affected employment,'' the term used in sec. 247(6)(A) and (B) of the Act. The proposed definition retains the statutory criteria of ''partial separation'' for both workers on whose behalf a petition has been filed and workers who are covered by a certification, and offers different definitions for usage under proposed subpart B and the other proposed subparts of this NPRM. The proposed definition also retains the provision in 20 CFR 617.3(cc) that, in order for the AAW to be counted as partially separated from adversely affected employment, the requisite reduction of hours and wages must have occurred. However, the proposed definition simplifies the language about when the separation must occur by substituting the phrase ''during the certification period'' for ''during a week ending on or after the impact date specified in the certification under which an adversely affected worker is covered'' (see proposed definition of ''certification period'').

Period of duty—This NPRM adds this term and defines it for the first time. It is from sec. 233(i)(2) of the Act, added by TGAAA, and relates to service performed in the reserve components of the Armed Services of the United States.

Petition date—This NPRM adds the term and defines it for the first time. It means the date a petition form is signed by the petitioner(s). This change reflects the common, everyday usage of this phrase. When petitioners sign on different dates, the petition date is the latest of those dates. This NPRM also removes the defined term ''date of petition'' from 29 CFR 90.2.

Prerequisite education or *prerequisite coursework* or *prerequisite training*—This NPRM adds these terms and defines them for the first time. They refer to approvable training under sec. 236(a)(5)(E) of the Act. For example, a trainee enrolled in an engineering program might have to complete courses in mathematics before registering for engineering courses. Similarly, some nursing programs may require additional math coursework beyond the trainee's high school classes before starting the nursing program curriculum.

Program of remedial education or *remedial education* or *remedial training*—This NPRM adds these terms and defines them for the first time. They refer to approvable training under sec. 236(a)(5)(D) of the Act and are used to refer to education designed to improve trade-affected workers' basic knowledge.

Qualifying separation—This NPRM modifies the definition of this term from 20 CFR 617.3(t)(2). The Department is proposing to amend the definition of ''qualifying separation'' to include partially separated workers. The definition at 20 CFR 617.3(t)(2) excludes partially separated workers and is based on an August 23, 1988, amendment to sec. 233(a)(2) of the Act, which added a 104-week limitation period for the receipt of Basic TRA with respect to totally separated workers. See Public Law 100–418, sec. 1425(a). The Department has reviewed the Act for this NPRM and has concluded that under a plain reading of the Act, partially separated workers are otherwise eligible for TRA benefits if the eligibility requirements in sec. 231 of the Act are met. The proposed definition covers qualifying separation for the purposes of assisting States in determining an AAW's eligibility to receive Basic TRA; the 26-week period for enrollment in approved training; and the Basic TRA eligibility period. The first qualifying separation is used for purposes of determining a worker's eligibility for Basic TRA and the weekly and maximum amounts of Basic TRA. This is discussed further in proposed subpart G.

Reemployment Trade Adjustment Assistance or *RTAA*—This NPRM adds these terms and defines them for the first time to refer to the employment-based benefit described in sec. 246 of the Act. RTAA was established with TGAAA and continued under TAAEA and TAARA 2015.

Regional Administrator—This NPRM modifies the definition of this term from 20 CFR 617.3(dd), by reversing the order of the terms ''U.S. Department of Labor'' and ''Employment and Training Administration.''

Remuneration—This NPRM removes this defined term from 20 CFR 617.3(ee) because it does not appear in this NPRM.

Secretary—This NPRM incorporates this defined term from 20 CFR 617.3(ff) and 29 CFR 90.2 without change.

Separation date—This NPRM adds this term and defines it for the first time. It replaces the term ''date of separation'' and is substantially the same as in 20 CFR 617.3(l), but rephrases the employer-authorized leave language slightly for clarity, adds a reference to leave for military service as provided in sec. 231(a)(2)(D) of the Act, and uses the word ''worker'' instead of ''individual.'' This NPRM also removes the defined term ''date of separation'' from 20 CFR 617.3(l).

Service—This NPRM adds this term and defines it for the first time to explain how the term is used in sec. 222 of the Act as part of group eligibility requirements. This proposed definition has been developed from case law and current practice. A service is the work performed by a worker for a service firm or appropriate subdivision. The work of a service firm is measured in units of time, labor, and tasks completed. Services may include the incidental production of an article, such as a license, ticket, certificate, permit, model, drawing, or prototype. For example, a travel agent provides travel-planning services, but may send customers a ticket or voucher. An online education company provides education services, but may send students a textbook. Where the revenue of the firm or its appropriate subdivision is generated from the sale of a service, the firm or subdivision is engaged in the supply of a service.

Significant number or proportion of the workers—This NPRM modifies the definition of this term from 29 CFR 90.2 to reflect that both partially and totally separated workers, as well as workers threatened with total or partial separation, are counted towards the number and proportion of workers affected, as established in sec. 222(a)(1) and (b)(1) of the Act. The phrases ''[i]n most cases'' and ''would ordinarily have to be affected'' have also been omitted from the definition.

Staffed worker—This NPRM adds this term and defines it for the first time under the authority of sec. 223(e) of the

Act, which allows the Department to establish standards for investigations of petitions filed under sec. 221 of the Act and to develop criteria for making determinations under sec. 223(a) of the Act. Previously referred to as leased workers, staffed workers are more fully addressed in proposed subpart B.

State—This NPRM modifies the definition of this term from 20 CFR 617.3(hh), by replacing the phrase ''such Commonwealth'' to ''the Commonwealth of Puerto Rico'' for clarity.

State agency—This NPRM removes this defined term from 20 CFR 617.3(ii). This is a commonly understood term. The term is defined at sec. 247(8) of the Act.

State law—This NPRM modifies the definition of this term from 20 CFR 617.3(jj) and sec. 247(9) of the Act. The reference to the Internal Revenue Code has been updated and additional language is added to include other State laws that may be explicitly mentioned in this proposed part 618.

Successor-in-interest—This NPRM adds this term and defines it for the first time to provide clarity to States when there are mergers and acquisitions, name changes, bankruptcy proceedings, and other actions that may change the name of the firm under which a worker's wages are reported to the State or by whom a termination notice or threatened status letter is issued. There is a test used by the Department in determining whether there is a successor-in-interest when the question arises as part of a determination as to the scope of the worker group under a certification. In determining whether or not there is a successor-in-interest, the State must determine whether most or all of the following conditions are met: There is continuity in business operations; there is continuity in location; there is continuity in the workforce; there is continuity in supervisory personnel; the same jobs exist under similar conditions; there is continuity in machinery, equipment, and process; there is continuity in product/service. If the State's investigation finds a successor-in-interest relationship exists and that could result in a denial of any TAA benefits, except RTAA, the State should file a new petition requesting an amendment to a certification in accordance with proposed § 618.250. The Department specifically encourages comments on this topic.

Suitable employment—This NPRM modifies the definition of this term from 20 CFR 617.22(a)(1)(i) and sec. 236(e) of the Act. Specifically, the Act uses the term suitable employment in sec. 236(a)(1)(A) (the first criterion for the approval of training), providing for approval where ''there is no suitable employment . . . available for an adversely affected worker.'' The Department has concluded that suitable employment, to be considered such, excludes part-time, temporary, or threatened employment. Thus, the proposed definition adds this caveat. Additionally, unlike 20 CFR 617.22(a)(1)(i), the NPRM does not restrict applicability of the definition to sec. 236(a)(1)(A) of the Act.

Suitable work—This NPRM removes this defined term from 20 CFR 617.3(kk)(1) and (2) and defines it within proposed subpart G, rather than in this proposed subpart A.

Supplier—This NPRM adds this term and defines it for the first time. It is derived from sec. 222(c)(4) of the Act. The Department proposes to add this term and definition in response to statutory changes to group eligibility requirements. The Department has supplemented the statutory definition with a statement explaining that there is no direct supply where an intervening entity receives the component parts for articles, aside from a delivery or bailment situation, or in the case of a service supplier, if an intervening entity performs the service. The Department's interpretation is based on case law and current practice.

Supportive services—This NPRM adds this term and defines it for the first time. It is derived from sec. 235(8) of the Act and is used to refer to such services as are needed to enable a trade-affected worker to participate in activities authorized under the Act. Additional information on supportive services is in the WIOA regulations at 20 CFR 680.900.

Threatened to become totally or partially separated—This NPRM adds this term and defines it for the first time. It is similar to the term ''threatened to begin'' in 29 CFR 90.2 and is used in the context of petition investigations. The proposed definition describes that workers in a firm or appropriate subdivision can be threatened to become totally or partially separated when there is evidence of intent to separate workers. Evidence may include a Worker Adjustment and Retraining Notice (WARN) Act notification, a letter to a union official from the company, a memo to the employees from the company, or other forms of notice. Similar to 29 CFR 90.2, the phrase applies when it is reasonable to anticipate that separations are imminent.

Threatened to begin—This NPRM incorporates this defined term from 29 CFR 90.2 without change. It is used in conjunction with the proposed defined term ''threatened to become totally or partially separated,'' and is the date(s) on which the applicable event(s) occurred.

Total separation or *totally separated*—This NPRM modifies the definition of these terms from 20 CFR 617.3(ll) and 29 CFR 90.2 and specifies the difference between how the terms are applied to a worker for purposes of investigating a petition and determining group eligibility, in accordance with proposed subpart B, and how they are applied to an AAW otherwise.

Trade Adjustment Assistance for Workers or *Trade Adjustment Assistance* or *TAA Program*—This NPRM modifies these defined terms from 20 CFR 617.3(mm) to state that the programs included as part of the TAA Program include RTAA and also to refer generally to the provision of benefits and services to trade-affected workers as described in this NPRM.

Trade-affected worker—This NPRM adds this term and defines it for the first time to simplify the reference when the NPRM applies to both categories of workers: ''adversely affected workers'' and ''adversely affected incumbent workers.''

Trade Readjustment Allowance or *TRA*—This NPRM modifies the definition of these terms from 20 CFR 617.3(nn) and (m)(1) and (2) to reference the administration of the TRA benefit in proposed subpart G and includes the three categories of TRA available under TAARA 2015: Basic, Additional, and Completion. This revised definition does not define the three categories of TRA, but provides a cross-reference to their definitions in proposed subpart G.

Unemployment Insurance or *UI*—This NPRM modifies the definition of these terms from 20 CFR 617.3(oo), to use the word ''worker'' instead of ''individual.'' The terms ''regular compensation,'' ''additional compensation,'' and ''extended compensation'' are the same as the definitions in the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26. U.S.C. 3304 note), except that the word ''worker'' has been substituted for the word ''individual,'' and the term ''Federal supplemental compensation'' has been updated and moved within the definition of ''extended compensation.''

Value-added production processes or services—This NPRM adds this term and defines it for the first time. It is derived from sec. 222(c)(3)(B) of the Act and used in reference to the petition investigation process and identifying adversely affected secondary workers

who perform work for a firm that is a downstream producer.

Wages—This NPRM incorporates this defined term from 20 CFR 617.3(pp) without change. For purposes of proposed subpart G, this includes wages paid to a worker by a successor-in-interest.

Wagner-Peyser Act—This NPRM adds this term and defines it for the first time to refer to the Wagner-Peyser Act, as amended (29 U.S.C. 49 *et seq.*). It references a program that is a required WIOA partner and may provide assistance to TAA Program participants.

Week—This NPRM incorporates this defined term from 20 CFR 617.3(qq) and sec. 247(12) of the Act without change.

Week of unemployment—This NPRM modifies the definition of this term from 20 CFR 617.3(rr). The phrase ''Federal unemployment compensation law'' has been changed to ''Federal Unemployment Insurance law'' to mirror the definition in sec. 247(13) of the Act.

Worker group—This NPRM adds this term and defines it for the first time. It defines who may comprise a group of workers certified under proposed subpart B as eligible to apply for TAA Program benefits and services. The proposed definition includes teleworkers and staffed workers. The proposed definition is derived from sec. 223(a) of the Act, which refers to a certification of eligibility to apply for assistance as ''covering workers in any group.'' The term is differentiated in this NPRM from the term ''group of workers'' (defined in this proposed subpart A), which refers to workers who file a petition for certification under sec. 221(a)(1)(A) of the Act.

Workforce Innovation and Opportunity Act or *WIOA*—This NPRM adds this term and defines it for the first time to refer to the Workforce Innovation and Opportunity Act (Pub. L. 113–128), as amended, under which the Department provides funding for States to carry out employment and training activities for adult, dislocated worker, and for youth activities in conjunction with local workforce development areas. The TAA Program is a mandatory one-stop partner under WIOA.

B. Subpart B—Petitions, Investigations, and Determinations

The purpose of subpart B is to set forth regulations required by sec. 248 of the Act, directing the Department to prescribe regulations to implement the provisions for rendering group determinations on adjustment assistance for trade-affected workers. This subpart will provide for the prompt and effective investigation of petitions for certification of eligibility to apply for adjustment assistance.

Proposed subpart B addresses secs. 221, 222, 223, and 224 of the Act and codifies and relocates 29 CFR part 90 by incorporating it into part 618. The proposed subpart makes several changes to update those regulations to reflect statutory changes; current procedures for filing petitions, conducting investigations, and issuing determinations of TAA Program eligibility; and requires exhaustion of administrative remedies, specifically use of the reconsideration process, prior to judicial review. The Department proposes to relocate most of the definitions in 29 CFR 90.2 to subpart A of part 618 for clarity and consistency.

Section 618.200 Scope

Proposed § 618.200 provides the same general scope for subpart B as 29 CFR part 90 but expounds upon the description of the scope given in 29 CFR 90.1.

Section 618.205 Petitions

Proposed § 618.205 updates the provision related to petitions at 29 CFR 90.11 and also makes the following changes. Proposed paragraph (a) updates who may file a petition, based on changes to sec. 221(a) of the Act. It also changes § 90.11(a) to reduce the number of workers who must sign the petition from three to two. The Act does not specify a minimum number of workers that make up a ''group of workers.'' Therefore, the Department interprets this to require that a group of workers be a minimum of two workers, instead of the current requirement of three workers. Proposed paragraph (b) combines and modifies 29 CFR 90.11(b) and (c) regarding the form and content of petitions. It requires petitioners to provide information the Department needs to begin its investigation. Absent this required information, a petition will not be valid. The required information remains substantially the same with the exception of proposing to remove the requirements in § 90.11(c)(6) and (7). The requirements in § 90.11(c)(6) and (7) are not worded in such a way to elicit information in keeping with all of the statutory requirements for group eligibility. Primarily, the requirements in 29 CFR 90.11(c)(6) and (7) do not apply to a petition filed identifying a shift. Therefore, the Department proposes to remove and replace them with proposed paragraph (b)(8), which requires that the petitioner explain why it is believed that worker separations that have occurred or may occur at the worker's firm are due to foreign trade impacts, or provide a reason that an amendment to an existing and active certification is being requested. Proposed paragraph (b)(3) also adds a requirement to provide the address of the location(s) where the group of workers who have been totally or partially separated or threatened with separation report to work (for a teleworker, the address of the location to which they report) to assist the investigator in identifying the group of workers.

Proposed paragraph (c) is new and provides that supplemental information, while not required when the petition is filed, may be provided with the initial filing to assist the Department in rendering a timely decision.

Proposed paragraph (d) updates 29 CFR 90.11(c) and maintains the methods of filing, allowing petition submissions by fax, email, and mail, but strongly encourages that all petitions be filed electronically with the Department through the Department's website. Due to built-in quality control measures, online filing ensures that petitions are complete when filed, which improves the overall processing time of all petitions by minimizing the need for the Department to return incomplete petitions. Individuals requiring assistance with online filing may contact their nearest one-stop center or their State's rapid response unit.

Proposed paragraph (e) is a new provision that implements sec. 224 of the Act, requiring the Department to take specific actions when the ITC issues an affirmative determination on the investigation under sec. 202 or 421 of the Act, or issues an affirmative final determination under sec. 705 or 735 of the Tariff Act of 1930. This language follows the statutory requirements.

Proposed paragraph (f) revises 29 CFR 90.12 and provides the Department's procedures for acceptance of a petition. Upon receipt of a petition, the Department will make an initial determination of validity, which will be limited to checking whether all required petition elements are included. Once a petition has been determined to be valid, the Department will begin an investigation.

Proposed paragraph (g) is new and provides that if the Department receives multiple petitions for the same group of workers, the petition date from the first petition filed will be used. This reflects current practice and ensures fairness to workers.

Proposed paragraph (h) was previously part of 29 CFR 90.12 and provides that the Department will publish a notice of the petition in the **Federal Register** and on the

Department's website announcing the initiation of an investigation into all valid petitions filed.

Proposed paragraph (i) modifies 29 CFR 90.32 and reinforces that petitions and any attachments included are public documents. As such, the Department will publish redacted versions of petitions on the Department's website. This will remove the need for individuals to file a FOIA request for copies of posted petitions. Lastly, proposed paragraph (j) is a new provision and is part of the States' responsibilities under sec. 239 of the Act to ensure that petitions that have not been filed with the Department, as required under the Act, are identified and filed with the Department. The proposed language requires that if a petition is filed with the State, upon receipt of that petition, the State must ensure the Department has received a copy of the petition or the State must forward the petition to the Department.

Section 618.210 Investigation

Proposed § 618.210 describes the investigation process, authorized under secs. 221 and 222 of the Act, and updates the language from 29 CFR part 90 to reflect current procedures and practices in the areas of timing; period of investigation; investigative processes; protection of confidential business information; termination of an investigation; the investigative record; and site visits. Proposed paragraph (a) reiterates the requirement in proposed § 618.205(f) that before an investigation can begin, the Department must determine that the petition is valid. Proposed paragraph (b) expands on 29 CFR 90.12 and defines the period of investigation to be used during investigations under this subpart B. The statutory timeframe for completing the investigation begins once a petition is filed with the Department and determined to be valid. Proposed paragraph (c) is new and explains the steps the investigator may take in order to render a determination regarding whether to certify a petition. It also identifies commonly used sources of information, providing added detail, structure, and transparency to stakeholders about the investigation process.

Proposed paragraph (d) derives from sec. 222(d)(3)(C) of the Act and updates the language from 29 CFR 90.32 to reflect the availability of information and protection of confidential business information received during the investigation process. This provision reiterates that the Department will not disclose confidential business information without the consent of the submitting firm or a court order.

Paragraph (e) is new and describes the conditions under which the Department may terminate an investigation. If an investigation is terminated, the Department will inform the petitioner and publish a notice in the **Federal Register** and on the Department's website. This proposed paragraph also provides that the Department may retain the original impact date for terminated petitions if the petition is later reinstated or a valid petition is filed for the same group of workers. A terminated investigation is subject to reconsideration and judicial review (see proposed § 618.245).

Proposed paragraph (f) is new and describes the contents of the investigative record of a determination. The investigative record will not include documents covered by attorney work-product protection, such as documents prepared in anticipation of litigation; documents covered by the attorney-client privilege, such as confidential communications with counsel seeking legal advice; documents covered by the deliberative process privilege, such as early drafts of determination documents; and other information otherwise exempt from disclosure. Proposed paragraph (g) expounds upon 29 CFR 90.12 and authorizes the use of site visits, previously called field visits, during the investigation to collect or validate information furnished by petitioners or to gather other relevant information.

Section 618.215 Public Hearings

Proposed § 618.215 discusses the provision governing public hearings and, other than updating regulatory citations, there are only a few changes from 29 CFR 90.13. These changes are as follows: Proposed paragraph (a)(3) is new and has been added to assist the parties in clearly communicating the issues to be heard; proposed paragraph (c) substitutes that a notice of public hearings will be published in the **Federal Register** within ''a reasonable period of time'' rather than at least 7 calendar days before the scheduled hearing, because the 7-day requirement may delay hearings; and proposed paragraph (j) revises 29 CFR 90.13(j) to allow for transcripts and recordings of hearings in place of being stenographically recorded.

Section 618.220 Use of Subpoena

Proposed § 618.220 explains the use of subpoena authority available to the Administrator under sec. 222(d)(3)(B) of the Act. It modifies 29 CFR 90.14 by providing factors the Department will use in determining the need for issuance of a subpoena during the investigation process. States are also provided subpoena authority in this NPRM, as discussed in subpart H. Proposed paragraph (a) is unchanged from 29 CFR 90.14(a). Proposed paragraph (b) is new and describes five factors the Department will consider when determining whether to issue a subpoena. Proposed paragraph (c) is unchanged from 29 CFR 90.14(c). Proposed paragraph (d) is substantially the same as 29 CFR 90.14(d), but includes a new reference to Rule 5(b) of the Federal Rules of Civil Procedure, which describes service and filing procedures of court pleadings and other papers. Proposed paragraph (e) is substantially the same as 29 CFR 90.14(b).

Section 618.225 Criteria for Certification of a Group of Workers

Proposed § 618.225 substantially updates 29 CFR 90.16(b) to describe the criteria the Department uses to certify a group of workers, which has expanded significantly under sec. 222 of the Act. It also identifies factors under consideration in determining whether a criterion is met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used. The proposed new provisions, listed below, reflect Congressional intent, existing Departmental practices and, in some instances, thresholds for select criteria.

Proposed paragraph (a) covers increased imports and provides the criteria for certification of a group of workers under sec. 222(a) of the Act. While 29 CFR 90.16(b) covered certifications based on increased imports, the modifications to the provision are significant enough to deem this a new provision. Proposed paragraph (a)(1) describes five possible bases for an increased imports certification. Proposed paragraph (a)(2) describes the four criteria that must be met in order to issue a certification under increased imports.

Proposed paragraph (b) covers shift in production of articles and supply of services by the group of workers' firm to another country and provides the criteria for certification of a group of workers under sec. 222(a) of the Act. Proposed paragraph (b)(1) describes the two possible bases of a shift in production certification. Proposed paragraph (b)(2) describes the three criteria that must be met in order to issue a certification under a shift.

Proposed paragraph (c) covers foreign acquisition and also provides the

criteria for certification of a group of workers under sec. 222(a) of the Act. The introductory text to proposed paragraph (c) describes the two possible bases for a foreign acquisition certification. Proposed paragraphs (c)(1) through (3) describe the three criteria that must be met in order to issue a certification under foreign acquisition.

Proposed paragraph (d) covers the certification of a group of workers as a supplier under sec. 222(a) of the Act. Proposed paragraphs (d)(1) through (5) describe the five criteria that must be met in order to issue a certification for a supplier.

Proposed paragraph (e) covers the certification of a group of workers as a downstream producer under sec. 222(b) of the Act. Proposed paragraphs (e)(1) through (5) describe the five criteria that must be met in order to issue a certification as a downstream producer.

Proposed Paragraph (f) implements sec. 222(e) of the Act related to a group of workers in a firm or firms named as a member of a domestic industry for an affirmative determination issued by the ITC. Proposed paragraphs (f)(1) through (3) describe the three criteria that must be met in order to issue a certification based on an affirmative determination issued by the ITC.

Proposed paragraph (g) is new and describes the Department's longstanding interpretation of the 1-year period prior to the petition date for production and sales declines.

Proposed paragraph (h) is new. The Department is making explicit an eligibility requirement contained in sec. 222(c)(2) of the Act, which states that firms, or appropriate subdivisions thereof, that engage in exploration or drilling for oil and natural gas must be considered to be engaged in the production of oil or natural gas. However, the Department will not interpret this provision to prevent workers from meeting criteria set forth in other portions of the Act. A petition covering a group of workers providing oil and gas services may be investigated as both a firm engaged in the supply of exploration or drilling services and a firm engaged in the production of oil or natural gas. This means the Department may conduct a parallel investigation to determine whether the petitioning group of workers meets any criteria for certification of worker groups set forth in proposed § 618.225.

Proposed paragraph (i) is new and provides that staffed workers, working on or off-site, will be classified as part of the worker group of the firm. The Department will specify in the determination document that all members of the affected worker group include teleworkers and staffed workers, but will not list specific leasing companies or temporary staffing entities. The Department will continue to collect information from the subject firm in order to establish the leasing or temporary staffing entity or entities over which the workers' firm has operational control. The Department will provide contact information to States for the aforementioned leasing or temporary staffing entities to assist them in notifying workers. States that discover additional leasing or temporary staffing entities employing staffed workers who are members of a certified worker group may serve those workers without the delay of filing a new petition or requesting an amendment to the certification. This change in procedure will enhance service delivery to workers. Although every case is decided on its own merits, proposed paragraphs (i)(1) through (9) list the control questions used to evaluate operational control and have been added to ensure uniformity in the Department's decisions. The Department is also considering an alternative approach to this provision, changing its previous interpretation and not including staffed workers as part of the worker group of the firm. It would instead require staffed workers to file a separate petition to seek certification as their own worker group. The Department seeks comments on both proposed paragraph (i) and the alternative approach the Department is considering.

Proposed paragraph (j) codifies administrative guidance issued as part of the TAAEA operating instructions. This section explains that teleworkers, also known as remote workers, may be part of a certified worker group without being specifically referenced in a certification document, insofar as their position is affected by the same trade effects as other workers in the worker group. Teleworkers should not be excluded simply because they are teleworkers. Rather, they should be considered part of the worker group when they otherwise fit the description.

Proposed paragraph (k) is new and provides that workers employed by a firm that is a successor-in-interest are members of a worker group even if they are not specifically mentioned within the determination document issued under proposed § 618.235.

Section 618.230 Evidence

Proposed § 618.230 is new and provides a description of the types of evidence to be gathered and used in evaluating the criteria for certification during the investigation process under § 618.210. Section 223(e) of the Act requires the Department to establish standards, including data requirements, for investigations under sec. 221 and for making determinations under sec. 223(a). Section 222(d) of the Act authorizes the Department to collect such information as necessary to make a determination. There is no similar provision in 29 CFR part 90 as this provision originated with TGAAA.

Proposed paragraph (a) provides that the Department will seek to verify all information provided in support of a criteria as accurate, complete, and current as part of considering the evidence. Proposed paragraph (b) provides that evidence may be accepted from sources including, but not limited to, petitioners, company officials, current and former workers of the firm, customers of the firm, trade associations, union representatives, Federal agencies, and reliable public sources such as State agencies and academic institutions. Another example of a party who may produce evidence is a party who submits information in response to the publication of the petition in the **Federal Register** or the Department's website. Proposed paragraph (c) provides that the Department may share information submitted in support of a petition, for verification purposes, with any entity as deemed appropriate for completing the investigation. For example, the Department may share a media article submitted by the petitioner in support of the petition with the company official to verify its accuracy.

Section 618.235 Determinations

Proposed § 618.235 clarifies the process the certifying officer will use for issuing a determination based on the findings of the investigation as set forth in proposed § 618.230. This is similar to 29 CFR 90.16, but reorders it, condenses the description of types of determinations into four categories, and adds a discussion of the oil and gas provision at sec. 222(c)(2) of the Act. The NPRM removes the reference in 29 CFR 90.16(a) to the issuance of a determination within 60 days. The statutory period is 40 days, as provided in sec. 223(a) of the Act. Proposed paragraph (a) describes the affirmative determination or certification category of determinations. It contains predominantly the same information provided in 29 CFR 90.16, but adds a discussion of the impact date and coverage of workers under the petition. Proposed paragraph (b) covers a negative determination or denial and derives from 29 CFR 90.16(f) but also incorporates additional language to explain the Department's process more

fully and to align it with proposed paragraph (a). Proposed paragraph (c) covers determinations and derives from 29 CFR 90.16(d). Excluded is language that has been incorporated from 29 CFR 90.16 into proposed paragraphs (a) and (b).

Proposed paragraph (d) covers amended determinations and codifies the practice of amending a certification to limit or expand a worker group or other elements of a certification, which aligns with longstanding practice and administrative guidance. Proposed paragraph (d) also states the Department's position that it reserves the right to begin reconsideration proceedings of a denial without a request for reconsideration being filed. Proposed § 618.250 of this subpart B also discusses this issue. In addition, this paragraph states that a termination will not take effect until the period in which to request reconsideration has elapsed.

Section 618.240 Termination of Certification

Proposed § 618.240 discusses the termination of certifications under sec. 223(d) of the Act, updating the regulations to reflect current practice and procedures through minor revisions to 29 CFR 90.17. Any party eligible under proposed § 618.225 to submit a petition may file for a reconsideration of a terminated or partially terminated certification. A decision to uphold the termination of a certification after reconsideration is a final determination by the Department and subject to judicial appeal.

Proposed paragraph (a) restates sec. 222(d) of the Act and is unchanged from 29 CFR 90.17(a). Proposed paragraph (a)(1) is new and describes that unless a termination is issued under proposed § 618.240, all certifications under proposed § 618.235(a)(1)(ii) are considered terminated the day following the expiration date of the certification. And as provided in the definition of the term ''certification period'' in proposed subpart A, a certification expires 2 years after the certification date. Proposed paragraph (a)(2) is new and provides that all ITC certifications, described at § 618.225(f), are considered terminated the day following the expiration date of the certification, which is 1 year following the date of publication of the determination in the **Federal Register**. Proposed paragraphs (a)(1) and (2) have been added to make clear that the expiration date of a certification serves the same purpose as a notice of termination as described further in proposed paragraph (e) of this section. The expiration date cannot be extended, however, so if it is known that further separations or threat of separations will continue to exist after that date, a new petition must be filed.

Proposed paragraph (b) includes the notice language from 29 CFR 90.17(a) and updates it to include to whom the notices will be made. It also requires the State to notify the workers in the worker group of the initiation of the investigation. Proposed paragraph (c) updates 29 CFR 90.17(b) and describes how interested parties may comment on a notice of the initiation of an investigation to terminate a certification. Proposed paragraph (d) is new and describes the information that will be considered in determining whether to terminate a certification. It also provides that the period of investigation will remain the same as the period of investigation for the original certification.

Proposed paragraph (e) combines 29 CFR 90.17(d) and (e) to provide details on the process of issuing a notice of termination or notice of partial termination, as well as detailing to whom the notices will be issued. It requires States to notify the worker group of the termination or partial termination. It also states that a termination will not take effect until the period in which a party may request reconsideration has elapsed. Proposed paragraph (f) updates 29 CFR 90.17(f) and provides detail on the process of issuing a notice of continuation of certification, as well as detailing to whom the notice will be issued. It requires States to notify the worker group of the continuation of certification. Proposed paragraph (g) is new and allows for reconsideration of a determination of termination or partial termination of a certification. It refers parties to § 618.245.

Section 618.245 Reconsideration of Termination of an Investigation, Denial, or Termination or Partial Termination of Certification

Proposed § 618.245 contains the process for reconsiderations of determinations on petitions. There are several changes from 29 CFR 90.18, enumerated below, to provide additional clarifications and to enhance efficiency of investigations. The Department encourages comments addressing the impact of this revised process. Proposed paragraph (a) updates 29 CFR 90.18(a) and (b) to clarify that the reconsideration process allows for a party to apply to the Department to reconsider the termination of an investigation, as described in proposed § 618.210(e); a negative determination issued under proposed § 618.235(b); or a termination or partial termination of certification issued under proposed § 618.240. It also lists the information required as part of the application in order for it to be complete and valid. Proposed paragraph (b) aligns with the last sentence in 29 CFR 90.18 (a) and maintains the requirement that all applications must be in writing and must be filed no later than 30 days after the notice of the termination of the investigation, negative determination, or termination or partial termination of a certification has been published in the **Federal Register**. Proposed paragraph (c) is new and addresses the process for reviewing and returning an incomplete application for reconsideration. The refiling of the complete application must occur within the 30-day period identified in proposed paragraph (b) or within 5 days of receipt if the application is returned less than 5 days prior to the end of that period.

Proposed paragraph (d) addresses the publication of a notice in the **Federal Register** and on the Department's website of the application and the initiation of an investigation on reconsideration. The Department proposes to eliminate 29 CFR 90.18(c), which required a determination to accept the application for reconsideration before conducting an investigation. The Department concluded that eliminating the step requiring the certifying officer to make and issue a determination on whether or not to initiate a reconsideration will decrease time and burden and simplify the process. The Department will initiate an investigation on all complete reconsideration applications. Proposed paragraph (e) is substantially the same as 29 CFR 90.18(f). Proposed paragraph (f) is new and describes the procedures for investigation on reconsideration. It also provides that the period of investigation will remain the same as the period of investigation for the original certification. Proposed paragraph (g) combines and updates 29 CFR 90.18(h) and (i). It also includes the requirement of the State to notify a worker group of a certification in accordance with proposed § 618.820 in subpart H. Proposed paragraph (g) also states that should a reconsideration investigation extend past 60 days, the Department will contact the applicant for a directive to continue or terminate the investigation. If the applicant directs the Department to continue its investigation, the Department will issue a notice of determination on reconsideration, which will be the Department's final determination. If the applicant directs the Department to

terminate the investigation, the Department will issue a notice of termination of investigation, which will render the initial determination the Department's final determination.

Section 618.250 Amendments of Certifications

Proposed § 618.250 provides the process for seeking amendments to certifications. This proposed section is new, though in practice the Department has been issuing amendments for many years. Section 223 of the Act establishes that a determination be issued for ''any group'' that meets the eligibility criteria of sec. 222 of the Act. The Department interprets that provision to mean that, should new or supplemental information support a clarification of the certified worker group, the Department may issue an amended certification under the same petition number and publish the amendment in the **Federal Register** and post it on the Department's website. Proposed paragraph (a) describes the types of amendments and explains that amendments must not extend the impact date as that would go beyond the period covered by the certification itself. Common reasons for amendments include changes to the ownership of a successor firm, correcting any technical errors made, and clarifying the worker group. Clarifying the worker group does not include adding teleworkers or staffed workers, as they are considered part of the worker group.

Proposed paragraph (b) includes a new requirement that amendments be requested through the regular petition process, which is a change to current practice. This change will help formalize the amendment process and ensure that all individuals are aware of and able to use the process. Proposed paragraph (c) requires the Department to publish a notice of the amendment in the **Federal Register** and requires the States to notify any additional certified trade-affected workers impacted by the amendment.

Section 618.255 Judicial Review of Determinations

Proposed § 618.255 explains the process for judicial review of determinations issued under proposed §§ 618.240(g) and 618.245. This is a significant update to 29 CFR 90.19. Section 284 of the Act allows for judicial review of only ''final determinations.'' Under existing regulations, all determinations rendered by the Department are final determinations subject to judicial review. In the NPRM, the Department is defining only determinations on reconsideration issued under proposed §§ 618.240(g) and 618.245 as final determinations and, therefore, only these determinations are subject to judicial review through the United States Court of International Trade (USCIT). Proposed paragraph (a) is substantially the same as 29 CFR 90.19(a), but eliminates the citations within part 90. Proposed paragraph (b) is new and defines only determinations on reconsideration issued under proposed §§ 618.240(g) and 618.245 as final determinations subject to judicial review through the USCIT. Proposed paragraphs (c) and (d) are substantially the same as 29 CFR 90.19(b) and (c), with only minor language changes to reflect modernization. Proposed paragraph (e) contains an updated reference and title from 29 CFR 90.19(d). Proposed paragraphs (f) and (g) are new and provide clarity on the determinations subject to judicial review under sec. 284 of the Act and specify that USCIT rules apply to filings with the court.

Section 618.260 Study Regarding Certain Affirmative Determinations by the Commission

Proposed § 618.260 provides for a study and report to be undertaken by the Department in response to certain ITC affirmative determinations under sec. 224 of the Act. This is an update to the requirements at 29 CFR 90.21. There are no substantial changes, but the additional detail provided explains what information the study will include.

Section 618.265 Availability of Information to the Public

Proposed § 618.265 discusses the availability of information under this part 618 and is largely unchanged from 29 CFR 90.32, except to indicate that copies of petitions, in redacted form, will be available on the Department's website.

29 CFR 90.36, related to the computation of time for purposes of subpart B, is proposed for deletion as it does not apply to calculations for petitions or reconsiderations. Individual sections of this proposed subpart B address time periods as appropriate.

C. Subpart C—Employment and Case Management Services

Proposed subpart C sets forth requirements under sec. 235 of the Act for States to provide employment and case management services to trade-affected workers. Proposed subpart C makes significant changes to the employment and case management services provisions in 20 CFR part 617 because the enactment of TGAAA altered these requirements. However, 20 CFR 617.20 and 617.21 contain many of the same elements now contained in sec. 235 of the Act in proposed subpart C. TAARA 2002 required States to ''make every reasonable effort'' to provide case management services to trade-affected workers through programs other than the TAA Program. TGAAA enacted and funded a requirement to offer case management services to trade-affected workers. TAARA 2015 continues these provisions and requires States to provide employment and case management services, either through TAA Program funding, through programs other than the TAA Program, or through a combination of both.

Proposed subpart C also updates 20 CFR part 617 to reflect changes to the TAA Program and related workforce development programs due to the authorization and implementation of WIOA. Proposed subpart C emphasizes the integration of the TAA Program into the one-stop delivery system established under WIA and continued under WIOA.

Some key additions within proposed subpart C include requiring initial assessments for trade-affected workers; clarifying the provision of required case management services; and prescribing requirements for IEPs.

Section 618.300 Scope

Proposed § 618.300 discusses the scope of this subpart and does not have a directly comparable section in 20 CFR part 617. This proposed section describes the TAA Program benefits that States must make available and their required integration with the reemployment and career services provided through the one-stop delivery system established under WIOA. States must provide trade-affected workers with seamless delivery of services and benefits described in subpart C to help them return to employment as quickly as possible. Providing timely employment and case management services is important for improving the efficiency and effectiveness of the TAA Program. Immediately conducting an assessment improves participation rates, gives trade-affected workers more time to consider their options, and leads to better employment, retention, and post-program earnings outcomes.

The Act requires States to provide services to two groups of workers: (1) Members of a group of workers covered by a petition for TAA filed by, or on behalf of, such group of workers; and (2) members of a worker group covered by a petition that the Department has certified. Under sec. 221(a)(2)(A) of the Act, the Governor must provide rapid

response services and appropriate WIOA career services to groups of workers for whom a petition has been filed under subpart B. States must provide these services at the time of filing, whether or not the petition has been, or eventually will be, certified or denied. Once covered by a certification, States must offer trade-affected workers employment and case management services, including counseling, testing and placement services, and information on supportive and other services. This requirement is based on new language in secs. 235 and 239(a), (e), and (g) of the Act, and the Congressional Declaration of Policy in sec. 125(a) of TAARA 2002, which states that trade-affected workers ''are eligible for transportation, childcare, and healthcare assistance, as well as other related assistance under programs administered by the Department of Labor.'' Section 239(f) of the Act requires that these services be coordinated with workforce activities and services under title I of WIOA and provides the Department with the authority to establish the responsibilities and requirements for such coordination. These requirements are not new. Many of the employment and case management services discussed in this subpart are contained in 20 CFR 617.20 and 617.21.

Section 618.305 The Trade Adjustment Assistance Program as a One-Stop Partner

Proposed § 618.305 is new and requires States to ensure that their TAA Program, as a required partner in the one-stop delivery system, complies with one-stop partnership requirements such as sharing staff, materials, and financial resources. Coordination with the broader public workforce system established under WIA, now WIOA, is required at 20 CFR 617.59(h). This section expands upon the existing rules and updates them to reflect the requirements established under WIOA. The partnership activities help ensure the seamless delivery of necessary services, including a comprehensive array of appropriate services not funded under the TAA Program, to groups of workers covered by filed petitions and to members of worker groups for whom a certification has been issued. Services provided before the certification of a petition for TAA cannot be charged to the TAA Program. Services provided by partner programs must not be duplicated using TAA Program funds. However, there may be a need to supplement the previous services if they do not meet the requirements of the TAA Program. Proposed paragraph (a) reiterates that the TAA Program is a required partner under WIOA. Proposed paragraph (b) requires that the TAA Program meet the WIOA one-stop partner requirements, including paying infrastructure costs in areas where the TAA Program is being carried out. Proposed paragraph (c) provides that, for locations where the TAA Program is being carried out, States must ensure that their administration of the TAA Program complies with the one-stop partnership requirements, including appropriate cost allocation for infrastructure and operating costs of one-stop centers, and the terms and conditions of the memorandum of understanding established under the WIOA Final Rule at 20 CFR 678.500.

If the TAA Program is carried out in a local workforce development area (or local area), the State must provide access to the TAA Program services in at least one of the local area's comprehensive one-stop centers in accordance with 20 CFR 678.305(d) and WIOA sec. 121(b)(1)(A)(i). Access to the TAA Program occurs in one of three ways:

- Option 1. Having a program staff member physically present at the one-stop center;
- Option 2. Having a staff member from a different partner program physically present at the one-stop center and appropriately trained to provide information to customers about the programs, services, and activities available through all partner programs; or
- Option 3. Making available a direct linkage through technology to a program staff member who can provide meaningful information or services.

The options above offer a wide range of possibilities to partners. Option 2 could require varying levels of assistance depending on the trade-affected worker's needs. For example, this could be as simple as having an adequately trained WIOA staff member providing basic program information to a one-stop customer regarding group and individual eligibility requirements of the TAA Program. In this example, the one-stop center staff has been trained on TAA Program eligibility requirements as well as how to search for and file a TAA Program petition. Once the Department renders a determination on a petition, the one-stop center staff will then connect the worker to appropriately trained one-stop center staff who can further assist them. If the petition is certified, the trade-affected worker is eligible to apply for individual benefits and the appropriately trained one-stop center staff must guide them through the application and enrollment process. This option allows the trade-affected worker to receive high-quality service through the one-stop center, in a timely manner. In this example, it would be essential that the Wagner-Peyser Act Employment Service staff person document their time and effort to ensure that the charges to the appropriate program, namely the TAA Program, for salaries and wages are based on records that accurately reflect the work performed, consistent with Federal cost principles in the Office of Management and Budget's (OMB's) Uniform Guidance at 2 CFR 200.430.

Option 3, a direct linkage, can take many forms as well. As described in 20 CFR 678.305(d)(3), a ''direct linkage'' means providing a direct connection at the one-stop center within a reasonable time, by phone or through a real-time web-based communication, to a program staff member who can provide program information or services, including career services, to the customer. Solely providing a phone number, website, information, pamphlets, or materials does not constitute a ''direct linkage.'' The flexibility provided through the three optional methods for assuring customer access to required one-stop partner services and activities at the comprehensive centers ensures that the TAA Program remains accessible through the one-stop center network.

Section 618.310 Responsibilities for the Delivery of Employment and Case Management Services

Proposed § 618.310 explains the State's responsibilities for delivering and making available employment and case management services. These responsibilities are from sec. 235 of the Act. Proposed paragraph (a) addresses the information that States must provide to trade-affected workers. The information requirements are detailed in subpart H.

Proposed paragraph (b) lists the State's specific responsibilities for delivering employment and case management services. The proposed regulatory text would modify 20 CFR 617.20(b). The language in 20 CFR 617.20 was based on workforce programs that have been replaced by WIOA; it also uses outdated language to describe reemployment services, now known under the TAA Program as employment and case management services. Proposed paragraph (b) does not significantly change the activities and services that States must provide or make available to trade-affected workers. States must: (1) Interview and review training opportunities for each trade-affected worker; (2) inform trade-

affected workers of the services and allowances available; (3) help them secure suitable employment; (4) accept applications for training; (5) help them secure appropriate training; (6) monitor their training progress; (7) devise a training-waiver process; (8) provide access to workshops and other employment resources; and (9) coordinate other employment benefits that workers may be eligible for.

Proposed paragraph (b) reorganizes 20 CFR 617.20(b). Paragraph (b)(1) is included in proposed § 618.310(b). Paragraph (b)(2), registering AAWs for work, is omitted from the NPRM. Registering AAWs for work is a function of the Wagner-Peyser and UI programs. Although TAA Program staff may assist with this process, it is not an employment and case management service listed under sec. 235 of the Act. Paragraph (b)(3) is covered in both proposed § 618.310(b)(2) and proposed § 618.816 of subpart H. Paragraphs (b)(4) and (6) are retained as proposed § 618.310(b)(3). Paragraph (b)(7) is covered in subparts F (training) and D (job search and relocation allowances). Paragraph (b)(8) is covered through the comprehensive and specialized assessment and IEP discussed in this subpart. Paragraphs (b)(9) through (12), regarding the selection of, referral to, and determinations on training, are covered in proposed § 618.310(b)(5) and (6) and in more detail in subpart F of this NPRM. Paragraph (b)(13), regarding the periodic review of reemployment plans, is covered in proposed § 618.350. Paragraph (b)(14), regarding periodic review of waivers, is included as proposed § 618.310(b)(7). Paragraph (b)(15), regarding the coordination of services with WIOA, is divided into proposed § 618.310(b)(8) and (9).

Proposed paragraph (c) implements sec. 235 of the Act by requiring States to provide, if appropriate, specific employment and case management services to trade-affected workers. Proposed paragraph (c)(1) requires States to assess workers' skills and service needs through assessments and by identifying appropriate employment goals and barriers to employment. These goals should be based on a realistic assessment of available training; the worker's knowledge, skills, and abilities; and the gap between them and those required for the worker's identified employment goal.

Proposed paragraph (c)(2) requires States to inform trade-affected workers of the availability of an IEP to identify employment goals and objectives, and appropriate training and services needed to achieve those goals and objectives. An IEP is a combination of the ''training plan'' contained in 20 CFR 617.20(b)(8) and the ''reemployment plan'' in 20 CFR 617.20(b)(13). The requirement to periodically review the reemployment plan in 20 CFR 617.20(b)(13) is carried forward as a requirement for an IEP under this NPRM. For workers seeking training or job search allowances, § 618.350(a) requires States to provide workers with an IEP, though this is not a requirement for eligibility for benefits.

Proposed paragraph (c)(3) requires the State to provide information to trade-affected workers on how to apply for financial aid, including referring workers to educational opportunity centers under the Higher Education Act of 1965, as amended (HEA). In addition, States must notify workers that they may request financial aid administrators to use current year income data, rather than preceding year income data, to determine the workers' financial need. This is required by sec. 235(4) of the Act. There is no corresponding requirement in the existing rule.

Proposed paragraph (c)(4) requires States to provide, if appropriate, certain services to trade-affected workers, including short-term, prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare workers for employment or training. These are referred to commonly as ''soft skills'' within the public workforce system. These services are required by sec. 235(5) of the Act. There is no corresponding provision in the existing rule.

Proposed paragraph (c)(5) requires States to provide, if appropriate, individual and group counseling, including job search and placement counseling. These services can be provided in one-on-one counseling sessions or in workshops at a one-stop center. These services are referenced indirectly in 20 CFR 617.20 and 617.21 and are required by sec. 235(6) of the Act. This NPRM uses more modern terminology that reflects the changes to the public workforce system that have occurred through the transition from JTPA, to WIA, and now to WIOA.

Proposed paragraph (c)(6) requires States to provide various kinds of employment statistics, including local, regional, and national labor market information, to ensure trade-affected workers make informed decisions about their employment goals and training needs. Part 617 of title 20 of the CFR references the provision of labor market information to trade-affected workers in relation to job search activities, relocation, and training programs. Section 235(7) of the Act requires States to provide this information.

Lastly, proposed paragraph (c)(7) requires States to inform trade-affected workers about supportive services available through partner programs, as required by sec. 235(8) of the Act. This requirement also was contained in 20 CFR 617.20(b)(5) and 617.21(e). The TAA Program reimburses limited travel and subsistence costs for training outside the worker's commuting area and provides for all training-related expenses (see subpart F). However, the TAA Program does not pay for vehicle repairs, local travel costs, childcare, or other similar supportive services traditionally paid for under WIOA.

Proposed paragraph (d) further defines what it means to ''make available'' the employment and case management services described in this subpart. TEGL No. 16–16, ''One-Stop Operations Guidance for the American Job Center Network,'' discussed the requirement that career services under WIOA be ''made available.'' The Department there concluded that this phrase had the same meaning as ''provided.'' The Department reaches the same conclusion under the Act. While not all employment and case management services will be appropriate for all trade-affected workers, they must be made available to them. This requires informing trade-affected workers of the available services; providing those services if requested or if the services are deemed appropriate for the worker; and documenting the services that they offered, any that were not offered, and why those services were not offered.

Section 618.325 Integrated Service Strategies and Workforce Innovation and Opportunity Act Co-Enrollment

Proposed § 618.325 does not have a comparable section in 20 CFR part 617. Proposed § 618.325 discusses co-enrollment between the TAA Program and WIOA and other programs to ensure the availability of a comprehensive array of services for trade-affected workers and the integration of workforce development programs. The Department long ago concluded that co-enrollment of trade-affected workers in the dislocated worker program under WIOA, WIA, and title III of JTPA before that, is the best way to integrate services and ensure successful reemployment of trade-affected workers, and States have been co-enrolling in accordance with administrative guidance. The State also should explore partnerships with community and faith-based organizations, including organizations

not affiliated with the broader WIOA system, to ensure the provision of appropriate, holistic services to trade-affected workers, their families, and their trade-affected communities. This integration of service strategies arises from the requirement in sec. 239 of the Act to make available employment and case management services, such as counseling, testing, placement services, and supportive and other services for trade-affected workers.

Co-enrollment of TAA Program participants in the WIOA dislocated worker program drastically improves the quality of service to trade-affected workers and improves participant outcomes. Based on data reported by the States between FYs 2009 and 2017, TAA participants who are co-enrolled in the dislocated worker program under WIA/WIOA have superior post-program employment results, by a consistent margin, in comparison to TAA participants who were not co-enrolled in a WIA/WIOA dislocated worker program. Moreover, these data show no adverse impact on outcomes under the dislocated worker program as a result of co-enrolling TAA Program participants. Additionally, TAA Program participants co-enrolled in the dislocated worker program have:

(1) Higher training participation (75 percent versus 51 percent for those not co-enrolled);

(2) Higher training completion rates (78 percent versus 71 percent for those not co-enrolled); and

(3) Higher credential attainment (73 percent versus 62 percent for those not co-enrolled).

All of these outcomes are correlated with higher performance outcomes and are statistically significant.

Proposed paragraph (a)(1) requires co-enrollment of trade-affected workers in WIOA's dislocated worker program. Co-enrollment allows for more efficient use of public workforce system resources and reduces barriers to program integration. A trade-affected worker may decline co-enrollment, which has no effect on eligibility for benefits and services under the TAA Program. In implementing the co-enrollment requirement, States must make trade-affected workers aware that they are being co-enrolled in the WIOA program.

Proposed paragraph (a)(2) requires that States make available to eligible trade-affected workers co-enrollment in Wagner-Peyser Act Employment Service activities, vocational rehabilitation services, and veterans' programs, such as the Jobs for Veterans State Grants program, and other one-stop partner programs, if appropriate. When trade-affected workers are co-enrolled properly in other one-stop programs, provided timely rapid response services, and given appropriate career services, they return to work as quickly as possible. Co-enrolled trade-affected workers also can receive supportive services that may help them complete TAA approved training and then return to employment. The Department expects the TAA Program, in general, to pay for all training and related costs and the majority of employment and case management services. However, trade-affected workers often also benefit from WIOA's supportive services and post-employment follow-up services, which cannot be funded through the TAA Program.

Proposed paragraph (b)(1) emphasizes that most trade-affected workers are dislocated workers as defined at WIOA sec. 3(15). Most trade-affected workers have been laid off, are likely to be eligible for unemployment compensation or are otherwise attached to the workforce, and are unlikely to return to a previous industry or occupation, which are the primary eligibility criteria for the dislocated worker program. There are only a few barriers to WIOA eligibility. Proposed paragraph (b)(2) recognizes that AAIWs will generally not be eligible for the WIOA dislocated worker program, but in certain circumstances, such as a general announcement of a closure, they may meet those eligibility criteria and must also be co-enrolled. Similarly, some partially separated workers' wages and time on the job will have decreased, but they remain employed and do not meet any other eligibility requirements of the WIOA dislocated worker program. Proposed paragraph (b)(3) describes that the broader requirement under WIOA that certain males be registered under the Selective Service provisions can be a barrier to co-enrollment. There is no Selective Service registration requirement under the TAA Program. If an individual knowingly and willfully fails to register, he cannot co-enroll in WIOA and, therefore the co-enrollment requirement does not apply.

Section 618.330 Assessment of Trade-Affected Workers

Proposed § 618.330 is new and requires States to design an assessment process. Section 239(g)(4) of the Act permits the Department to require initial assessments for all trade-affected workers and requires the State to ''perform outreach to, intake of, and orientation for [AAWs] and [AAIWs] covered by a certification under [the Act].'' States must provide all trade-affected workers an initial assessment after determining that they are individually eligible for the TAA Program as part of the intake process. This meets a necessary component of the requirement at TAARA 2015 sec. 239(g)(4) that each State perform ''intake of'' trade-affected workers covered by a petition. Intake includes these assessments but also the collection of demographic information for reporting purposes. The initial assessment must include an evaluation of a trade-affected worker's skill levels (including literacy, numeracy, and English language proficiency), abilities (including skills gaps), and supportive service needs.

Proposed paragraph (a) provides an overview of assessments. Proposed paragraph (b) provides that the States must ensure the scheduling of the assessment gives trade-affected workers enough time and information to consider, request, and enroll in training or obtain a waiver of the training requirement for TRA before expiration of the 26-week deadlines for enrollment in training provided under sec. 231(a)(5)(A) of the Act. Proposed paragraph (c) provides that assessments are created in cooperation with the trade-affected worker with their interests, skills, aptitudes, and abilities discussed. Proposed paragraph (d) requires that the results be documented in the worker's case file. An assessment requires more than a review of information available about the trade-affected worker, their education, and previous employment. An assessment is an interactive process that includes the involvement of the trade-affected worker. Proposed paragraph (e) discusses what to do if a partner program conducts the assessment(s). The use of partner programs' assessments can increase efficiency, ensure that workers quickly receive appropriate reemployment services, and quickly identify those workers requiring a more comprehensive and specialized assessment of their skills. The Department recognizes that the lack of uniform requirements for assessments means that some assessments conducted by partner programs may not meet all TAA Program requirements for an initial assessment. If so, the State must supplement those partner program assessments with additional information to comply with § 618.335. Proposed paragraph (f) requires that States must explain the advantages of receiving an assessment to trade-affected workers and also confirms that a worker may refuse an assessment. However, the worker must provide any information necessary (outside the assessment process) that enables States to determine

eligibility for any benefit under this part 618.

Section 618.335 Initial Assessment of Trade-Affected Workers

Proposed § 618.335 is new and implements sec. 239(g)(4) of the Act. WIOA sec. 134(c)(2)(A)(iii) requires individuals be provided with an ''initial assessment of skill levels (including literacy, numeracy, and English language proficiency), aptitudes, abilities (including skills gaps), and supportive service needs'' as a career service through the one-stop center. The WIOA regulations mirror this language at 20 CFR 678.430(a)(3). Proposed § 618.335 aligns the TAA Program with WIOA and it provides the requirements for an initial assessment of trade-affected workers. The first step in the process is to determine whether the worker will need employment and case management services and training. The State must provide TAA Program benefit information to trade-affected workers no later than at the time of the initial assessment, as discussed in proposed § 618.816(f). However, the State may provide this information to a worker even earlier, upon receiving a notice of a certified petition covering that worker.

Proposed paragraph (a) requires that States conduct an initial assessment for each trade-affected worker, as authorized by sec. 239(g)(4) of the Act. If an initial assessment has been completed before the trade-affected worker enrolls in the TAA Program, the State must use the previous assessment and not conduct a duplicate assessment in accordance with proposed § 618.330(e). Proposed paragraph (b) lists factors that States must consider to find the best approach to reemployment for each particular worker. A review of local labor market conditions will help the State determine if any jobs are available in the local area for which the worker could apply. A review of the worker's knowledge, skills, and abilities gained from their education and previous employment helps the State determine whether the worker will be able to use those skills in new available jobs, or whether the worker's skills are too specialized to be transferred to other available employment. A review of all barriers to the worker's employment will help the State identify training that may overcome those barriers, such as English language training or remedial training to get a high school equivalency degree. Any feedback from the trade-affected worker, including disagreement with the assessment's conclusions, must be documented in the case file.

Proposed paragraph (c) explains the State's options for service strategies based on the information gathered from the initial assessment. This involves first making a determination of whether or not there is suitable employment available to the trade-affected worker and the options for moving forward. Proposed paragraph (d) explains that if suitable employment is not available, the State must advise the worker to explore available training under subpart F.

Section 618.345 Comprehensive and Specialized Assessment of Trade-Affected Workers

Proposed § 618.345 is new and implements sec. 235 of the Act. WIOA sec. 134(c)(2)(A)(xii) and its implementing regulation at 20 CFR 678.430(b)(1) require States to provide ''[c]omprehensive and specialized assessments of the skill levels and service needs of adults and dislocated workers, which may include . . . [d]iagnostic testing and use of other assessment tools; and [i]n-depth interviewing and evaluation to identify employment barriers and appropriate employment goals'' as an individualized career service ''if determined to be appropriate in order for an individual to obtain or retain employment.'' WIOA draws a distinction between basic career services and individualized career services as individualized career services only are required to be provided if it is determined appropriate. Proposed § 618.345 aligns the TAA Program with WIOA. Proposed paragraph (a) requires the comprehensive and specialized assessment to be made available to all trade-affected workers. Proposed paragraph (b) explains that the trade-affected workers' goals and interests must be taken into account, as well as their location as it relates to available local employment and whether or not it is inside their current commuting area. Proposed paragraph (c) reiterates WIOA's regulations and is meant to ensure that States have the information needed to help workers select appropriate training and a viable future career, thus increasing their chances of successfully completing training and finding sustainable employment. Finally, proposed paragraph (d) provides that States can design their comprehensive and specialized assessments to gather the information necessary for determining whether the six criteria for training approval can be met under subpart F.

Section 618.350 Individual Employment Plans for Trade-Affected Workers

Proposed § 618.350 revises and combines two separate sections of 20 CFR part 617: a ''training plan'' at 20 CFR 617.20(b)(8) and a ''reemployment plan'' at 20 CFR 617.20(b)(13), and implements a new process for making available IEPs for trade-affected workers.

Proposed paragraph (a) requires the State to make available an IEP to all trade-affected workers and requires the establishment of an IEP for workers who apply for training under subpart F or a job search allowance under subpart D. Proposed paragraph (b) requires that the IEP must document both the results of the assessment and a service strategy to provide the trade-affected worker with needed services for reemployment. Proposed paragraph (c) provides the required elements of an IEP. The IEP must be developed jointly between the State and the trade-affected worker. These elements are required because they cover most aspects of the training and reemployment process. Proposed paragraph (d) explains that the IEP can be developed by a partner program, but it must be supplemented to include the elements required in proposed paragraph (c) if the IEP does not already include them. This reduces duplication of services, while still meeting program-specific needs. Proposed paragraph (e) requires the State to monitor the worker's progress toward meeting the IEP's elements. Proposed paragraph (f) requires the State to modify the IEP as necessary, and with the worker's input. The State also must modify the IEP when there is a change to the trade-affected worker's approved training program or revisions to receipt of subsistence and transportation payments. Proposed paragraph (g) explains that a trade-affected worker seeking a job-search allowance under subpart D or training under subpart F may refuse to participate in the IEP process. However, the trade-affected worker must provide sufficient information, either through a partial IEP or outside of the IEP process, for the State to make a determination on the six required training approval criteria or the job-search allowance application criteria. Failure to do so will result in denial of the training program or allowance. A trade-affected worker so denied can appeal the training denial, in accordance with provisions in subparts D, F, and H.

Section 618.355 Knowledge, Skills, and Abilities of Staff Performing Assessments

Proposed § 618.355 is new and has no comparable counterpart in existing regulations or in administrative guidance. The Department is proposing this section for the first time in order to assist States to ensure that requirements under sec. 235 of the Act are fully realized. TAA Program funds described in sec. 235A of the Act may assist in ensuring that States are able to obtain adequate staff to perform these services. Proposed paragraph (a) describes the qualifications that staff performing assessments should possess. In essence, staff should understand what jobs in the area are available to whom, and how trade-affected workers may be able to fill those jobs, either immediately or after receiving additional training. Staff with these qualifications can perform assessments quickly and properly, which helps the TAA Program run efficiently.

Proposed paragraph (b) confirms that the staff performing the assessments may be from any partner program and need not be limited to those funded under this Act. This flexibility better integrates the services of the TAA Program and partner programs. Proposed paragraph (c) references funds available under sec. 235A(2) of the Act to assist in training staff to meet these recommendations.

Section 618.360 Employment and Case Management Services for Trade-Affected Workers in Training

Proposed § 618.360 is a new clarification that is added as a result of TAA Program oversight and monitoring conducted by the Department. Proposed § 618.360 requires States to continue to make employment and case management services available to all trade-affected workers considering training (on a waiver from training in accordance with subpart G), taking TAA approved training, or who have completed training. Keeping these services available will help workers as they move from training to reemployment, and increases the chances of a good return on that training investment. Those services include placement and referrals to appropriate supportive services to trade-affected workers upon their completion of training and until they find reemployment. Post-employment follow-up services cannot be funded by the TAA Program, but must be provided through co-enrollment in WIOA.

D. Subpart D—Job Search and Relocation Allowances

Proposed subpart D governs job search and relocation allowances, which are authorized, respectively, under secs. 237 and 238 of the Act. Proposed subpart D consolidates provisions contained in subparts D, E, and F of 20 CFR part 617, which implement these allowances. Proposed subpart D largely preserves the 20 CFR part 617 requirements for job search and relocation allowances, with a few substantive changes regarding a statutory increase to the limit for job search allowance reimbursement per AAW and per certification to $1,250 from $800 previously; an increase in the maximum lump-sum payment for relocation to $1,250 from $800 previously; and the definition of ''suitable employment'' used in the eligibility requirement for both job search and relocation allowances, explained below. Proposed subpart D also contains procedural changes from 20 CFR part 617.

Finally, proposed subpart D continues to require the use of the FTR at 41 CFR chapters 300 through 304, in determining amounts for use by States to provide travel, subsistence, and transportation benefits, and establishing specified other requirements, to eligible AAWs. This is not a new requirement; the Department already requires use of the FTR for specified purposes in 20 CFR 617.34, 617.42, and 617.45 through 617.47. However, there has been confusion in some States as to what travel requirements apply to the TAA Program. Proposed subpart D, in expanding references to the FTR, clarifies that workers using job search and relocation allowances are subject to the same Federal travel rules as employees of the Department.

Section 618.400 Scope

Proposed § 618.400 explains the scope of this subpart D. This provision is new. It explains that the purpose of job search and relocation allowances is to help AAWs secure suitable employment and relocate outside their commuting area.

Section 618.405 General

Proposed § 618.405 contains general provisions and revises and consolidates 20 CFR 617.30 and 617.40. Proposed paragraph (a) retains the content in 20 CFR 617.30, except that it replaces the reference to ''securing a job'' with ''suitable employment.'' Proposed paragraph (b) retains the content of 20 CFR 617.40, except that it eliminates the reference to the ''head of the family.'' Instead, it authorizes payment to the AAW in the family who first applies for the relocation allowance, if otherwise eligible. The Department has concluded that this minor change makes it easier for States to administer these benefits by eliminating the need to identify the head of the family.

Section 618.410 Applying for a Job Search Allowance

Proposed § 618.410 describes the same application process in 20 CFR 617.31, but changes instructions on when to file an application. Under 20 CFR 617.31(b), an AAW who is covered under a petition and who is totally or partially separated may apply for a job search allowance before or after the Department issues a certification. Proposed § 618.410 changes these procedures to require that a State accept applications for job search allowance only after the Department has issued a certification. Further, the Department proposes to eliminate precertification applications for job search allowances to avoid unrealistic expectations for reimbursement. For most workers, requiring certification prior to filing a job search application will result in only a short delay in filing and no delay in payment because only AAWs may receive job search allowances. This approach is similar to that of many assistance programs that do not reimburse individuals for activities conducted with their own funds before the individual becomes eligible for assistance. Related to the change in when applications may be accepted, this proposed subpart includes a change that all references to ''individuals'' in 20 CFR part 617 will instead be ''adversely affected workers.'' This change is consistent with sec. 237(a)(1) of the Act, which provides that ''an [AAW] covered by a certification'' may file an application for a job search allowance.

Section 618.415 Eligibility for a Job Search Allowance

Proposed § 618.415 sets forth the eligibility requirements for job search allowances. Section 237(a)(2)(B) of the Act requires, as a condition for receipt of a job search allowance, that ''the worker cannot reasonably be expected to secure suitable employment in the commuting area in which the worker resides.'' In implementing this provision, the Department proposes to use the same definition of the term ''suitable employment'' as is used in proposed subpart F and defined in proposed § 618.110. This departs from 20 CFR 617.32(a)(4) and 617.42(a)(6), which use ''suitable work,'' applying the State UI law definition of suitable work,

as the threshold for approval of job search and relocation allowances.

Proposed paragraph (a) has several changes from 20 CFR 617.32(a). Proposed paragraph (a) excludes language on registration with the State agency (a requirement in 20 CFR 617.32(a)(3)) because proposed § 618.310 already requires States to provide employment and case management services, and the Act does not contain this particular registration requirement for job search allowance eligibility. Proposed paragraph (a)(1) provides the time limits within which an AAW must request a job search allowance. It contains minor rewording for readability, but the requirements are unchanged from 20 CFR 617.31(c).

Proposed paragraph (a)(3) substitutes the term ''suitable employment'' for ''suitable work'' and eliminates the reference to long-term duration. Suitable employment may exclude some work—*i.e.,* some lower-skilled and lower-paying work—that would qualify as suitable work under a State law. Suitable employment is work at a substantially equal or higher skill level paying at least 80 percent of the AAW's previous wage. Suitable employment differs from suitable work because, in most States, suitable work includes jobs with wages, skills requirements, or both, that are lower than those in jobs that would qualify as suitable employment under the Act. Proposed paragraph (a)(3) also adds ''employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates.'' This alternative ensures that AAWs who can reasonably expect to find a job that otherwise meets the suitable employment definition except that it pays a wage of at least the 75th percentile of national wages, rather than paying at least 80 percent of the AAW's previous wage, would still be eligible for job search allowances.

The proposed changes would make it easier for workers to qualify for a job search allowance, because fewer local jobs would qualify as suitable employment. The proposed change, however, might make it harder for workers to qualify for a relocation allowance, because, similarly, fewer jobs requiring relocation would qualify as suitable employment. This difficulty should be mitigated by the fact that workers who find suitable employment with the help of a job search allowance would also be eligible for a moving allowance to relocate to that same suitable employment. The Department proposes this change because of the unique economic circumstances of workers adversely affected by international trade. The Organisation for Economic Co-operation and Development (OECD) notes that changes brought on by technology and trade can cause local labor market shocks; such shocks cause some workers to move elsewhere, but often not in large enough numbers to mitigate fully the shock in the affected locality.[7] Compounding the problem for trade-affected workers, worker migration has slowed over the last several decades.[8] Together these trends have caused the Department to respond by proposing this change from suitable work to suitable employment. This change also would provide administrative consistency and uniformity of interpretation and application of Federal law, a policy goal described in 20 CFR 617.52(b), and in this NPRM, in proposed § 618.840.

Proposed paragraph (a)(4) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that the State determines whether an AAW could reasonably expect to find suitable employment through alternatives to a job search allowance, such as by having an AAW search and interview for jobs through electronic means. The Department added this provision to reflect the cost-saving technological advances of the modern era. There are now countless websites, apps, and online services that connect employers with workers, and many communication technologies make face-to-face discussion via video conferencing simple and inexpensive. By this proposed change, the Department is encouraging States and AAWs to use these cost-saving, and possibly equally effective, measures.

Proposed paragraph (a)(5) is new and has no comparable counterpart in existing regulations or in administrative guidance. It clarifies for the first time that a State may not approve job search allowances if the AAW received a relocation allowance under the same certification since an AAW must have already obtained work to qualify for the relocation allowance.

Proposed paragraph (a)(6) gives an AAW 30 calendar days to complete a job search, clarifying 20 CFR 617.32(a)(5), which provides ''a reasonable period not exceeding 30 days after the day on which the job search began'' within which to conduct a job search outside the commuting area.

Proposed paragraph (b) describes when a job search is complete and mirrors 20 CFR 617.32(b), with organizational changes for clarity and one change. A job search is not complete until the AAW has received a bona fide (*i.e.,* good faith) offer of employment, or has contacted each employer the AAW either planned to contact or to whom the AAW was referred by the State agency or other one-stop partner. The language in 20 CFR 617.32(b) refers only to State agency-referred employment, but the proposed addition of employers that the AAW ''planned to contact'' broadens the scope and satisfies this requirement.

Section 618.420 Findings Required

Proposed § 618.420 explains what a State must find before approving a job search allowance, and further delineates the responsibilities between a liable State and an agent State, when a job search occurs in a different State from the liable State. Proposed subpart H, Administration by Applicable State Agencies, establishes the responsibilities of the liable State and an agent State. Specifically, proposed § 618.824 establishes that the liable State makes all determinations on each claim for program benefits, and the agent State pays the costs for job search and relocation allowances.

Proposed paragraph (a) mirrors 20 CFR 617.33(a), except that it removes paragraph (a)(2) as redundant and adds the employer contact verification requirement that is in the eligibility requirements in 20 CFR 617.32(c). The Department has determined that this requirement, which requires a liable State to verify the AAW's contacts with employers certified by the AAW in the worker's own job search plan or through referrals, more logically fits under the section on required findings.

Proposed paragraph (b) in its first sentence mirrors 20 CFR 617.33(b), but adds a new requirement that the agent State, when requested by the liable State, must verify with the employer and report to the liable State whether the AAW has obtained suitable employment, or a bona fide offer of suitable employment, and pay the job search allowance.

Section 618.425 Amount of a Job Search Allowance

Proposed § 618.425 explains how to calculate the amount of a job search allowance. It follows 20 CFR 617.34, but updates the maximum amount available for allowances to the statutory limit of

[7] OECD. (2018). ''OECD Economic Surveys: United States at 81.'' Retrieved from: *https://read.oecd-ilibrary.org/economics/oecd-economic-surveys-united-states-2018_eco_surveys-usa-2018-en.*

[8] See id.; see, *e.g.,* David Ihrke, U.S. Census Bureau. (2017). ''United States Mover Rate at a New Record Low.'' Retrieved from: *https://www.census.gov/newsroom/blogs/random-samplings/2017/01/mover-rate.html.*

$1,250, instead of $800. It also simplifies requirements by basing allowable travel, lodging, and meal costs on the FTR, which in the Department's judgment are reasonable and necessary in amount. The lodging and meal allowance is set, by statute, at 90 percent of the lower of actual meal and lodging costs or one-half the applicable prevailing per diem rates in the FTR. Proposed § 618.425 reflects the statutory limit. Proposed § 618.425 inserts the FTR citation and a hyperlink to the FTR. Proposed § 618.425 also replaces the term ''public transportation'' with the term ''mode of transportation.'' The reference to public transportation has been unduly limiting, so the Department proposes this more expansive term.

Section 618.430 Determination and Payment of a Job Search Allowance

Proposed § 618.430 requires an AAW to provide supporting documentation upon completion of a job search in order for the State to make payment and requires the State to reimburse the AAW promptly. Proposed paragraph (a) departs from 20 CFR 617.35(a) by eliminating the reference to the State making determinations ''before or after'' the Department issues a certification covering a worker. This aligns with the rationale for proposed § 618.410(b), which provides that the State may accept applications for job search allowances only after the Department issues a certification. Consistent with this change, all references in proposed subpart D are to AAWs, not to ''individuals'' as in 20 CFR part 617. Further, proposed § 618.410(a) clarifies that job search allowance determinations are subject to the requirements of proposed §§ 618.820 (determinations and notice) and 618.828 (appeals and hearings), and requires States to include copies of job search allowance applications and determinations in the AAW's case file. These are changes from 20 CFR 617.35(a) to ensure proper administration of job search allowances.

Proposed paragraph (b) revises its counterpart provision in 20 CFR 617.35(b) to clarify, without changing, the conditions for payment of a job search allowance, and adding that payment is conditioned on the availability of funds.

Proposed paragraph (c), like 20 CFR 617.35(c), permits the State to advance up to 60 percent of the cost of an expected job search allowance, but increases the maximum amount of an advance from $360 to $750, which is 60 percent of the statutory dollar limit of $1,250. Inflation in the years since this limit was initially established reduced the value of the previous amount, and this NPRM ameliorates that reduced value.

Proposed paragraph (d) specifies the evidence an AAW must provide to receive a job search allowance. The Department proposes to align the requirements for documentation with the FTR and the Uniform Guidance at 2 CFR part 200. At the time of this proposed publication, receipts are required for all lodging and purchased transportation expenses. A receipt is also required for any expense of $75.00 or greater.

Section 618.435 Job Search Program Participation

Proposed § 618.435 replaces 20 CFR 617.49 and implements sec. 237(c) of the Act. Proposed paragraph (a) provides the requirements for an AAW participating in a job search program (JSP) to receive reimbursement for the necessary expenses of subsistence and transportation related to participation in an approved JSP. Proposed paragraph (b) allows a State to approve a JSP if it is provided through WIOA, the public employment service, or any other Federal- or State-funded program, and meets the definition provided in § 618.110, or is sponsored by the firm from which the AAW has been separated. Proposed paragraph (c) requires that subsistence and transportation costs must be approved, as appropriate, for workers participating in a JSP and the JSP may be within or outside the AAW's commuting area.

Section 618.440 Applying for a Relocation Allowance

Proposed § 618.440 describes the application process for a relocation allowance but differs from 20 CFR 617.41 on when to file an application. While proposed paragraph (a) is essentially unchanged from 20 CFR 617.41(a), proposed paragraph (b) allows an AAW to apply for a relocation allowance only after the Department issues a certification covering that worker. This is consistent with sec. 238(a)(1) of the Act, which permits ''an [AAW] covered by a certification . . . to file an application for a relocation allowance.'' This mirrors the change for job search allowances reflected in proposed § 618.410, which also does not permit applications until after the Department issues a certification. A State may not issue a relocation allowance or a reimbursement to anyone not covered by a certified petition for any reason. As previously noted in the preamble discussion of proposed § 618.410 regarding job search allowances, the Department proposes this change because permitting precertification applications can raise workers' expectations of payments that may not become available.

Proposed paragraph (b) also contains the requirement that the State may approve the relocation only after an AAW files an application and before such worker undertakes the relocation.

Section 618.445 Eligibility for a Relocation Allowance

Proposed § 618.445 on eligibility for a relocation allowance combines the requirements in 20 CFR 617.42 (Eligibility) and 617.43 (Time of relocation), edits them for clarity, and makes several significant changes.

First, proposed § 618.445 removes the requirement in 20 CFR 617.42(a)(5) regarding registration with the State agency from the job search eligibility requirements because the Act does not contain a registration requirement for relocation allowance eligibility and because proposed § 618.310 of subpart C, absent from 20 CFR part 617, already requires that States make available employment and case management services to all trade-affected workers. Further, proposed paragraph (a)(5) departs from 20 CFR 617.42(a)(6) in three respects. Proposed paragraph (a)(5) substitutes a Federal law definition of ''suitable employment'' for ''suitable work'' under State law and eliminates the reference to ''affording a reasonable expectation of employment of long-term duration'' because the concept of long-term employment is substantially included in the definition of ''suitable employment.'' Proposed paragraph (a)(5) also adds ''employment that pays a wage of at least the 75th percentile for national wages, as determined by the National Occupational Employment Wage Estimates.'' This alternative ensures that AAWs who obtain or receive a bona fide offer of a job that otherwise meets the suitable employment definition except that it pays a wage of at least the 75th percentile of national wages, rather than paying at least 80 percent of the AAW's previous wage, would still be eligible for relocation allowances.

Therefore, before granting a relocation allowance, the State must determine that an AAW has no reasonable expectation of securing suitable employment in the commuting area. This is consistent with the treatment of job search allowances, and, as explained earlier, is in many States likely to be a higher standard than the suitable work standard used in 20 CFR part 617. Using suitable employment in the eligibility criteria for relocation allowances limits the jobs for which a State may pay a

relocation allowance. However, the Department has concluded this proposed change would increase workers' options. The change would permit more AAWs to use a relocation allowance to secure suitable employment or other high-paying employment outside the commuting area, rather than settle for suitable work within the commuting area. And AAWs who are eligible for the job search allowance, and thereby find suitable employment or other high-paying employment, will similarly be eligible to relocate to that same suitable employment by using a relocation allowance.

Two other significant differences between proposed § 618.445 and 20 CFR part 617 involve the timing of relocations. First, proposed paragraph (a)(6) integrates 20 CFR 617.42(a)(7) and 617.43 and simply states the two statutory 182-day time limits for beginning a relocation, instead of stating that an AAW must begin a relocation ''within a reasonable period'' and later elaborating on what is a reasonable period merely by providing the same deadlines as in this proposed paragraph (a)(6). Proposed § 618.445 omits references to reasonable period to begin a relocation because the firm deadlines provided for an AAW beginning a relocation are sufficient, and render moot the references to a reasonable period. Proposed paragraph (a)(7) requires an AAW to complete the relocation within a ''reasonable time'' under the FTR, while retaining the required factors in 20 CFR 617.43(a) that a State must consider in determining whether a worker has completed the relocation within a reasonable time.

The second significant difference involves the statutory 182-day time limit in which the relocation must occur. TAARA 2002 amended sec. 238(c)(2) of the Act, which requires the AAW's relocation to occur within 182 days after the conclusion of an approved training program, by adding at the end of the provision the alternative condition ''if the worker entered a training program approved by the Secretary under [sec.] 236(b)(1) and (2)'' (which govern supplemental assistance for workers in training outside the commuting area). All workers who conclude TAA approved training must apply for a relocation allowance no later than the 182nd day after concluding such training, in accordance with sec. 238(a)(2)(E)(ii) the Act and proposed § 618.445(a)(1)(ii). However, the Department interprets sec. 238(c)(2) of the Act to mean that an AAW approved by the State, under proposed § 618.640(c) and (d), to receive subsistence and transportation payments (supplemental assistance) for training at facilities outside the worker's commuting area, must also begin the relocation within 182 days after completing training, the same as the relocation allowance application deadline. In contrast, AAWs who are not approved by the State to receive subsistence and transportation payments, because they receive training within their commuting area, may begin relocation within 182 days after applying for a relocation allowance, which effectively permits these workers to begin relocation much later than workers who receive supplemental assistance in training.

Proposed § 618.445 also makes one minor change. Proposed paragraph (a)(1) provides the time limits within which an AAW must apply for a relocation allowance. It contains the same requirements as 20 CFR 617.31(c), but is proposed to be moved here for better organization.

Section 618.450 Findings Required

Proposed § 618.450 regarding ''findings required'' is the counterpart to 20 CFR 617.44 and further delineates the responsibilities between a liable State and an agent State with respect to relocation allowances when a relocation occurs in a different State than the liable State. Proposed subpart H establishes the responsibilities of the liable State and the agent State. Specifically, proposed § 618.824 establishes that the liable State makes all determinations on each claim for program benefits, and the agent State pays the costs for job search and relocation allowances.

Proposed § 618.450 mirrors 20 CFR 617.44(a), with a change. Proposed paragraph (a)(1) adds a new requirement that, as a condition of approving final payment of a relocation allowance, the AAW is not simultaneously receiving a job search allowance. This is the same prohibition contained in the eligibility requirements in proposed § 618.445(b). This provision is proposed for the first time and has no comparable counterpart in existing regulations or in administrative guidance.

Section 618.455 Determining the Amount of a Relocation Allowance

Proposed § 618.455, on determining the amount of a relocation allowance, consolidates, reorganizes, and updates the requirements in 20 CFR 617.45 (Amount), 617.46 (Travel allowance), and 617.47 (Moving allowance). A relocation allowance includes, with specified qualifications, 90 percent of the travel and subsistence costs of the AAW and their family to reach their new home, 90 percent of the cost of moving household effects, and a lump sum equal to three times the worker's average weekly wage, not to exceed $1,250. The lump sum maximum reflects the statutory limit and is an increase from the $800 maximum provided in 20 CFR 617.45(a)(3). Proposed § 618.455 requires States to follow the FTR but eliminates the specific citation to FTR sections. Proposed paragraph (a)(1) refers to 41 CFR chapter 301 (travel) and proposed paragraph (a)(3) refers to 41 CFR chapter 302 (movement of household goods). Proposed paragraph (a)(2) sets reimbursement amounts for the family's meals and lodging at 90 percent of the lower of their actual meals and lodging costs or one-half the applicable prevailing per diem rates in the FTR. The current per diem rates can be found on the internet using the ''per diem rates'' hyperlink at: *https://www.gsa.gov.* Proposed paragraph (a)(3)(ii) increases the allowable amount of insurance coverage of such household goods and effects to $40,000 from $10,000, found in 20 CFR 617.47(a)(1). The Department first introduced the allowable amount of insurance coverage of $10,000 in § 635.47(a)(1) of regulations proposed by the Department on March 4, 1983 (48 FR 9444), and finalized on December 22, 1986 (51 FR 45840), with an effective date of January 21, 1987. The Department has determined that $10,000 is no longer an appropriate level of insurance coverage as households' accumulated goods and effects have increased in value due to inflation and rising household incomes since 1987. While no measure tracks the value of accumulated household goods and effects, a proxy is the core Personal Consumption Expenditures (PCE). Core PCE measures, for all households, personal expenditures on goods and services, excluding food and energy. It follows that the accumulated value of goods a household owns, and would move and require to be insured, is correlated with the annual amount spent on goods and services by households. According to the Bureau of Economic Analysis, the core PCE increased from $2,443 billion in January 1987 to $11,626 billion in January 2018.[9] This increase in PCE by a multiple of 4.76 is a proxy for the increase in the value of goods a household would need to have insured. Therefore, proposed paragraph (a)(3)(ii)

[9] Federal Reserve Bank of St. Louis. (2018). ''Personal consumption expenditures excluding food and energy [DPCCRC1M027SBEA].'' Retrieved from: *https://fred.stlouisfed.org/series/DPCCRC1M027SBEA.*

conservatively increases the allowable insurance coverage by a multiple of 4, from $10,000 as established in 1987, to $40,000.

Proposed § 618.455 omits the more detailed provisions for trailers, rental trucks, house trailers, and temporary storage contained in 20 CFR 617.47. These detailed requirements are unnecessary and better addressed by the FTR. The Department notes that moving a house trailer or mobile home, as permitted under proposed paragraph (a)(3)(i), has special requirements under the FTR, at 41 CFR part 302–10, of which the worker must be notified before planning such a move.

Section 618.460 Determinations and Payment of a Relocation Allowance

Proposed § 618.460 regarding determinations and payment of a relocation allowance serves the same purpose as 20 CFR 617.48 (Time and method of payment), with some changes and reorganization. Nothing in proposed § 618.460 departs in substance from 20 CFR 617.48 except for the requirements that an AAW be covered by a certification as a condition of the State accepting an application, and that workers submit documentation supporting all lodging, transportation, and meal expenses to be reimbursed by the State. This documentation requirement is proposed for the same reasons it has been proposed for workers seeking reimbursement of expenses from a job search allowance. Proposed § 618.460 otherwise reorganizes the provisions of 20 CFR 617.48 and revises them for greater clarity.

Proposed paragraphs (a) and (b) contain and somewhat revise the requirements in 20 CFR 617.48(a). Proposed paragraph (a) departs from 20 CFR 617.48(a) by omitting any reference to determinations before a worker becomes an AAW; this reflects that proposed subpart D does not provide for applications before the Department issues a certification. Proposed paragraph (a) also newly requires States to promptly make and record determinations as well as include copies of job search allowance applications and determinations in the AAW's case file. This provision has no comparable counterpart in existing regulations or in administrative guidance. This is to ensure proper administration of job search allowances and mirrors the requirement for job search allowances in proposed § 618.430(a). Proposed paragraph (b) includes provisions from 20 CFR 617.48(a).

Proposed paragraph (c) specifies what the AAW must provide for expenses to be reimbursed by a State under a relocation allowance. This would clarify 20 CFR 617.48(b)(1)(ii) by requiring workers to provide documentation in accordance with the FTR and the Uniform Guidance. At the time of this proposed publication, this includes receipts for all lodging, purchased transportation, and any expense equal to or greater than $75.00. Proposed paragraphs (d), (e), and (f) incorporate the provisions from 20 CFR 617.48(b), (c), and (d).

E. Subpart E—Reemployment Trade Adjustment Assistance

Proposed subpart E governs RTAA. TGAAA established the RTAA program to replace the demonstration project known as ATAA, established by TAARA 2002. This proposed subpart prescribes regulations implementing provisions in sec. 246 of the Act and incorporates administrative guidance. There are no existing regulations covering the RTAA program.

RTAA provides wage supplements to eligible AAWs, aged 50 and older, who return to work earning less than their adversely affected employment and $50,000 or less per year. AAWs receiving RTAA may also be eligible to receive employment and case-management services, job search and relocation allowances, and TAA approved training. If the HCTC benefit is available, RTAA recipients are eligible to apply for or claim the HCTC. The goal of RTAA is to encourage reemployment for older workers who may find it difficult to secure a new job that pays as much as their old job.

Section 246(a)(3) of the Act sets forth the eligibility criteria for RTAA. An AAW is eligible for RTAA after beginning a new, full-time job at a firm other than the one from which the AAW was separated (or combination of jobs at firms that equate to full-time employment) that pays less (or collectively pays less if a combination of jobs) than the AAW's adversely affected employment, or after beginning TAA approved training while reemployed at least 20 hours per week at a new job with a firm other than the one from which the AAW was separated.

Compared to ATAA, RTAA expands the range of benefits available by permitting training while receiving RTAA, and by allowing receipt of RTAA after such training is completed, if the AAW otherwise meets eligibility requirements. This proposed subpart permits eligible AAWs to remain eligible for RTAA when employed part-time, provided that the AAW is enrolled in TAA approved training. Some AAWs may receive a TRA, the income support component of TAA, before receiving their first RTAA benefit payment. For such workers, sec. 246(a)(4) of the Act requires reduction in the RTAA eligibility period by the number of weeks of TRA received as well as a reduction in the maximum RTAA amount payable.

Section 618.500 Scope

Proposed § 618.500 provides the scope of this subpart and addresses the governance of RTAA. An AAW may combine wage supplements with other benefits and services, including employment and case management services, TAA approved training, job search and relocation allowances, and, if available, the HCTC.

Section 618.505 Individual Eligibility

Proposed § 618.505 enumerates the eligibility criteria for RTAA, as set forth in sec. 246 of the Act. Proposed paragraph (a) outlines the general age, wage, and reemployment requirements to be eligible for RTAA. An AAW, aged 50 or older, is eligible for RTAA if the following criteria are met:

(1) The AAW must have a full-time job (or combination of jobs that equate to full-time employment as defined by State UI law) or a job of at least 20 hours per week while enrolled in TAA approved training;

(2) The qualifying job in criterion 1 must pay less (or collectively pays less if a combination of jobs) than the AAW's adversely affected employment;

(3) The AAW must be earning wages that do not exceed $50,000 over a 12-month period; and

(4) The qualifying job in criterion 1 above is not at the firm from which the AAW was separated.

Proposed paragraph (b) explains terms specifically for the purposes of RTAA. As explained in more detail in the preamble to subpart A, the proposed definition of ''firm'' revises the term at 29 CFR 90.2. Of note, the proposed definition of ''firm'' incorporates the definition set forth at sec. 247(3) of the Act. Pursuant to the Act, the term ''firm'' means ''a firm, including an agricultural firm or service sector firm; [or] an appropriate subdivision thereof.'' Therefore, the term ''firm'' in the RTAA context means ''firm or appropriate subdivision.''

This definition of ''firm'' is used by the Department to identify the ''firm'' in the certification. To determine that an AAW is eligible for RTAA, the State must make a finding that the new employment obtained by the worker is not at the ''firm'' from which the worker was separated and that forms the basis for the worker's applicable certification.

A State must determine what constitutes the ''firm'' for purposes of determining RTAA eligibility on a case-by-case basis, depending on the certification. A certification may cover one or more worker groups at either an entire firm or one or more subdivisions of a firm located in one or several States. Proposed paragraph (b)(1) provides instructions to States on how to make decisions relative to determining RTAA eligibility based on whether or not the Department issued a certification for a subdivision of a firm or the entire firm. Proposed paragraph (b)(2) explains that the term ''firm'' includes predecessors and successors-in-interest, affiliated firms, and continuity of operations at the same location. The proposed regulatory text establishes several criteria in descending order that the State should apply to determine whether one firm is a successor-in-interest to another, including a list of conditions at paragraphs (b)(3)(i) through (vii) that a State may need to consider when rendering a determination. The intent of this provision is to assist States in determining whether the worker has become employed by a ''firm'' that is different from the ''firm'' from which the worker was separated in accordance with sec. 246(a)(3)(B)(iv) of the Act.

Proposed paragraph (c) explains that, for purposes of RTAA, full-time employment is defined by the law applicable to the State in which the reemployment occurs. The Department proposes to define State law in § 618.110 as the State UI law. Following longstanding practice, State UI law means State statutory provisions and their implementing regulations. In the absence of State statutory provisions and regulations, State law may be determined via State court decisions, program letters, manuals, and any other State documents interpreting State UI law. Thus, even if a State did not define full-time employment in the State code, a definition contained in another State-issued document would apply. Proposed paragraph (c)(1) explains that if State law does not contain a definition of full-time employment, the State is required to define full-time employment for RTAA purposes. Proposed paragraph (c)(2) requires the State to verify reemployment in accordance with State policies. Verification of the firm can occur by such communication methods as email, phone call, certified letter, or other means determined by the State. Proposed paragraph (c)(3) establishes that if an AAW has multiple jobs, the State must combine hours of all employment to determine whether the worker meets the definition of full-time employment. Proposed paragraph (c)(4) provides that if the worker is employed in more than one State, the State must apply the State law with the lowest threshold of hours required for full-time employment.

Proposed paragraph (d) provides that an application or eligibility for UI is not needed for RTAA purposes. There is no direct relationship between UI and RTAA. Eligibility for RTAA is not dependent on eligibility for UI.

Lastly, proposed paragraph (e) explains the types of employment that are considered qualifying reemployment for RTAA. Proposed paragraph (e)(1) establishes that qualifying reemployment under RTAA is the same as covered employment for UI purposes. This provides uniformity in administration. It also provides efficiency, since the rules for covered employment for UI are well defined and familiar to State administrators. However, this paragraph requires that the employment be legal under Federal, State, and local laws. The Department recognizes that there are situations where certain employment may be legal under local or State law but illegal under Federal law. The Department is establishing a requirement that to be qualifying reemployment, the employment must be legal at all levels of government. Proposed paragraph (e)(2) explicitly allows a State to consider employment that provides wages plus commission, and piecework-based employment to be reemployment when determining RTAA eligibility. The Department proposes to authorize these specific types of employment to ensure that States are not limiting reemployment opportunities. Proposed paragraph (e)(3) provides that qualifying reemployment may include multiple jobs. In some instances, an AAW may have multiple part-time jobs instead of a single full-time job. This flexibility will allow AAWs to combine multiple part-time jobs to be considered full-time employment. Proposed paragraph (e)(4) provides that the State must count hours in which an RTAA-eligible worker is on employer-authorized leave as hours of work for purposes of meeting the full- or part-time employment definitions of this section, provided that doing so is consistent with State law. The Department found that States were not counting holidays or leave as hours of employment. This resulted in States disqualifying AAWs when there was a paid, observed holiday because the AAW did not ''work'' those hours, or in instances where the worker may have used a sick day.

Section 618.510 Eligibility Period for Payments of Reemployment Trade Adjustment Assistance and Application Deadline

Proposed § 618.510 sets forth the eligibility period for payments of RTAA as provided by sec. 246(a)(4) of the Act. Proposed paragraphs (a) and (b) of this section explain the differences in eligibility periods for AAWs that have not received TRA and those that have received TRA, respectively. Proposed paragraph (a) provides that for an AAW who has not received TRA, the worker may receive RTAA benefits for a period not to exceed 104 weeks (2 years) beginning on the earlier of: The date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely affected employment that is the basis of the certification; or, the date on which the worker first begins qualifying reemployment as described in § 618.505(e). Proposed paragraph (b) provides that for a worker who has received TRA under a certification, the worker may also receive RTAA benefits for a period of 104 weeks (2 years) beginning on the date on which the worker first begins qualifying reemployment, reduced by the total number of weeks for which the worker received TRA. Proposed paragraph (c) describes that the State will need to know certain applicable dates before making an RTAA determination.

Proposed paragraph (d) establishes an exception to the general rule that all events to establish RTAA eligibility occur when the individual turns 50 years old. Proposed paragraph (d) provides that the AAW may obtain reemployment before the age of 50, which later may be deemed as RTAA-qualifying reemployment when the AAW turns 50. It is at this time (after turning 50) that the AAW may be potentially RTAA-eligible, if all other eligibility requirements are met. This is because upon obtaining the reemployment, which is a date certain, the State can establish the RTAA eligibility period (104 weeks or 2 years, as the case may be) and when the AAW turns 50, they may be eligible during the remaining RTAA eligibility period. The AAW potentially is eligible if the eligibility period is established sometime after turning 48 and consequently such period expires after turning 50. If the RTAA eligibility period has expired by the time the AAW turns 50, the AAW will not be eligible for RTAA. This would foreclose the opportunity for an AAW whose RTAA-eligibility period is established before turning 48 and consequently expires

before turning 50. Furthermore, if the AAW obtains employment before age 48, and is not eligible for RTAA at 50, because the 104-week eligibility has expired, the worker cannot obtain other employment to establish RTAA eligibility based on an eligibility period established with subsequent employment after turning 48, and thereafter. RTAA is for workers 50 or older and the Department concludes this worker readjusted.

Proposed paragraph (e) allows for exceptions to the eligibility periods set forth in paragraphs (a) and (b) as well as to the overall filing deadline in instances of judicial appeals, where the Department later grants a certification of the worker group covered by that petition and the ITC has not indicated that a delay in the certification was attributed to either the petitioner or the AAW.

Section 618.515 Continuing Eligibility and Timing of Payments

Proposed § 618.515 explains the requirements for an AAW's continued eligibility under RTAA and the timing of payments. Proposed paragraph (a)(1) allows workers to change jobs without loss of access to RTAA so long as the worker continues to meet other eligibility criteria. Proposed paragraph (a)(2) prohibits the payment of RTAA during a period of unemployment and provides that the AAW may resume receipt of RTAA payments upon obtaining qualifying reemployment for the remaining portion of the eligibility period. Section 246(a)(7) of the Act prohibits payment of TRA and RTAA for the same week.

Proposed paragraph (a)(3) establishes a requirement that if the computed annualized reemployment wages exceed $50,000, no additional RTAA payments may be made unless conditions change again, resulting in recomputed annualized reemployment wages of $50,000 or less. This provision is established to reduce the likelihood and number of overpayments that would otherwise occur.

Proposed paragraph (b) addresses the timing of RTAA payments and continues a longstanding practice allowing States to pay RTAA on a weekly, biweekly, or monthly basis, for not more than a 104-week period (2 years) under any one certification, beginning no earlier than the date of qualifying reemployment under § 618.505. This proposed regulatory text also allows for retroactive payments, including a lump sum payment, for which an AAW may have been eligible but who may not have known such benefit was available at the time. The Department has established this provision to require regular payments to RTAA-eligible workers. This allows workers to anticipate regular payments, as this may have been one of the factors in their decision to seek qualifying reemployment and the RTAA benefit.

Proposed paragraph (c) requires the State to verify, on at least a monthly basis, that the AAW continues to meet the eligibility requirements for RTAA. The proposed regulatory text requires the State to determine whether any changes have occurred to the worker's reemployment wages. The NPRM also requires the State to determine whether any changes have occurred to the participant's annualized reemployment wages. This is established to reduce the likelihood and number of overpayments that would otherwise occur.

Proposed paragraph (d) establishes procedures for States to recompute the appropriate RTAA payment based on a change in annualized reemployment wages. These two provisions are added to reduce the likelihood and number of overpayments that would otherwise occur. Proposed paragraph (d)(1) requires States to cease additional payments and issue a determination to a participant if the annualized reemployment wages exceed $50,000 or if the annualized reemployment wages equal or exceed the annualized separation wages. Proposed paragraph (d)(2) requires States to adjust the RTAA payment if the annualized reemployment wages change but do not exceed $50,000 or the annualized separation wages.

Section 618.520 Benefits Available to Eligible Adversely Affected Workers

Proposed § 618.520 details the benefits available under RTAA as provided by sec. 246 of the Act. Benefits available include wage subsidies, training, job search and relocation allowances, and, if available, the HCTC. Proposed paragraph (a) explains that eligible RTAA AAWs may receive a total payment of up to $10,000 over a period of not more than 104 weeks. Proposed paragraph (a)(1) provides that the total amount of RTAA benefit available to an eligible AAW is an amount equal to the annualized wage differential as computed under proposed paragraph (a)(2) or (3) of this section. Proposed paragraph (a)(2) provides, for initial eligibility, the computation of the annualized wage differential for an AAW employed full-time, while proposed paragraph (a)(3) provides the computation of the annualized wage differential, for initial eligibility, for an AAW employed at least 20 hours per week, and enrolled in TAA approved training. The annualized wage differential in either instance is a percentage of the difference between the wages received by the AAW at the time of separation and the wages received by the AAW from reemployment. RTAA benefits are not available if the AAW's annualized separation wages do not exceed the AAW's annualized reemployment wages. This is because sec. 246(a)(2)(A) of the Act establishes the RTAA benefit as 50 percent of the difference between the wages received by the worker at the time of separation and the wages at reemployment. If the wages at reemployment are equal to or greater than the wages at separation, the result would be zero or a negative number.

Proposed paragraph (a)(2) provides that for an eligible AAW employed full-time, the annualized wage differential is an amount equal to 50 percent of the result of the AAW's annualized wages at separation minus the AAW's annualized wages from reemployment.

Proposed paragraphs (a)(2)(i) and (ii) provide the computations for annualized wages at separation and annualized wages from reemployment, respectively. A State would compute annualized wages at separation by multiplying the AAW's hourly rate during the last full week of the AAW's regular schedule in adversely affected employment by the number of hours the AAW worked during the last full week of such employment, multiplied by 52 (*i.e.,* the number of weeks in a year). Proposed paragraph (a)(2)(i) refers to the AAW's ''regular schedule'' and also excludes certain types of compensation from the meaning of ''wages,'' because certain types of work hours and compensation are too speculative and cannot be anticipated in computing annualized wages from reemployment under paragraph (a)(2)(ii) of this section. Thus, a State would exclude overtime wages and hours from the computation of annualized wages at separation, along with employer-paid health insurance premiums, employer pension contributions, bonuses, severance payments, buyouts, and similar payments too variable to properly be included in the AAW's regular weekly pay computation. Finally, the computation of annualized wages at separation uses wages earned only in the last full week of the AAW's regular schedule in adversely affected employment, rather than, for example, the AAW's wages during the preceding 12-month period. This is because the Act describes the formula as using the wages received by the AAW ''at the time of separation.'' The Department concludes that this language requires

reliance on regular wages toward the end of an AAW's adversely affected employment, rather than during a longer period of time. In the case of an AAW who had a partial separation that resulted in a reduction of the AAW's wage or hours, the computation of annualized wages at separation is based on the wages or hours immediately before the partial separation went into effect. Proposed paragraph (a)(2)(i) does not explicitly address computation of annualized wages at separation for AAWs experiencing partial separations because the computation as provided already is sufficient to address partial separations. So long as an AAW experiences reductions in both hours and wages to 80 percent of their previous amounts, the AAW's computations are the same as those for an AAW who experiences a total separation from adversely affected employment.

Proposed paragraph (a)(2)(ii) computes the annualized wages from reemployment. The Department proposes here the same criteria for work hours and compensation used for annualized wages at separation, in order to ensure a fair and logical comparison. Proposed paragraph (a)(2)(ii) computes these annualized wages by multiplying the AAW's hourly rate during the first full week of reemployment by the number of hours the AAW worked during the first full week of such reemployment, multiplied by 52 (*i.e.,* the number of weeks in a year). This computation requires combining wages or hours from all jobs, because proposed § 618.505(c)(3) provides that full-time employment may include any combination of part-time jobs. However, as is the case for the computation of annualized wages at separation, the computation of annualized wages from reemployment excludes overtime hours and wages; employer-paid health insurance premiums; employer pension contributions; bonuses; severance payments; buyouts; and similar payments not reflective of weekly pay. For an AAW's initial RTAA determination, the computation of annualized wages from reemployment uses wages earned in the first full week of reemployment because that amount is the only available at the outset of an AAW's reemployment. Tips are not included in the proposed computation of annualized wages, either at separation or from reemployment. The Department recognizes that tips are, in fact, an expected form of income supplementing regular wages for restaurant servers and perhaps for workers in other occupations. However, the Department proposes excluding them from the computations in paragraphs (a)(2)(i) and (ii) because, like other forms of irregular compensation excluded in RTAA computations, they vary in amounts and are unpredictable.

Proposed paragraph (a)(3) governs the computation of the annualized wage differential for initial eligibility of an AAW working at least 20 hours per week and enrolled in TAA approved training. This computation is required by sec. 246(a)(6) of the Act and is the same as under proposed paragraph (a)(2) for an AAW reemployed full-time except for the percentage reduction applied to the difference between the wages received by the AAW at the time of separation and the wages received by the AAW from reemployment. As is the case with an AAW reemployed full-time, proposed paragraph (a)(3) provides that, as part of the RTAA benefit amount computation for an AAW reemployed part-time, the amount of annualized wages from reemployment is multiplied by the ratio of the AAW's number of weekly hours of reemployment to the AAW's number of weekly hours of employment at the time of separation, not to exceed 50 percent.

Proposed paragraph (b) incorporates the provision of the Act at sec. 246(a)(2)(C) that allows RTAA recipients to receive training and other services, including employment and case management services. The Department addresses these services in proposed subparts F (training) and C (employment and case management).

Proposed paragraph (c) explains that RTAA recipients are otherwise eligible for job search and relocation allowances, subject to the provisions of subpart D.

Proposed paragraph (d) incorporates sec. 246(a)(2)(B) of the Act that permits eligible RTAA recipients to apply for the HCTC, if available, to assist in paying their health coverage premiums.

Lastly, proposed paragraph (e) establishes the restriction that once an AAW has received a payment under RTAA, they are no longer eligible to receive TRA. Section 246(a)(4)(B) of the Act provides that an AAW may receive RTAA after receipt of TRA and also provides that a State must reduce RTAA payments as a result of receipt of TRA. The Act does not provide that recipients of RTAA may receive TRA at a later date. In order to limit the administrative complexity of allowing eligible AAWs to move back and forth between RTAA and TRA, this NPRM prohibits receipt of TRA after RTAA. This has been the operating policy of the Department since TAARA 2002.

Section 618.525 Determinations, Redeterminations, and Appeals

Proposed § 618.525 explains the requirements related to determinations, redeterminations, and appeals under RTAA. Proposed paragraph (a) provides that specified provisions in proposed subpart H concerning determinations, redeterminations, notice, and appeals and hearings apply to RTAA. Proposed paragraphs (a)(1) through (3) provide further procedural requirements specific to RTAA. Specifically, proposed paragraph (a)(1) provides that in reviewing the application, the State must verify and document the AAW's age, reemployment, and wages in determining whether the worker meets the individual eligibility criteria in proposed § 618.505(a).

Proposed paragraph (a)(2) provides that a determination of eligibility issued to an AAW must include a notice that the State will recompute regularly the benefit amount and may change it if the eligible AAW's wages in reemployment vary. RTAA payments frequently change; therefore, this requirement would prevent confusion as AAWs see their benefit amounts change.

Proposed paragraph (a)(3) allows an AAW to file a new application each time the AAW is reemployed and obtain RTAA if the AAW meets the criteria of proposed § 618.505(a) at the time of filing of the new application, even if the State has denied a prior application.

Proposed paragraph (a)(4) provides that a State may approve a RTAA payment and pay it retroactively to an AAW who is covered by a TAA certification but who becomes reemployed before the Department issues the certification, provided the AAW otherwise meets eligibility requirements of § 618.505(a). This is explained above in the discussion of proposed § 618.505.

Proposed paragraph (b) provides that the recordkeeping and disclosure of information requirements of proposed § 618.852 apply to the State's administration of RTAA. The language of proposed § 618.852 already states that it applies to the administration of the Act, which includes RTAA; however, proposed § 618.525(b) ensures there is no confusion concerning the applicability of proposed § 618.852 to RTAA.

Section 618.530 Reductions of RTAA Payments; Priority of Payments

Proposed § 618.530 explains the requirements related to the reduction of payments and the priority of payments under RTAA. Proposed paragraph (a) explains when a State can deduct court-

ordered child support payments from RTAA payments. A State must treat RTAA payments in the same manner as TRA. State laws regarding deductions of payments from UI and TRA must follow the Social Security Act (SSA). SSA sec. 303(e)(1) defines ''child support obligations'' as ''only includ[ing] obligations which are being enforced pursuant to a plan described in [sec. 454 of SSA] which has been approved by the Secretary of Health and Human Services under part D of title IV of [SSA].'' SSA therefore does not permit deductions for alimony or for child support in general, but only for child support obligations of the type specified. Unemployment Insurance Program Letter (UIPL) No. 45–89 (55 FR 1886, Jan. 19, 1990) explained in detail the deductions permitted under SSA sec. 303(e)(2). Proposed paragraph (b) provides that RTAA does not fit into the priority of payments under UI because this benefit is related to employment, not unemployment.

F. Subpart F—Training Services

Proposed subpart F governs the training portion of the TAA Program. Training is an opportunity to gain skills and reenter the workforce after a total or partial separation or threat of separation from adversely affected employment. The TAA Program's goal is to help each trade-affected worker participating in the program obtain suitable employment when possible and nonsuitable employment otherwise. Training under the TAA Program should assist a trade-affected worker in obtaining the skills necessary for employment as quickly as possible and at a reasonable cost. With those principles in mind, training should allow workers to compete for the highest paying employment achievable given their preexisting skills, abilities, and education and the current and projected job market.

Proposed subpart F sets out the regulations for administering the training benefit under the TAA Program. TAA approval of a training program entitles a trade-affected worker to the payment of the costs of that training and related costs, subject to a number of limitations described in this subpart. Participation in a TAA approved training program is an eligibility requirement for TRA, with certain exceptions, as explained in subpart G. Under sec. 236(a)(6) of the Act, however, workers may still be entitled to TRA and other TAA Program benefits if other funding sources pay all or part of the costs of a TAA approved training program.

Subpart F applies the FTR at 41 CFR chapters 300 through 304 for use by States in providing TAA Program training participants with supplemental assistance in the form of subsistence and transportation benefits. This is not a new policy. The Department already enforces this requirement under several provisions in the existing regulations, including 20 CFR 617.27 and 617.28, which reference the use of the FTR. This ensures uniform interpretation of the FTR and access to subsistence and transportation benefits. TAA Program training participants travel under the same rules as employees of the Department. Some key changes covered in this proposed subpart include expansion of apprenticeship training; approvable part-time training; parameters for serving AAIWs; benchmark requirements to meet Completion TRA eligibility; and procedures for amending approved training programs.

Section 618.600 Scope

Proposed § 618.600 is new and provides the scope of proposed subpart F. This section has been added to give the reader a helpful overview of subpart F. This section explains that the goal of training is to help trade-affected workers obtain the skills necessary to get back to work as quickly as possible at a reasonable training cost. The type of reemployment aimed for is suitable employment. Obtaining suitable employment is an aspirational goal, but not a requirement. Training that leads to reemployment that pays as much or more than the trade-affected worker's adversely affected employment is another aspirational goal.

Section 618.605 General Procedures

Proposed § 618.605 is new and is derived, in part, from 20 CFR 617.20. The proposed section discusses general procedures for trade-affected workers to apply for training, as well as other procedures States must follow in making determinations on applications for training. Proposed paragraph (a) is new and was developed in conjunction with proposed subpart C in accordance with sec. 235 of the Act. It requires States to ensure that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment has been made available to them, as required in proposed subpart C. Assessments assist in the development of an IEP, as described in proposed subpart C, and must be in place before approving an application for training, or if not in place, the information necessary to determine eligibility for training must be collected and documented in the trade-affected worker's case file. The use of assessments in the development of a worker's IEP is essential to ensure proper coordination with WIOA. Assessments are the foundation of the worker's IEP and they ensure that the appropriate reemployment services, which may include training, are added to the IEP.

Proposed paragraph (b) replaces 20 CFR 617.22(d) and addresses applications for training, as well as for transportation and subsistence payments. It reflects more accurately that applications must be made to the States in accordance with their policies and procedures. Because the use of forms will vary from State to State, the Department is not establishing specific requirements for their use or content and has instead referenced compliance with State policies and procedures.

Proposed paragraph (c) expands upon 20 CFR 617.22(e) by adding that liable and agent State responsibilities apply to various types of decisions, and that decisions on whether to provide TAA Program-funded transportation and subsistence payments are determinations to which apply the sections on determinations and notice, liable and agent State responsibilities, and appeals and hearings. In order to comply with OMB's Uniform Guidance and documentation requirements to ensure access to due process, copies of such applications and all determinations by the State on whether to approve or deny the training, including whether to approve TAA Program-funded transportation and subsistence payments, must be included in the trade-affected worker's case file. The documentation may be made through paper or electronic records or a combination thereof.

Proposed paragraph (d) revises 20 CFR 617.23(a) but retains its intent. Proposed paragraph (d)(1) requires the State to explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find appropriate training where no appropriate training opportunities exists. States, in collaboration with local workforce development boards (LWDBs), one-stop partners, and other partners, must explore how to make new training opportunities available either by approving out-of-area training or by encouraging training providers to provide needed training in the local area, as well as exploring ways in which work-based training (*e.g.,* OJT, apprenticeships) and other types of training programs could be adapted to accommodate workers in disciplines that lack training opportunities. Proposed paragraph (d)(2) provides that

TAA Program funds may be used to create customized, group training opportunities. Funds may be used to create trainings including, but not limited to, remedial education classes, English language training, or contextualized occupational training, in order to serve a particular dislocation event where available education and training programs are not sufficient. Contextualized learning is training that combines academic and occupational training. The Department, through its oversight efforts, has observed that a large-scale dislocation can overburden a local area's resources for adult basic education or English language education. TAA Program funds can be used to add additional capacity when that occurs. Proposed paragraph (d)(3) requires States to coordinate with other public and private agencies, in cooperation with LWDBs established under WIOA to ensure a wide-range of training opportunities are available to trade-affected workers in demand occupations.

Proposed paragraph (e) is a new provision, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is authorized under sec. 225 of the Act. Proposed paragraph (e) allows training for trade-affected workers any time after their certification date without regard to whether such worker has applied for or exhausted UI. This new provision was added because the Department has discovered through monitoring and oversight activities that many States use the application for or filing of a UI claim to be the sole trigger for providing trade-affected workers with access to TAA Program benefits and services. Relying on this as the sole outreach strategy to assist trade-affected workers in applying for training may cause a delay in services. Section 225 of the Act makes clear that outreach to trade-affected workers should begin as soon as a certification is issued and that States must provide whatever assistance is necessary to enable trade-affected workers to prepare applications for program benefits, including training, in as timely a fashion as possible. States should use multiple strategies for providing trade-affected workers with access to TAA Program benefits and services.

Section 618.610 Criteria for Approval of Training

Proposed § 618.610, which corresponds to 20 CFR 617.22(a)(1) through (6), implements all six statutory criteria for training approval from sec. 236(a)(1)(A) through (F). The introductory language adds a new requirement that a State must refer to a trade-affected worker's initial or comprehensive and specialized assessments and IEP, if available, before approving training.

Criterion 1, implemented by proposed paragraph (a), is modified from 20 CFR 617.22(a)(1). Section 236(e) of the Act provides the definition of ''suitable employment,'' which appears at proposed § 618.110. This is a change from 20 CFR 617.22(a)(1) where suitable employment is defined within the paragraph rather than in 20 CFR 617.3 with the other definitions. A second change is the elimination of the requirement that no suitable employment is available outside the commuting area in an area in which the worker desires to relocate ''with the assistance of a relocation allowance.'' The Department determined that the language in 20 CFR 617.22(a)(1)(i) created confusion as to whether an application for a relocation allowance is required before determining whether suitable employment is available outside the commuting area. The proposed change clarifies that only a trade-affected worker's stated intent to relocate to a different area is necessary, and this change is intended to eliminate undue delay in the training approval process. Proposed paragraph (a)(2) reflects minor changes to the phrasing of this criterion versus the language used in 20 CFR 617.22(a)(1). However, there is no change to the intent.

Criterion 2, implemented by proposed paragraph (b), contains similar requirements to 20 CFR 617.22(a)(2)(i) but rephrases and reorganizes them. Proposed paragraph (b)(1) emphasizes that for the trade-affected worker to benefit from appropriate training, the training must improve the worker's chances of obtaining employment than would occur without training. The training should also improve the worker's chances of either earning higher wages than would otherwise be the case or that the training will place the worker on a career pathway to do so. The change emphasizes that approved training can provide the worker with access to a career pathway that will lead to higher earnings, even if the initial placement does not. The Department concludes that the 20 CFR 617.22(a)(2)(i) criterion that the worker be job ready on completion of the training program is too vague and does not reflect the most effective or prudent course of action in workforce development programs on career pathways. These changes help ensure that the targeted employment is to be stable and long-term, with the potential for higher wages and growth opportunities for the worker.

This change is also the result of evidence gathered from studies and evaluations of career pathways programs. The Department has recently published the results [10] of a survey of evaluations of career pathways models. Of nine completed studies examining earnings, three found positive results, five found mixed results, and one found mostly negative results. Of 10 completed studies that examined educational outcomes, 7 found positive results, 1 found mixed results, and 2 found mostly negative results. Earnings impacts ranged from an increase of 17 percent to 32 percent in the random assignment studies.

Proposed paragraph (b)(2) follows 20 CFR 617.22(a)(2)(i) in requiring that a worker be capable of undertaking, making satisfactory progress in, and completing the training. However, the Department proposes substituting ''knowledge, skills, and abilities'' for ''mental and physical capabilities'' as the test for determining whether a worker can go through the training. This change is proposed to comply with laws that forbid the denial of training to an otherwise qualified trade-affected worker because of a disability. See sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and its implementing regulations at 29 CFR part 32, and WIOA sec. 188 (29 U.S.C. 3248) and its implementing regulations at 29 CFR part 38. Under both secs. 504 and 188, a qualified trade-affected worker in this context is one who satisfies the requisite skill, experience, education, and other training-related requirements, and who with or without a reasonable accommodation can perform the essential functions of such training. See also the definition of ''qualified handicapped individual'' in 29 CFR 32.3 and ''qualified individual with a disability'' in 29 CFR 38.4. For similar reasons, the NPRM also proposes replacing ''physical and mental capabilities'' in 20 CFR 617.22(a)(5) and ''capabilities'' in 20 CFR 617.22(a)(6) with ''knowledge, skills, and abilities'' in § 618.610(e)(1) and (f)(1), respectively.

Criterion 3 is implemented by proposed paragraph (c). It retains and expands on the provisions in 20 CFR 617.22(a)(3). This criterion requires States to assess, based on labor market information, whether trade-affected

[10] Abt Associates. (2018). ''Career Pathways Research and Evaluation Synthesis.'' Retrieved from: *https://www.dol.gov/asp/evaluation/completed-studies/Career-Pathways-Design-Study/2-Career-Pathways-Research-and-Evaluation-Synthesis.pdf.*

workers who complete an approved training program are likely to find employment using the skills and education acquired while in the training. This criterion does not limit approval only to training programs that result in suitable employment (except for training programs that include OJT, which must lead to suitable employment with the employer offering the OJT). It is not always feasible to train trade-affected workers for suitable employment. Obtaining suitable employment is a goal, not an inflexible requirement, for the approval of training—except for OJT. However, the expectation is that all training leads to employment and is an inflexible requirement.

Proposed paragraph (c)(1) is derived from 20 CFR 617.22(a)(3) and implements sec. 236(a)(3) of the Act, which states that ''a reasonable expectation of employment does not require that employment opportunities for a [trade-affected] worker be available, or offered, immediately upon the completion of approved training.'' In addition, paragraph (c)(1) requires that when initially approving such training, there must be a projection based on labor market information of employment opportunities expected to exist at the time of completion of the training program. This criterion requires the State to review current local labor market data and trends. As such, States should use real-time sources of State labor market information.

Proposed paragraphs (c)(2) through (6) are new and based on established administrative guidance. They are proposed after consideration of Department monitoring and oversight findings and technical assistance requests. Paragraph (c)(2) requires States to measure expected job market conditions using pertinent labor market data, including job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. Paragraph (c)(2) also indicates that labor market information should be documented in the trade-affected worker's case file, and that the State should work with the LWDBs and its one-stop partners to understand current labor market conditions and opportunities for work-based learning.

Proposed paragraph (c)(3) places a new obligation on the State when determining whether Criterion 3 is met, as part of the process of approving training for a trade-affected worker who desires to relocate upon completion of training. Under proposed paragraph (c)(3), the State must document the labor market information in the area to which the worker intends to relocate. This is because that is the area where the worker will be seeking employment upon completion of training and is the relevant labor market.

Proposed paragraph (c)(4) recognizes that a demand for a single trade-affected worker trained in a specific occupation can exist in the local labor market and permits the State to determine that a reasonable expectation of employment exists in occupations where there are limited job openings. States must verify with businesses in the commuting area or in the area of intended relocation that such demand exists for a worker with such training, and these efforts must be documented in the trade-affected worker's case file. This situation may exist in smaller labor market areas or in larger areas where only a few skilled specialists are needed to meet the current demand (*e.g.,* taxidermy or boat repair). However, States must ensure that they do not create an excess supply of trained workers where there is limited opportunity. In occupations with limited demand, the State must consider the number of workers currently enrolled in training that are likely to meet that demand prior to enrolling additional workers in training for that occupation.

Proposed paragraph (c)(5) recognizes that self-employment may be a viable employment goal. States must review the labor market conditions to determine that the skills to be obtained in the training will lead to self-employment that will provide the trade-affected worker with wages or earnings at or near their wages in adversely affected employment.

Proposed paragraph (c)(6) codifies the requirement in sec. 236(c)(B)(i) of the Act that an OJT can only be approved that can reasonably be expected to lead to suitable employment with the employer offering the OJT.

Criterion 4 is implemented by proposed paragraph (d) and corresponds to 20 CFR 617.22(a)(4), but is simpler, better organized, and free of outdated references. References to approval of training outside the trade-affected worker's commuting area for cost reasons have been moved to proposed paragraph (f), Criterion 6.

Criterion 5, implemented by proposed paragraph (e), follows the requirements in 20 CFR 617.22(a)(5), but has been reorganized and some minor provisions have been added. Proposed paragraph (e)(1) modernizes the criterion's personal qualification language. Proposed paragraph (e)(2) adds a new requirement directing the State to review the trade-affected worker's initial assessment, and the comprehensive and specialized assessment and IEP, if available, to determine if the proposed training is appropriate based on the worker's current skills. Proposed paragraph (e)(3) generally follows 20 CFR 617.22(a)(5)(ii), and stresses that the duration of the approved training must be commensurate with the worker's financial resources. Proposed paragraph (e)(3) also provides considerations for determining whether the worker has sufficient financial resources when the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the training. Proposed paragraph (e)(4) requires information to be documented by the State. Proposed paragraph (e)(5) reiterates 20 CFR 617.22(a)(5)(iii) with minor word changes.

Criterion 6 is implemented by proposed paragraph (f) and generally follows and expands on 20 CFR 617.22(a)(6). Proposed paragraph (f)(1) provides that the determination must be appropriate given the trade-affected worker's knowledge, skills, abilities, background, and experience as identified in proposed paragraph (e). States should compare the trade-affected worker's ability to undertake the training program against the worker's employment goals as identified through the criteria used in proposed paragraph (c) and determine if the training program is suitable based on that comparison. States should also examine the trade-affected worker's IEP, if available, but at minimum, must have the worker's stated employment goal. For example, if a trade-affected worker's stated employment goal is to be a welder and their assessment results, education, past work history, and skills are all compatible with welding, and there is a demand for welders in the local labor market, and the training program will result in the worker being able to meet any certification standards required for a welding position, then the training program for this worker can be considered suitable.

Proposed paragraph (f)(2) discusses reasonable cost. Reasonable cost is a critical determinant in approving training programs. The amount of training funds available to the States is limited by sec. 236(a)(2)(A) of the Act and discussed in more detail in proposed subpart I. When training is approved, a trade-affected worker is entitled to payment of all the costs of the approved training. Due to these conditions, States must control training costs and approve only that training ''available at a reasonable cost.''

Proposed paragraph (f)(2)(i) corresponds to 20 CFR

617.22(a)(6)(iii)(A) and provides examples of training-related costs that must be considered in the approval of training. The Department has expanded the list of examples from the list in 20 CFR 617.22(a)(6)(iii)(A) to reflect common costs associated with training programs and to ensure that States fully understand the costs of a training program before they approve it. The list is not all-inclusive. States must ensure that training funds are expended wisely, are available for the maximum number of trade-affected workers, and will support workers to ensure that they will complete their selected training program. Proposed paragraph (f)(2)(i) also requires the State to ensure and document that the training program costs are reasonable by researching costs for similar training programs. States must exhaust alternatives before purchasing equipment or related materials for workers, to ensure that those purchases are truly necessary.

Proposed paragraph (f)(2)(ii), based on 20 CFR 617.22(a)(6)(ii), generally prohibits the State from approving training when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. However, there may be instances where a higher cost training program is the better investment of funds, so the NPRM would allow a State to approve higher cost training if it is expected to achieve a higher likelihood of employment, employment retention, or wage replacement, or achieve comparable results in a significantly shorter duration, resulting in reduced weeks of TRA or a more rapid return to employment. Based on this standard, higher cost training must not be approved unless there is a clear difference in the quality and results of the training or unless comparable results can be achieved in a significantly shorter period of time. The latter standards are consistent with the Act's intent to get trade-affected workers back into employment as rapidly as possible. States should have well-defined policies and procedures addressing this topic to ensure consistency and clear explanations to workers. The definition of ''reasonable cost'' is further addressed in proposed § 618.650.

Proposed paragraph (f)(2)(iii) follows 20 CFR 617.22(a)(6)(iii)(C) in prohibiting approval where transportation or subsistence payments for training outside the trade-affected worker's commuting area adds substantially to the total cost of training, if other appropriate training in the commuting area is available at a lower cost. In addition, the Department relocated a portion of 20 CFR 617.22(a)(4)(ii) to proposed paragraph (f)(2)(iii) because it is more related to determining reasonable cost. Proposed paragraph (f)(2)(iv) is new and explains that approval of training under Criterion 6 is also subject to the provisions of § 618.650.

Section 618.615 Limitations on Training Approval

Proposed § 618.615 discusses the various limitations on a State's approval of a training program. The NPRM relocates some of the limitations on approval of training provisions from 20 CFR 617.25 to sections other than proposed § 618.615, where they more logically fit.

Proposed paragraph (a)(1) retains the single training program rule of 20 CFR 617.22(f)(2). A training program may evolve over the trade-affected worker's period of participation in the TAA Program. For example, during the training, the State may learn that the worker's program needs an OJT component, additional coursework, or remedial training to ensure employment. Changes to an ongoing training program are considered to be part of one training program. The only exception is discussed in proposed paragraph (d)(4) for certain workers who perform a period of military service. Proposed paragraph (a)(2) retains the State's ability to amend training programs, as explained in proposed § 618.665. This provision is in 20 CFR 617.22(f)(3)(ii). Proposed paragraph (a)(3) codifies existing policy and operation that allows for a training program to consist of multiple types of training. For example, a single training program could consist of remedial training, occupational training, and an OJT.

Proposed paragraph (b) corresponds to 20 CFR 617.22(f)(4) with respect to full-time training but differs significantly by permitting States to approve part-time training, as allowed under sec. 236(g) of the Act. Part-time training may be appropriate when trade-affected workers cannot undertake full-time training and the part-time training is reasonably expected to help them increase their earnings, ideally by helping them secure suitable employment. States must not approve part-time training that does not meet these requirements.

Proposed paragraph (b)(1) retains the provision in 20 CFR 617.22(f)(4) that training is full-time if it is in accordance with the established hours and days (or credit hours) of the training provider.

Proposed paragraph (b)(2) is new and discusses part-time training under the TAA Program. There is no corresponding language in part 617, because the Act did not allow part-time training when the regulations were last promulgated. Paragraph (b)(2)(i) provides that a State may approve part-time training. Proposed paragraph (b)(2)(i) also provides that the maximum duration for part-time approved training is the same as that for other approved training, as set out in proposed paragraph (d)(3)(i). Proposed paragraph (b)(2)(ii) implements sec. 236(g)(2) of the Act's restriction on payment of TRA to AAWs in part-time training. It also establishes that the training-approval requirements of this section apply to part-time training. Proposed paragraph (b)(2)(iii) clarifies that a trade-affected worker may participate in part-time training while employed either part-time or full-time. Proposed paragraph (b)(2)(iv) requires the State to inform an AAW who chooses part-time training that the worker will not be eligible for TRA and may lose HCTC eligibility, if available, while engaged in part-time training. AAIWs also should be informed of this in the event they are separated and become an AAW. However, AAIWs are not eligible for either TRA or the HCTC. Proposed paragraph (b)(2)(v) cross-references proposed § 618.780(b)(1)(i), which provides that a State law cannot disqualify an AAW from receiving UI or TRA because such worker is enrolled in or participating in a training program approved under subpart F. However, an AAW enrolled in part-time training is not eligible for TRA and AAIWs are ineligible for TRA. Therefore, proposed paragraph (b)(2)(v) only specifies that State law cannot disqualify an AAW for UI because of part-time training. Proposed paragraph (b)(2)(vi) cross-references proposed § 618.780(b)(1)(ii), which allows a trade-affected worker to refuse work to which the State agency referred the AAW because such work would either stop or interfere with participation in TAA approved training. Because AAWs enrolled in part-time training are not eligible for TRA and AAIWs are not eligible for TRA, proposed paragraph (b)(2)(vi) specifies that this applies to UI or other program benefits.

Proposed paragraph (c) generally follows 20 CFR 617.22(c), but adds language to clarify the process by which (pre-TAA Program) workers who are part of a group of workers that has not yet received a certification under proposed subpart B can transition to training under the TAA Program from training originally approved under another program, such as WIOA.

Proposed paragraph (d)(1) provides a general statement of appropriate duration, requiring that the duration be appropriate to the skill level needed to facilitate reemployment. The training must be of suitable duration to achieve the desired skill level in the shortest possible time. Proposed paragraph (d)(2) describes factors that may impact the length of training, including a trade-affected worker's full- or part-time employment status, the need for supportive services from partner programs, and scheduled breaks in training.

Proposed paragraph (d)(3) corresponds to 20 CFR 617.22(f)(2) and explains the maximum duration of approvable training. For most workers, the availability of income support is critical to their ability to engage in training. The Department interprets the Act to mean that the maximum number of weeks of training are intended to align with the maximum number of available weeks of income support. There is a maximum of 130 weeks of income support available to an AAW that is totally separated. This includes regular State funded UI, plus basic, additional, and Completion TRA. Therefore, paragraph (d)(3)(i) changes the 104-week regulatory limit on weeks of training to a total of up to 130 weeks, except as otherwise provided for OJT and apprenticeship at proposed § 618.635(a)(3) and (c)(1), respectively, and as provided for certain workers who perform a period of duty in the Uniformed Services in proposed § 618.615(d)(4). Proposed paragraph (d)(3)(ii) updates 20 CFR 617.22(f)(3)(ii) by specifically stating the requirement of counting actual weeks of training when measuring the duration of training. Scheduled breaks in training are not counted as weeks in training.

Proposed paragraph (d)(3)(iii), provides a pathway for approving a training program that exceeds the period during which TRA is available, as allowed under sec. 236(a)(9) of the Act, but is still within the maximum duration of training. It cross-references proposed § 618.610(e)(3), which provides the requirements for determining whether the trade-affected worker has sufficient financial resources available to support the worker through the completion of the training. Many training participants fail to complete training because they run out of income support. Notably, while AAWs are eligible for TRA, AAIWs are not. However, AAIWs will become AAWs if they are separated from adversely affected employment. Thus, both AAWs and AAIWs should be made aware of these limitations, and attention must also be paid to ensuring an AAIW has adequate financial resources to complete training. A State can approve a training program for longer than the duration of income support available if the State determines that the trade-affected worker has sufficient personal resources to support themselves while completing the training program. This does not mean that a trade-affected worker is expected to obtain personal loans or other such funds that they do not already possess. The worker must attest to the State that they have sufficient resources to sustain themselves while in training. The Department encourages comments on the implementation of this requirement and this issue in general.

Proposed paragraph (d)(4) implements sec. 233(i) of the Act, which creates an exception to the duration-of-training requirements for trade-affected workers who are also U.S. Armed Forces reservists ordered to active duty. There is no similar provision in 20 CFR part 617. As Congress has made clear, these workers should not be penalized for serving their country. The exception tolls the duration-of-training requirement so that workers returning from an involuntary call to active duty can reenroll in a training program upon their return, begin a new training program, or repeat parts of the training, as necessary.

Proposed paragraph (e) retains the provision in 20 CFR 617.22(i) that training must be within the United States. Proposed paragraph (e) clarifies this provision, explaining that both the trade-affected worker and the training provider (including providers of distance training) cannot be physically located outside the United States. Certain criteria for training approval, such as suitable employment, cannot be met if the worker is physically located outside of the United States. This provision is also consistent with Congress's intent in sec. 2 of the Act ''to foster the economic growth of and full employment in the United States'' and ''to safeguard American industry and labor.''

Section 618.620 Selection of Training Program

Proposed § 618.620, authorized by sec. 236(a)(5) of the Act, provides for the selection of training programs and has substantially changed from 20 CFR 617.23 due to statutory changes. Proposed paragraph (a) represents a change from the language at 20 CFR 617.23, which outlined the selection criteria for training programs and specified evaluation of a training provider's success by placement rates. The State must document the standards and procedures used to select training providers and training(s) in which the training program under this subpart will be approved. Proposed paragraph (a)(1) is similar to 20 CFR 617.23(a) and (b) but updates the language to align with WIOA provisions. The Department suggests that the State work with partners and partner programs to identify jointly appropriate training programs in their communities that will assist trade-affected workers in obtaining work or place them on a career pathway towards suitable employment leading to higher wages.

Proposed paragraph (a)(2) is new and allows a State to choose a training provider from the eligible training provider (ETP) list, established under WIOA, without establishing additional standards or procedures. Section 236(a)(5) of the Act prohibits States from limiting training available under the TAA Program to only those training providers on the ETP list.

Proposed paragraph (b) addresses types of training. This replaces 20 CFR 617.23(b) and (c)(1) and (2). The regulation at 20 CFR 617.23(b) is not carried forward into this NPRM in any manner. The regulation at 20 CFR 617.23(c)(1) is replaced because the Act no longer establishes OJT as the preferred training method. Proposed paragraph (b)(1) describes work-based training and provisions for both AAWs and AAIWs. Although the Act no longer mandates work-based learning as the preferred training method, the Department maintains that work-based training options like apprenticeship, OJT, and customized training are excellent training options for establishing a career pathway and rapidly returning trade-affected workers to employment. Successful work-based training requires implementing the business engagement strategies developed under WIOA sec. 107(d)(4) in cooperation with the LWDBs.

Proposed paragraph (b)(2), which describes institutional training, is derived from 20 CFR 617.23(c)(2), but does not contain the requirement establishing priority to public area vocational-technical schools. The Department has added the reference to community colleges in recognition of their importance to the nation's overall training efforts.

Proposed paragraphs (b)(2)(i) through (iv) are new and based on established administrative guidance. These proposed paragraphs establish criteria for the approval of distance learning. Proposed paragraph (b)(2)(i) requires that the provider and trade-affected worker be located within the United

States. Paragraph (b)(2)(ii) requires the distance learning program to meet the criteria established under subpart F. Proposed paragraph (b)(2)(iii) requires the State to establish and monitor milestones of a distance learning program. This ensures that a trade-affected worker continues to make progress towards completing the training. Paragraph (b)(2)(iv) establishes that a trade-affected worker that fails to meet the milestones established in paragraph (b)(2)(iii) may be deemed to have ceased participation in training under subpart G (although AAIWs are ineligible for TRA, this may be helpful for States to use as a guideline). Proposed paragraph (b)(3) is new and defines the term ''higher education'' in accordance with sec. 236(a)(5)(H) of the Act.

Proposed paragraph (c), which provides a nonexclusive list of other specific types of approvable training programs, generally follows 20 CFR 617.24(b) through (f). OJT, from 20 CFR 617.24(a), is discussed under § 618.635(a). The Department is not retaining the heading of ''Preferred Training,'' as there is no longer a preference requirement in the Act. The selection of training, as discussed in this subpart, must be based on the need of the trade-affected worker to return to employment. This paragraph adds career and technical education to the list of approvable types of training because they are included in the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224 (2018)), which supersedes the Carl D. Perkins Career and Technical Education Act of 2006, which superseded the Vocational Education Act of 1963, to which sec. 236(a)(1)(D) of the Act refers.

Proposed paragraph (d) is new and builds on proposed paragraph (b)(3) of this section and administrative guidance. It reflects the Department's conclusion that TAA Program funds can be used to provide training to trade-affected workers seeking to obtain an advanced degree or to complete coursework towards obtaining an unfinished advanced degree. It clarifies that workers who already possess an advanced degree or credential must not be denied further training for that reason alone. Approved training for advanced degrees is expected to be rare, and States must exercise special care to ensure that the costs are reasonable under the criteria in proposed § 618.610(f)(2)(ii).

Section 618.625 Payment Restrictions for Training Programs

Proposed § 618.625 makes plain a series of restrictions on payments for training programs. It follows 20 CFR 617.25(b), but has been rewritten, simplified, and condensed. Proposed paragraphs (a)(1) through (3) are unchanged from 20 CFR 617.25(b)(1)(i) through (iii).

Proposed paragraph (b)(1) replaces the last paragraph of 20 CFR 617.25(b)(1). States must ensure that TAA Program funds are not used to duplicate payment of training costs by another source of funds. Proposed paragraph (b)(2) is unchanged from 20 CFR 617.25(b)(4)(i)(A)(*2*). Proposed paragraph (b)(3) follows 20 CFR 617.25(b)(4)(ii)(B) with only minor word changes and addresses State establishments of nonduplication procedures.

Proposed paragraph (c) permits the State to share training costs. It is based on sec. 236(a)(5)(F) and (6) of the Act, allowing for the sharing of program costs, and is derived from 20 CFR 617.25(b)(2) and (3).

Proposed paragraph (c)(1) contains new provisions. It codifies that TAA Program funds are the primary source of Federal assistance to trade-affected workers. It also implements sec. 236(a)(4)(A) of the Act, which forbids all other funding under Federal law when the TAA Program pays the training costs for a trade-affected worker. However, if the costs of training exceed State TaOA funds, and if the Department has notified the States that there are no remaining TaOA funds to allocate, including reserve funds, then States may use other sources to continue funding training, as provided in proposed paragraph (d)(2)(ii) of this section.

Proposed paragraph (c)(2) is a new provision, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. Proposed paragraph (c)(2) allows States to share training costs with authorities administering non-Federal, State, and private funding sources provided that there are insufficient TAA Program funds to cover the total cost of training. This was added to give States more flexibility to enter into cost-sharing arrangements with non-Federal entities.

Proposed paragraph (c)(3) retains language from 20 CFR 617.25(b)(3)(ii)(A) prohibiting reimbursement from TAA Program funds of any training costs that were accrued before the approval of the training program under the TAA Program. Proposed paragraph (c)(4) corresponds to 20 CFR 617.25(b)(2)(ii) and (b)(3)(ii)(A), describing prearrangements and what is required in prearrangement agreements. Proposed paragraph (c)(4)(i) explains that these agreements may be entered into on a case-by-case basis to address specific training situations of trade-affected workers or they may be part of a statewide strategy. Prearrangements help prevent duplication of the payment of training costs. They also help ensure that training costs that are reimbursable are not paid from TAA Program funds, which would violate sec. 236(a)(4)(B) of the Act. In addition to describing that prearrangements must be specific, binding agreements entered into before TAA Program funds are obligated, proposed paragraph (c)(4)(ii) provides new flexibility to States to determine that after a training program has been approved and TAA Program funds have been committed if funds become available under another source, the State may decide to continue to pay for the training under the TAA Program or share those costs. If the decision is made to share the costs, then the State must enter into a prearrangement with the other funding source to specify how the worker's training program will be funded. The Department has added this provision for clarity because it specifically covers a situation not previously addressed in the regulations. Many States have adopted tuition-free community-college programs for residents, and States will need to determine which program best meets the needs of trade-affected workers. If a cost-sharing agreement is put in place after the training program has been approved, then the worker's approved training program must be amended to reflect the prearrangement. Proposed paragraph (c)(4)(iii) follows 20 CFR 617.25(b)(3)(ii)(B) and is derived from sec. 236(a)(6)(B) of the Act. This provision will help avoid duplicate payments of training costs by requiring the worker to enter into a written agreement with the State providing that TAA Program funds will not be applied toward, or used to pay, any portion of the costs of the training that the worker has reason to believe will be paid by any other source.

Proposed paragraph (c)(5) follows 20 CFR 617.25(b)(4)(ii)(C) but clarifies it. As required by sec. 236(a)(4)(C) of the Act, in determining the amount of training costs payable from TAA Program funds, the State must not consider payments to the trade-affected worker under other Federal laws that do not directly cover the costs of training. Significantly, subchapter IV of the

Higher Education Act of 1965, codified at 20 U.S.C. 1087uu, provides that, ''[n]otwithstanding any other provision of law, student financial assistance received under [subchapter IV of the Higher Education Act] . . . shall not be taken into account in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal . . . program.'' This includes, but is not limited to Pell Grants, benefits under Supplemental Educational Opportunity Grants, Federal educational loan programs, Presidential Access Scholarships, Federal student work-study programs, and Bureau of Indian Affairs Student Assistance. Therefore, a State may not consider Federal student financial assistance in determining whether to approve training under the Act and may not require the worker to use such funds to pay the costs of approved training. Federal student financial assistance paid directly to a worker is not deducted from the worker's TAA Program benefits. This differs from 20 CFR 617.25(b)(4)(ii)(C)(*1*). The relationship between Federal student financial assistance and TRA is discussed in subpart G. Proposed paragraph (c)(5) also addresses the transition of Federal student financial assistance recipients from WIOA and other programs to the TAA Program. Specifically, WIOA sec. 134(c)(3)(B)(i) (29 U.S.C. 3174(c)(3)(B)(i)) overrides 20 U.S.C. 1087uu and limits WIOA-funded training services to individuals who are unable to obtain other grant assistance for training services, including through Pell Grants, or who require assistance beyond the assistance made available under other grant assistance programs, including Pell Grants. Federal student financial assistance must cease to be applied to tuition and other training related costs that are covered by TAA Program funds upon transition to the TAA Program.

Proposed paragraph (c)(6) has no existing reference in 20 CFR part 617 and has been added as a result of States' technical assistance questions to the Department. It addresses the situation where a trade-affected worker's firm agrees to fund training costs under conditions that may make the worker liable for all or a portion of those costs if certain conditions are not met. For example, the employer may offer separated employees paid training, but require the worker to reimburse the employer if the worker does not maintain a certain minimum grade point average (GPA). If the training is otherwise approvable under the Act, this proposed provision would require the State to contract with an adversely affected employer to assume any unfunded costs on the worker's behalf. Thus, in the above example, if the employer required the worker to maintain a 2.5 GPA or lose the paid training benefit, the worker could enroll in and receive employer-funded training, and, if the worker later achieves only a 2.4 GPA, the agreement would allow the State to assume the cost of training and not require the AAW to reimburse the employer. This provides the State with greater flexibility to leverage the use of nongovernmental funds made available by employers to AAWs. Workers funded under this provision are, like all others, still required to attend all classes and participate fully in training to avoid the establishment of an overpayment in the event of a failure.

Proposed paragraph (d)(1) is new and combines requirements at sec. 236(a)(7)(A) through (C) of the Act into a single statement. Section 236(a)(7)(A) through (C) states that the Secretary shall not approve a training program if—

- All or a portion of the costs of such training program are paid under any nongovernmental plan or program;
- the [trade-affected worker] has a right to obtain training or funds for training under such plan or program; and
- such plan or program requires the worker to reimburse the plan or program from funds provided under this chapter, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

Proposed paragraph (d)(1) simplifies these statements by prohibiting the use of TAA Program funds or wages paid under the training program to reimburse all or any portion of training costs from any source, regardless of whether it is from a Federal, State, nongovernmental plan or program, or another source. The authority for this is provided by combining secs. 236(a)(4)(B), (6)(A), and (7)(A) through (C). This is also partially addressed in proposed paragraph (c)(6) of this section. Proposed paragraph (d)(2)(i), modifying 20 CFR 617.25(b)(5)(ii), prohibits the approval of a training program if the trade-affected worker is required to obtain funds or pay training costs from TAA Program funds or any funds belonging to the worker from any source. This prohibition follows sec. 236(a)(1) of the Act, subject to the annual training cap limitation under sec. 236(a)(2)(A). Proposed paragraph (d)(2)(ii) requires that if no TAA Program training funds are available, the States must seek other funding, including the use of WIOA national dislocated worker grant funds, to provide training.

Section 618.630 Training of Reemployed Trade-Affected Workers Not in Suitable Employment

Proposed § 618.630, which follows 20 CFR 617.22(g), derives from sec. 236(d) of the Act. This provision addresses AAWs who cannot find suitable employment but who obtain nonsuitable employment. These AAWs, while employed, continue to be eligible for TAA Program training. They may continue their employment while waiting for their selected training course to begin. Upon approval and enrollment in training, they may choose to terminate their employment, reduce the hours worked, or continue in either full- or part-time employment while a participant in training (as discussed in proposed § 618.615(b)). As provided in sec. 236(d) of the Act, the AAWs may not be determined ineligible or disqualified for UI or TAA Program benefits, including TRA, because they left work that is not suitable employment. However, choosing to continue in such employment, either part- or full-time, may have negative effects on UI and TAA Program benefits, including TRA and the possible loss of the HCTC, if available. The wages earned in such employment may impact the weekly benefits payable under UI or TRA.

Section 618.635 Work-Based Training

Proposed § 618.635 modifies 20 CFR 617.25(a) to set forth detailed requirements for OJT, customized training, and apprenticeship. The requirements in proposed paragraph (a) were not fully implemented in 20 CFR part 617, so several new provisions have been proposed to implement statutory requirements from sec. 236(c) of the Act.

Proposed paragraph (a)(1) provides the description of OJT that follows the statutory definition at sec. 247(15) of the Act. OJT must be provided under a contract between the State and an employer, which may be in either the public or private sector, including nonprofits. Proposed paragraphs (a)(1)(i) through (iv) are derived from sec. 236(c)(1)(B) of the Act.

Proposed paragraph (a)(2) describes components of related education. Classroom training sponsored by the employer and as part of the contract may be part of OJT and may be provided for part of the day with the balance of the training day in a productive setting, or in some other described schedule. Proposed paragraph (a)(3) implements

sec. 236(c)(3)(A) of the Act and requires that that the OJT contract specify the duration of the OJT, and be limited in duration as appropriate. Although statutorily limited to a maximum of 104 weeks under sec. 236(c)(3)(B) of the Act, the length of an OJT contract must also be limited to the specific vocational preparation required for the occupation, as listed on O*NET (*www.onetonline.org*). Proposed paragraph (a)(4) implements the statutory language in sec. 236(c)(4) of the Act, which excludes certain employers from receiving OJT contracts.

Proposed paragraph (a)(5) sets out the reimbursement provisions for the OJT contract at a rate of up to 50 percent of the wage rate for the OJT participant, limited to the duration of the contract, as provided in sec. 236(c)(5)(H) of the Act. Proposed paragraph (a)(6) contains the labor standards required by sec. 236(c)(5) of the Act for approval of the costs of OJT. Proposed paragraphs (a)(5)(i) through (ix) are essentially unchanged from 20 CFR 617.25(a)(1) through (7), (9), and (10), except for minor language changes for clarification. Paragraph (a)(8) of 20 CFR 617.25(a) has been dropped because of the repeal of the previous language of sec. 236(c)(8) of the Act, which required the employer to certify that they will continue to employ such AAW for at least 26 weeks after completion of training if the worker desires to continue employment and the employer does not have due cause to terminate the employment.

Proposed paragraph (a)(7) follows sec. 236(c)(2) of the Act, which requires payments for OJT to be made to employers in monthly installments. This is a change from 20 CFR 617.25(a), which requires payment in equal monthly installments. The dollar amounts of the monthly payments may fluctuate because, though paid at the same rate of pay, the payments may be based on different numbers of hours worked.

Proposed paragraph (a)(8), largely adopted from sec. 233(d) of the Act and 20 CFR 617.18(c), is a reminder that proposed § 618.780(c) provides that AAWs engaged in OJT are not eligible for TRA. It also explains that the AAW may be considered ineligible for the HCTC, if available. Proposed paragraph (a)(9) allows for participants enrolled in OJT to also enroll in RTAA, if they are found eligible and all the requirements are met, as described in subpart E. Proposed paragraph (a)(10) conveys that TAA Program funds may be leveraged with WIOA funds to reach the maximum reimbursement level established under WIOA. Proposed paragraph (a)(11) states that the State must not approve OJT, under sec. 236(a)(5)(i) of the Act, for AAIWs.

Proposed paragraph (b) implements provisions related to customized training, defined by sec. 236(f) of the Act, and sets forth specific requirements. Customized training is a type of work-based training authorized under sec. 236(a)(5)(A) of the Act. Customized training was not addressed in 20 CFR part 617 and is a source of many technical assistance questions. Implementing rules related to customized training will provide clarification about this type of work-based training. Proposed paragraph (b)(1) describes that customized training meets the special requirements of a single employer or a group of employers and may be provided by the same, or a training provider, which could include State or local staff. An example would be a single machine shop or group of small machine shops that require employees with training on a specific tool, software package, or process. Proposed paragraph (b)(2) codifies that for the purposes of customized training, employer(s) must commit to employ a trade-affected worker upon successful completion of the training. The employer(s) must enter into an agreement with the State that describes the conditions that must be met and reiterates the expectation of employment after training is completed. Proposed paragraph (b)(3) requires the employer(s) to pay for at least 50 percent of the costs for the training. Proposed paragraph (b)(4) explains the limitation from sec. 236(a)(10)(B) of the Act that AAIWs are eligible for customized training if the position is for a position other than their adversely affected position.

Proposed paragraph (c) is new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the National Apprenticeship Act, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of an industry-recognized credential, are approvable TAA Program training activities. The Department encourages comments on implementing these new provisions. These provisions are based on sec. 236(a)(5)(A) of the Act. The requirement that an apprenticeship lead to a recognized postsecondary credential, which includes an industry-recognized credential, differentiates an apprenticeship from a regular OJT. Proposed paragraph (c)(1) limits the duration of the paid work-based learning component of an apprenticeship to a maximum of 130 weeks, in line with the general limitation on training duration in § 618.615(d)(3). However, the length of the educational or instructional training component is limited only by the scheduled completion date of the apprenticeship. In setting these time periods for apprenticeship training, the Department considered that the average total program duration (from FY 2009 to FY 2017) of an apprenticeship participant in the TAA Program was 66 weeks. Only 38 weeks of this time was spent in training (related instruction component). The average duration for TAA Program participants in an OJT was 80 weeks, with 45 weeks of OJT instruction. The TAA Program has been criticized in the past for keeping trade-affected workers out of the workforce while they are receiving benefits. Such criticism does not apply to OJT or apprenticeship because these are work-based trainings and participants are employed while participating in the TAA Program. The Department concludes that sec. 236(a)(5)(G) of the Act allows the Department to establish apprenticeships as a type of approvable training under the TAA Program and to establish regulations governing them. Apprenticeship is not the same as a regular OJT and is therefore not subject to the duration limit at sec. 236(c)(3)(B) of the Act.

Proposed paragraph (c)(2) describes the expenses related to apprenticeship that can be covered using TAA Program funds. These costs include expenses for the educational or instructional component of an apprenticeship (tuition, fees, tools, uniforms, equipment, books, etc.). In addition, the sponsor may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the work-based training and additional supervision related to the work-based training provided by the sponsor.

Proposed paragraph (c)(3) prohibits States from entering into contracts with sponsors that exhibit a pattern of failing to provide apprentices with the successful attainment of an industry-recognized credential or the apprenticeship completion certificate if a registered apprenticeship under the National Apprenticeship Act.

Proposed paragraph (c)(4) is divided into paragraphs (c)(4)(i) and (ii). Paragraph (c)(4)(i) addresses compliance with registered apprenticeships under the National Apprenticeship Act. Specifically, the costs for the registered apprenticeship program, discussed in proposed paragraphs (c)(2) and (3), may only be approved by the State if the

requirements of 29 CFR parts 29 and 30, and Departmental administrative guidance are met. Paragraph (c)(4)(ii) addresses other apprenticeships. It explains that costs for an apprenticeship program will be approved if certain labor standards are met.[11] These are based on the labor standards that apply to OJT under sec. 236(c)(5) of the Act and are applied to apprenticeships other than registered apprenticeships, although the labor standards at sec. 236(c)(5)(H) of the Act is incorporated in proposed paragraph (c)(2)(ii), rather than in proposed paragraph (c)(4)(ii). Proposed paragraph (c)(5) instructs the State to make individual benefit determinations on TRA benefits to AAWs and to inform the AAWs considering apprenticeship of the possible loss of eligibility for TRA and the HCTC, if available. Proposed paragraph (c)(6) allows for the combination of apprenticeship and RTAA, if all eligibility requirements under subpart E are met. Proposed paragraph (c)(7) defines the term ''sponsor'' as it relates to apprenticeships. Proposed paragraph (c)(8) requires the State to enter into a contract with the sponsor that establishes the terms and conditions of the apprenticeship.

The Department will be monitoring all participant outcomes achieved through apprenticeships approved under the Act via coordination between OTAA and the Office of Apprenticeship to ensure that AAWs who complete apprenticeships continue to successfully retain employment.

Section 618.640 Supplemental Assistance

Proposed § 618.640 discusses the requirements for TAA Program-funded supplemental assistance in the form of subsistence and transportation payments. Proposed paragraphs (a) and (b) describe general information and application instructions and are derived in part from 20 CFR 617.27(a) and (c) and 20 CFR 617.28(a) and (d). It eliminates outdated references to expired workforce programs. Proposed paragraph (a) also requires the need for such payments to be documented in the trade-affected worker's IEP, if available, or case file. Proposed paragraph (b) requires the trade-affected worker to submit an application for supplemental assistance in accordance with subpart H and the processes established by the State.

Proposed paragraphs (c) and (d) correspond to, condense, and clarify 20 CFR 617.27 and 20 CFR 617.28, respectively, regarding payments for subsistence and transportation. They codify the statutory provisions at sec. 236(b) of the Act. Proposed paragraph (c)(1) clarifies that subsistence payments include the costs of temporary living quarters (separate maintenance), meals, and incidental expenses, which was previously inferred by the use of the term ''per diem'' in 20 CFR 617.27. Proposed paragraph (c)(2) establishes the requirements for subsistence payments. Proposed paragraph (c)(3) limits the amount of subsistence payments to the lesser of the worker's actual per diem expenses for subsistence, or 50 percent of the prevailing per diem allowance rate authorized under the FTR (see 41 CFR chapters 300 through 304) for the location of the training facility. Proposed paragraph (c)(4) requires States to make subsistence payments upon a worker's completion of a week of training, but allows States to advance a subsistence payment for a week if the State determines that doing so is necessary to enable the worker to participate in the approved training.

Proposed paragraph (d) provides that a trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation payments are solely for those miles beyond the worker's commuting area. This is a significant change from 20 CFR 617.28(b), which provides an allowance for the entire round-trip distance where training is conducted outside the commuting area. Proposed paragraph (d) establishes a maximum limit for transportation payments of 90 percent of the cost per mile at the prevailing personal vehicle mileage rate authorized under the FTR.

Section 236(b) of the Act permits, but does not require, the Department to pay ''where appropriate'' supplemental assistance necessary to defray ''reasonable'' transportation expenses when the training is not within commuting distance of a worker's residence. The Department proposes limiting TAA Program-funded transportation allowances to those miles beyond the regular commuting area for several reasons. The proposed change is fairer to trade-affected workers who travel to training within the commuting area, who receive no allowance. It encourages trade-affected workers to attend training closer to home, which avoids the costs and disruption of a temporary relocation. And it preserves funds for actual training. Moreover, trade-affected workers may still be able to receive transportation reimbursement within their commuting area if they qualify under WIOA or a national dislocated worker grant. See 20 CFR part 680, subpart G.

Proposed paragraph (d)(2) is new and has no comparable counterpart in existing regulations or in administrative guidance. It addresses transportation payments for trade-affected workers who are residing temporarily in the area of training. It clarifies for the first time that the per diem transportation payment may not exceed the amount of the per diem subsistence payment that would be payable under proposed paragraph (c)(3). Proposed paragraph (d)(3)(i), which addresses transportation payments, is derived from 20 CFR 617.28(b)(1), except that paragraph (d)(3)(i) does not state that the travel cost begins at the worker's home, as discussed above. Proposed paragraph (d)(3)(ii) updates the reference to the FTR and provides a U.S. General Services Administration reference. Proposed paragraph (d)(4) adds a new provision that a trade-affected worker must receive transportation payments promptly after completion of a week of approved training, and that payments must be made at a minimum on a monthly basis. This was added to make sure that trade-affected workers are not in a situation where they do not have the resources to take transportation to training because they have not been reimbursed within a reasonable period.

Proposed paragraph (e) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is intended to assist States in understanding how subsistence and transportation work together. It explains that payment can be made for both subsistence and transportation, and proposed paragraph (e)(1) newly clarifies that for the first and last day of arriving and departing a training, a trade-affected worker receiving subsistence may receive reimbursement transportation. This means, for example, that workers no longer have to choose between receiving mileage reimbursement for driving to a distant training and receiving reimbursement for the cost of a hotel the night before their training begins. An example of proposed paragraph (e)(1) would be where a worker travels outside of the worker's commuting area for a 1-month training session. The TAA Program would pay for travel on the first day out to the new location, subsistence during the training, and then for the travel back home. On the first and last day, there could

[11] The six criteria for the approval of training at sec. 236(a)(1)(A)–(F) of the Act also apply to apprenticeships.

potentially be payments for both travel and subsistence. This exception is also available, as described in proposed paragraph (e)(2) in the event a trade-affected worker fails to complete the training for a justifiable cause, as described in proposed § 618.780(b)(3)(iii).

Proposed paragraph (f) is derived in part from 20 CFR 617.28(d), and requires the State to adjust the payments for transportation and subsistence for any advance payments made to a trade-affected worker in order to take into account the amount of the advance that is more or less than the amount that the worker is entitled to receive. Proposed paragraph (g) is new and has no comparable counterpart in existing regulations or in administrative guidance. It clarifies for the first time that trade-affected workers must submit expense receipts. This will help to ensure proper accounting and management of Federal funds and is consistent with proposed subpart D regarding expenses for job search and relocation allowances available to AAWs.

Section 618.645 Voluntary Withdrawal From a Training Program

Proposed § 618.645 establishes a new requirement, added for the first time, for a trade-affected worker's voluntary withdrawal from a training program. This provision has no comparable counterpart in existing regulations or in administrative guidance. During its oversight of the TAA Program, the Department has encountered numerous situations where a worker has withdrawn from training. States have also requested technical assistance and interpretations of the Act and regulations related to this topic. This proposed section seeks to provide direction to the States on this topic. Proposed paragraph (a) provides that the State must advise a trade-affected worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart H, be established as an overpayment and may, subject to proposed subpart G, result in ineligibility for TRA for AAWs. Proposed paragraph (b) provides an exception for service in the Uniformed Services under the criteria set out in § 618.615(d)(4). Proposed paragraph (c) allows for a trade-affected worker who ceases participation in training for justifiable cause as described in § 618.780(b)(3)(iii) to resume the approved training program. Proposed paragraph (d) recognizes that AAWs who withdraw from training still may receive job search and relocation allowances if they meet all the eligibility requirements for these benefits as set forth in proposed §§ 618.410 and 618.440 of subpart D. Proposed paragraph (e) is not a new requirement but was clarified in previously issued administrative guidance. The goal of TAA approved training is to help trade-affected workers obtain suitable employment. The acquisition of an apprenticeship completion certificate or industry-recognized credentials forms an important part of that long-term reemployment strategy. Therefore, States must provide training for TAA Program training participants as approved by the State in the training program, even if the AAW becomes employed in suitable employment during that training. The State must evaluate, with input from the AAW, how the employment impacts the AAW's training program (and whether the training program needs to be amended); determine that training completion serves the long-term employment goals of the worker; and the AAW must continue to meet benchmarks that were established as part of the approved training program, even though the employed AAW is not likely to be eligible for TRA payments.

Section 618.650 State Standards and Procedures for Establishing Reasonable Cost of Training

Proposed § 618.650 is new and does not have a counterpart in 20 CFR part 617. It describes limitations on States that establish a policy defining a ceiling on the amount of training costs payable for trade-affected workers. Section 236(a)(1)(F) of the Act requires States to approve training suitable for the worker and available at a reasonable cost. ''Reasonable cost'' in proposed § 618.610(f)(2) incorporates § 200.404 of OMB's Uniform Guidance (2 CFR 200.404) and its interpretive guidance. The expenditure must be prudent under those standards. Section 200.404 provides that ''[a] cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost.'' States must follow the prudent person test to determine if the training costs are reasonable and necessary for the trade-affected worker to achieve the goals of the TAA Program. Additionally, States must also comply with the standards for reasonableness in proposed § 618.610(f)(2), including those permitting States to allow training other than the least-cost option if the extra cost is justified by better worker outcomes or a faster return to the workforce.

To achieve the goal of expanding training opportunities for the largest number of trade-affected workers, the Department determined that States are not prohibited from setting specific training limit amounts, such as matching the training limit amount to the WIOA individual training account limit in each local area, as a tool to ensure they approve training for trade-affected workers at a reasonable cost that will lead to employment. Proposed paragraph (a) informs States that training limits may be established, and, if limits are established, they must reasonably take into account the varying costs for training throughout the State. The Department is concerned that a statewide training cost ceiling could result in unnecessary barriers to training for trade-affected workers. In addition, the State must have a method to approve training exceeding the training cap, and it must include a requirement that a local area secure State approval to exceed the statewide training cost ceiling prior to approving the training.

Proposed paragraph (b) requires the State to develop a policy that allows for consideration and approval of training costs that exceed the established training cost limits set by the State. If used, this exception will prevent the denial of a training program solely based on a cost limitation. While the Department expects States will be judicious in granting exceptions, the Department recognizes that there will likely be cases in which relief is appropriate. The policy must include transparent standards and procedures that provide for prompt consideration of any request to exceed the training cost limit.

Proposed paragraph (c) requires the State to propose an alternative training program, when training is not approvable due to exceeding the State's maximum amount established in policy and the State policy to exceed, described in proposed paragraph (b), has not been met.

Proposed paragraph (d) requires States to review their established policy on a reasonable cost limit annually and to change or remove the limits when warranted. Proposed paragraph (e) requires that whenever a State establishes, modifies, or rescinds its policy, the State must notify the Department and provide full documentation supporting its action to the Department for review.

Proposed paragraph (f) explicitly provides that there is no requirement that a State establish a limit on training costs.

The Department also is considering an alternative approach to establishing a definition of available at a reasonable cost. Under this alternative approach, the Department would establish via regulation that the soft cap would be initially established as the local area's established limit for ITAs under WIOA. Under this alternative approach, the local area would be able to request to exceed this cap to meet the needs of the trade affected worker. The Department seeks comments on both proposed paragraph (a) and the alternative approach the Department is considering.

Section 618.655 Training for Adversely Affected Incumbent Workers

Proposed § 618.655 is new and addresses the approval of training for AAIWs. Section 236(a)(1) of the Act includes the phrase ''or an [AAIW]'' after ''[AAW]'' in the provision for the approval of training. The Act thus extends to AAIWs the same training benefits provided to AAWs under the Act, except as provided in sec. 236(a)(10) and proposed § 618.635(a)(10) and (b)(4). Section 236(a)(1) of the Act allows workers threatened with total or partial separation from adversely affected employment, AAIWs, to begin TAA approved training before their separation. TAA Program-funded training for AAIWs is intended to allow earlier intervention where layoffs are planned in advance and the employer can specifically identify which workers will be affected, or where the threat of separations are possible. AAIWs may begin training before a layoff, thereby reducing the time needed to complete the training program after the separation occurs and reducing the duration of the worker's weeks of unemployment. Training options for an AAIW should be designed to meet the long-term needs of the AAIW based on the expectation that the AAIW will be laid off. Training programs may also be amended in accordance with proposed § 618.665. The criteria and limitations for approval of training for AAIWs are the same as they are for AAWs, except for certain exclusions. AAIWs, like AAWs, are entitled to supplemental assistance (transportation and subsistence payments), and employment and case management services. Proposed paragraph (a) clarifies that AAIWs are eligible for approved training before separation, and further clarifies that AAIWs may apply for training and States may approve training for any AAIW at any time after the date on which they are determined to be individually threatened with separation regardless of filing for, receiving, or exhausting UI.

Proposed paragraph (b) clarifies how a State will verify that an AAIW is threatened with total or partial separation. This paragraph explains that an AAIW is threatened with total or partial separation when the AAIW has received a notice of termination or layoff from employment. Verification of a threat of total or partial separation may be obtained from the firm that is trade impacted or another reliable source that the State determines to be appropriate.

Proposed paragraph (c) states that the provisions of subpart F extend to AAIWs, unless otherwise noted. It also lists exceptions that apply to AAIW training. Proposed paragraph (c)(1) explains that training may not be approved for an AAIW if such training includes an OJT component consistent with sec. 236(a)(10)(A) of the Act.

Proposed paragraph (c)(2) implements the statutory requirement in sec. 236(a)(10)(B) of the Act that customized training may not be approved for an AAIW unless the training is for a position other than the AAIW's adversely affected employment.

Proposed paragraph (d) implements sec. 236(a)(11) of the Act, and provides conditions for terminating the approval of training for AAIWs, under certain conditions. Paragraph (d)(1) requires the State to continue to monitor that the threat of total or partial separation continues to exist for the AAIW during the course of training approved under the Act. The State must periodically verify, with the AAIW's employer, that the threat of separation still exists before funding each subsequent portion of the training. Proposed paragraph (d)(2) provides that if the threat of separation is removed, TAA Program funding of the AAIW's training program must cease at the conclusion of the most recently funded portion, or semester or quarter. The AAIW will be allowed to complete any portion of the training program for which the TAA Program has already recognized an accrued expenditure; however, no additional funding will be available while the threat of separation is removed. Funding may resume for the original training program that had been previously approved upon a determination by the State that the threat of separation has been reestablished, or upon total or partial separation from adversely affected employment, if the requirements under § 618.610 are still met. The approved training program must be amended in compliance with proposed § 618.665(a)(1)(ix). Proposed paragraph (d)(3) clarifies that, as with all training approvals under the Act, the AAIW is only eligible for one training program per certification; thus, a training program begun prior to separation and while under a threat of layoff continues to constitute the one allowed training program available to that AAIW. Proposed paragraph (d)(4) provides that the training duration limitations addressed in proposed § 618.615 are applicable to training program approval for AAIWs. Proposed paragraph (d)(5) further emphasizes that an AAIW will not be eligible for a new or different training program when a total or partial separation occurs; however, the existing training program may be amended under the provisions of proposed § 618.665. Lastly, proposed paragraph (d)(6) provides that the State must not consider the AAIW's threatened employment suitable employment under proposed § 618.610(a). Without this interpretation, training for AAIW would otherwise never be approvable.

Proposed paragraph (e) explains that an AAIW may transition to an AAW. Proposed paragraph (e)(1) provides that the separation must occur prior to the expiration of the petition under which the AAIW was determined to be threatened and the total or partial separation must be for lack of work. Proposed paragraph (e)(2) specifies that once an AAIW has become an AAW under the conditions specified in paragraph (e)(1), the worker's approved training program must be amended, as described in § 618.665, and the State must determine what other benefits under the TAA Program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the duration limits contained in § 618.615.

The Department specifically encourages comment relating to proposed § 618.655, particularly on potential strategies States may use to encourage employers to inform their workers of planned layoffs so that the workers may apply for training as AAIWs as early as possible. The Department also encourages comment on creative solutions for these workers so that they can seamlessly transition from threatened employment into new, good-paying jobs.

Section 618.660 Training Benchmarks

Proposed § 618.660 is new and provides the process for establishing and monitoring compliance with training benchmarks. Benchmarks are required by sec. 233(f)(3)(A) of the Act when the trade-affected worker enrolls in an approved training program that will extend beyond the duration of payable weeks of Basic TRA and

Additional TRA, for the purposes of eligibility for Completion TRA, in accordance with subpart G. Although AAIWs are ineligible for TRA, establishing training benchmarks is recommended, as an AAIW may become an AAW. The purpose of training benchmarks is to allow early and ongoing assessment of the performance of a training participant to determine whether the original training program is a good fit. Benchmarks also function as a protection of the appropriate expenditure of TAA Program funds. This section implements existing operations of the TAA Program.

Proposed paragraph (a) requires States to establish and document training benchmarks for AAWs (and it is recommended to do so for AAIWs) so that they can meet Completion TRA eligibility requirements described at proposed § 618.765. The benchmarks must be established when the trade-affected worker enrolls in an approved training program so that the State can monitor the worker's progress toward completing the approved training duration limits at proposed § 618.615. Inclusion of benchmarks should occur when the training program is initially established and approved, and, in the unusual event that benchmarks are not included in the initial training program, at such time the training program is amended. Proposed paragraph (b) requires training benchmarks to be established for all but short-term training programs, such as a 3-month certificate program. The establishment of benchmarks is a useful practice and may be required later in the AAW's training if unanticipated circumstances arise that extend the training beyond the duration of payable weeks of Basic TRA and Additional TRA. Proposed paragraph (c) provides that to review the trade-affected worker's progress against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc. The case manager may attest to the worker's progress after consultation with the vendor and the worker. Proposed paragraph (d) requires the benchmarks to be described in the trade-affected worker's IEP, if available, or otherwise documented in the worker's case file. Proposed paragraph (e) requires that benchmarks be flexible enough to allow for some variability (*e.g.,* a single course failure or missed week of attendance may contribute to a failed benchmark but should not, on its own, make the AAW ineligible for Completion TRA), and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and State environments. These benchmarks are related to, but differ from, the requirement that an AAW ''participate in training'' as a condition of eligibility for TRA. ''Participation in training'' merely requires that an AAW must attend scheduled classes and required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training provider, while training benchmarks measure satisfactory progress of the trade-affected worker during their training. Training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training program in place is appropriate for the trade-affected worker or whether it would be prudent to amend the training program to meet the needs of the worker better.

Section 233(f)(3) of the Act requires an AAW to substantially meet performance benchmarks to remain eligible for Completion TRA. There are two benchmarks that must be met. The first is that the AAW is expected to continue to make progress toward the completion of the training. The second is that they are on schedule to complete the training during that period of eligibility. In § 618.660(f), the Department interprets these benchmarks to mean that the AAW is maintaining satisfactory academic standing (*e.g.,* not on probation or determined to be ''at risk'' by the instructor or training provider) and is on schedule to complete training within the timeframe identified in the approved training program. Paragraph (f) requires these benchmarks to be evaluated and documented at least every 60 days, beginning with the start of the approved training program.

Under paragraph (g)(1), upon failure to meet either or both of the benchmarks for the first time during the same evaluation period, the State must provide a warning to the AAW that their eligibility for Completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker's case file. An AAWs approved training program may be amended after they fail to satisfy one or both training benchmarks for the first time. There is no requirement to wait for a second substandard review. If the first-time benchmark failure is of a magnitude as to make a failure at a later benchmark review likely, then the State should reevaluate the training program, if necessary, to improve the likelihood that the AAW will complete the training program. Similarly, if an AAW is failing two courses in one benchmark assessment period, this will result in only one substandard review; however, if the failure of two courses makes timely completion of training under the approved training program unlikely, then the training program should be amended. Paragraph (g)(2) provides that if an AAW who has previously failed to meet a benchmark under paragraph (g)(1) fails to meet a benchmark during a subsequent benchmark review under paragraph (f), the State must notify the worker of their ineligibility for Completion TRA. An AAW may elect to continue in the approved training but will not receive any Completion TRA payments; or, the training program must be amended according to proposed § 618.665, and Completion TRA payments may resume. In cases where a State denies payment of Completion TRA because the AAW has not made satisfactory progress toward training benchmarks, the AAW may appeal the determination through the appeal process described in subpart H at § 618.552. An AAW may refuse an amendment to the training program but will not be eligible for Completion TRA.

Section 618.665 Amending Approved Training

Proposed § 618.665 provides conditions for amending an approved training program. Proposed § 618.665 greatly expands upon the regulatory provision for amending an approved training program. The second sentence of 20 CFR 617.22(f)(3)(ii) merely permitted an amendment ''to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills.'' Proposed § 618.665 recognizes that more substantial amendments may be necessary to provide trade-affected workers with skills necessary to obtain employment and sets forth the circumstances, and conditions, under which amendments must be made. The ability to amend a training program is not new but does require some additional structure to ensure consistent treatment of trade-affected workers.

Proposed paragraph (a) requires the State to work in cooperation with the trade-affected worker in amending a training program where the need for such amendment was not foreseeable and where the customer demonstrates good cause for the need to amend. Proposed paragraphs (a)(1)(i) through (x) provide the list of conditions to be met for an amendment to be appropriate. One or more of the conditions must be met. Proposed paragraph (a)(2) provides

that the training duration limits at proposed § 618.615(d)(3) apply to amended programs. Proposed paragraph (a)(3) requires an amendment to be made before completion of the original training program. Proposed paragraph (b) sets forth the criteria that must be met in order for a training program to be amended. The Department concludes that since the State is amending an existing approved training program, not all of the training approval criteria described in proposed § 618.610 apply to an amendment. For example, since the State already determined that there was no suitable employment available when the training program was originally approved, it is not reasonable to conduct a subsequent review of available suitable employment in order to amend a training program. As a result, proposed paragraphs (b)(1) through (4) apply only Criteria 3 through 6, from proposed § 618.610 of this subpart F, to amended training programs.

G. Subpart G—Trade Readjustment Allowances

Proposed subpart G covers the eligibility requirements for, and the amounts and duration of, TRA. Proposed subpart G reorganizes and simplifies some of the provisions of 20 CFR part 617 to make them easier to follow and modifies or excludes provisions of part 617 to reflect statutory amendments and policy determinations found in administrative guidance.

Section 618.700 Scope

Proposed § 618.700 is new and does not have a comparable section in 20 CFR part 617. It describes the scope of this proposed subpart G.

Section 618.705 Definitions

Proposed § 618.705 is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time definitions of the terms ''participating in approved training'' and ''training allowance'' as used in this proposed subpart G. It also addresses the issue of wages as it relates to successor-in-interest. Proposed paragraph (a) redresses the numerous references in 20 CFR part 617 that refer to ''participation in training'' and replaces the term with ''participation in approved training'' throughout this subpart G. Part 617 does not interpret or define this term, despite using the phrase ''participating in a training program approved under [20 CFR] 617.22(a)'' throughout. The term ''approved training'' takes the place of ''training program approved under [20 CFR] 617.22(a).'' Proposed paragraph (a)(1) describes ''participating in approved training'' generally, relative to attendance and taking part in on-site classes, activities, and events as well as covering excused absences. Proposed paragraph (a)(2) describes the term specifically for distance learning but is otherwise the same as proposed paragraph (a)(1) in this section.

Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes, for the first time, a definition of the term ''training allowance,'' which is used throughout sec. 232 of the Act and in 20 CFR 617.13. The term ''training allowance'' has been used to describe such Federal programs as Veterans Educational Assistance and Supplemental Educational Opportunity Grants whereas payments would go directly to the AAW, as opposed to payments provided directly to a training provider. Federal student financial assistance is excluded from being a ''training allowance'' and reasons for the exclusion are discussed in more detail in proposed § 618.745(c)(4).

Proposed paragraph (c) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is not a new interpretation or new concept. Instead, it is an explicit clarification of existing policy. This proposed paragraph is derived from the definition of the term ''firm'' contained in 29 CFR 90.2 and in proposed § 618.110, which provides that any predecessors or a successor-in-interest are considered part of the same firm for purposes of proposed subpart B. Proposed paragraph (c) extends that logic to the wages earned by a worker that may be reported under the subject firm named on a petition, a predecessor, or a successor-in-interest. For purposes of TRA, wages reported to a State or paid to an AAW by a successor-in-interest are to be treated as weeks and wages in adversely affected employment for purposes of establishing TRA eligibility.

Section 618.710 Categories of Trade Readjustment Allowances

Proposed § 618.710 is new and explains that there are three categories of TRA: Basic, Additional, and Completion. These three categories of TRA are used throughout subpart G, so the basic explanation here should make the rest of proposed subpart G easier to follow. This proposed section has no parallel in part 617 but is part of administrative guidance.

Proposed paragraphs (a), (b), and (c) identify, respectively, Basic TRA, Additional TRA, and Completion TRA, and reference their respective qualifying requirements contained in later sections in subpart G. Proposed paragraph (a) describes Basic TRA, which is payable to an AAW who meets the requirements of proposed § 618.720. Proposed paragraph (b) describes Additional TRA, which is payable to an AAW who meets the requirements of proposed § 618.760. Additional TRA begins the first week after exhaustion of Basic TRA.

Proposed paragraph (c), describes Completion TRA, which is payable to an AAW who meets the requirements of proposed § 618.765. Completion TRA is payable after exhaustion of Basic and Additional TRA and only if the AAW is pursuing a program leading to a certificate or industry-recognized credential, participates satisfactorily, and the program is completed by the established eligibility period. The eligibility period will begin once the individual files an initial claim for Completion TRA, files for compensation for a given week while participating in TAA training, and is expected to complete such training in the established 20-week period during which to receive Completion TRA. The State must assist the AAW to meet these strict requirements. The State must work with the AAW to determine the best timing for the start of the 20-week period to ensure that the training will be completed within the established period. The first week of Completion TRA cannot automatically be established as the first week after exhaustion of Additional TRA as doing so could result in an AAW receiving no Completion TRA at all. For example, if a training program required 21 weeks beyond the end of Additional TRA and the first week of Completion TRA were automatically started at the conclusion of Additional TRA, no Completion TRA would be payable as the AAW would not complete the training within the 20-week period.

Section 618.715 Applications for Trade Readjustment Allowances and Payment

Proposed § 618.715 covers applications for TRA and payment. Proposed paragraph (a) modifies 20 CFR 617.10(b) and changes the phrase ''may be filed within a reasonable period of time after publication of the determination certifying the appropriate group of workers'' to ''must be filed after publication of the certification of the appropriate worker group'' to clarify that filing before a certification is issued is not optional. It also omits all references to applications for TRA that appeared in 20 CFR 617.10(b) for weeks

of unemployment beginning before the initial application for TRA is filed because it needlessly confuses the requirement that TRA cannot be paid until an AAW is covered by a certification as described in proposed paragraph (d) of this section. Proposed paragraph (a)(2) provides that an application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

Proposed paragraph (b) is nearly the same as 20 CFR 617.10(c) in providing the procedures for filing TRA applications, except that it updates references to this subpart G and newly provides for the filing and processing of applications by any means allowed for UI claims in the State, as reiterated in proposed paragraph (e)(2) of this section. This new provision allows States flexibility in application processing. In addition, proposed paragraph (b) has been edited for clarity.

Proposed paragraph (c) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that TRA determinations are subject to specified requirements in proposed subpart H concerning determinations, appeals, and hearings. It also requires that an AAW's case file include the worker's TRA applications and the determinations on the applications. These have been added for clarity, as a result of State monitoring and oversight findings.

Proposed paragraph (d) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It explains when TRA is payable. Proposed paragraph (d)(1) states that TRA payments must not be made until a certification is issued and the State determines that the AAW is a member of a worker group covered under the certification, in accordance with sec. 231(a) of the Act. Proposed paragraph (d)(2) also implements sec. 231(a) of the Act and provides that the first week of TRA entitlement is the week that begins on or after the certification. This is a change, which eliminates the provision at 20 CFR 617.11(b) establishing the first week of TRA entitlement as the later of: (1) The week that begins more than 60 days after the date of the filing of the petition that resulted in the certification; or (2) the first week beginning after the exhaustion of UI entitlement. The 60-day waiting period was removed from the Act and is no longer applicable. Proposed paragraph (d)(3) is new and specifies that an AAW may receive only one form of TRA (Basic, Additional, or Completion) for any given week. This has been added for clarity.

Proposed paragraph (e) is new and has been added to make clear that an application is required for each TRA benefit type available to the AAW. States must ensure that workers are provided timely information regarding the specific requirements of the benefit for which they are making application, so that AAWs can file applications on time. Proposed paragraph (e)(2) is new and reiterates proposed paragraph (b) of this section, which provides States the flexibility for the filing and processing of applications by any means allowed for UI claims in the State.

Section 618.720 Qualifying Requirements for Basic Trade Readjustment Allowances

Proposed § 618.720 sets forth the requirements for Basic TRA eligibility and is largely taken from 20 CFR 617.11(a)(2) but contains some changes. It replaces the term ''individual'' with ''AAW'' or ''worker.'' It also updates the language about petitions and certifications in subpart B and references the terms ''worker group'' and ''group of workers'' in order to be consistent with this part 618. Proposed paragraph (a) updates 20 CFR 617.11(a)(2)(i) to conform to language specific to part 618. Proposed paragraph (b) replaces 20 CFR 617.11(a)(2)(ii) by replacing paragraphs (a)(2)(ii)(A) and (B) with the term ''certification period.'' Proposed paragraph (b) also proposes a significant change in eligibility for TRA by incorporating the amended definition of ''qualifying separation'' that includes partially separated workers. A qualifying separation was previously construed as requiring a total separation, an interpretation provided in 20 CFR 617.3(t)(2), based on sec. 233(a)(2) of the Act. The Department's exclusion of partially separated workers from the definition of ''qualifying separation'' has been based on 1988 amendments to the Act, codified in sec. 232(a)(2). The 1988 amendments added a 104-week limitation period on the receipt of Basic TRA that begins ''with the first week following the week in which the [AAW] was most recently totally separated from adversely affected employment.'' Public Law 100–418 sec. 1425(a). The Department's prior interpretation of sec. 233(a)(2) was that it created a moveable 104-week eligibility period for Basic TRA that only could be initiated based on a total separation. See 59 FR 906 (Jan. 6, 1994); 20 CFR 617.3(m)(1) (basing the ''eligibility period'' for Basic TRA ''upon the most recent such total qualifying separation'').

The Department proposes that under a plain reading of the Act, partially separated workers are eligible for TRA benefits if the requirements in sec. 231 of the Act are otherwise met. The Department's revised interpretation is based on sec. 231(a) of the Act directing that TRA payments ''shall be made to an [AAW]'' who meets the requirements for statutory eligibility contained in sec. 231(a)(1) through (5). The term AAW in turn is defined in sec. 247(2) of the Act as an individual who ''has been totally or partially separated'' from adversely affected employment because of lack of work.

Section 231 of the Act prescribes the qualifying requirements for receipt of TRA. Section 231(a)(1) explicitly references a partial separation. Further support for this revised interpretation is provided by sec. 231(a)(2) of the Act that refers to partial separations with respect to the earnings requirements to establish TRA eligibility, and sec. 231(a)(3)(A) of the Act that refers to partial separations in the context of the eligibility requirement of UI entitlement. Lastly, sec. 234(a)(2) of the Act explains which State law applies with respect to filing a claim for TRA and references partially separated workers.

The Department's proposal to revise the definition of the term ''qualifying separation'' to include partial separations raises the question of how to interpret sec. 231(a)(5)(A)(ii) of the Act that establishes the 26-week training enrollment deadline, as well as sec. 233(a)(2) of the Act that establishes a 104-week eligibility period for Basic TRA, because both sections of the Act reference only total separations. Section 618.725 proposes to use the same 26-week training enrollment deadline for all qualifying separations, regardless of whether the AAW experienced a total or a partial separation. Similarly, § 618.755 limits the receipt of Basic TRA to 104 weeks, regardless of whether the qualifying separation was total or partial.

Proposed paragraph (c)(1) is much the same as 20 CFR 617.11(a)(2)(iii)(A) but has been revised for clarity in accordance with the general changes described in the preamble introduction of proposed § 618.720. The phrase ''first qualifying separation, or any subsequent total qualifying separation under the same certification'' has been replaced with ''total or partial separation from adversely affected employment during the certification period,'' to explain the requirements more specifically that must be met for there to be a ''qualifying separation.'' The phrase ''where there is more than one subdivision, the

appropriate subdivision of that firm'' has been added to address circumstances where an AAW may have been a member of a certified worker group of an appropriate subdivision. Proposed paragraph (c)(2) updates 20 CFR 617.11(a)(2)(iii)(B) by including references to this part 618, rephrases paragraphs (c)(2)(i) through (iv), and reverses the order of paragraphs (c)(2)(ii) and (iii).

Proposed paragraph (d) is substantially the same as 20 CFR 617.11(a)(2)(iv).

Proposed paragraph (e) requires exhaustion of UI prior to receipt of TRA and sets forth two requirements. Proposed paragraph (e)(1) requires exhaustion of UI entitlement and is based on 20 CFR 617.11(a)(2)(v)(A) and (B), with three changes. First, proposed paragraph (e) contains an exception to the exhaustion requirement in 20 CFR 617.11(a)(2)(v)(B), under sec. 231(a)(3)(B) of the Act, that exhaustion of additional compensation that is funded by a State and not reimbursed from any Federal funds, is not required. This was from an amendment to the Act included in TAARA 2002 and retained by TAARA 2015. Second, it explains that whenever an AAW becomes entitled (or would become entitled if the worker had applied therefore) to UI (except additional compensation that is funded by a State and not reimbursed from any Federal funds) TRA eligibility is suspended until the worker again exhausts UI.

Proposed paragraph (e)(2) codifies sec. 232(d) of the Act. This provision allows an AAW to elect to receive TRA instead of UI under certain circumstances. The new entitlement must be based on employment that occurs after establishing the first UI benefit period. In such scenarios, an AAW may elect to receive TRA instead of UI, provided that the initial UI claim was exhausted, and the worker is otherwise eligible for TRA.

In adopting this statutory amendment to the WBA payable to an AAW, Congress addressed a longstanding problem resulting from AAWs working after initially establishing TAA Program/TRA eligibility. For example, AAWs may have worked in part-time or short-term employment during summer breaks resulting in earning some wage and thereby establishing a new and/or subsequent UI benefit period with a lower WBA. Previously, TRA eligibility ceased if an AAW established a subsequent UI claim, which in some cases resulted in the AAW dropping out of TAA approved training because the WBA was substantially reduced once the AAW became entitled to UI benefits while continuing or resuming training after a break. This unwarranted outcome discouraged workers from completing training and from seeking employment between training periods. The Department's interpretation is that subsequent employment that forms the basis of the subsequent UI benefit period can be any employment, including recalls to the adversely affected employment.

Proposed paragraph (e)(3) details the requirement that States provide the AAW with a summary of their potential UI and TRA benefits in writing and document the AAW's choice in the case management file.

Proposed paragraph (e)(4) provides that if the worker exercises the election to receive TRA, State law governs what happens to the valid UI claim filed. For States where claims may be withdrawn if no benefits are paid, the worker might subsequently file a claim in a later quarter, and the worker might potentially exercise the TRA option a second time. Furthermore, the election made will be in effect until the election is available once again or the benefit chosen is exhausted.

Finally, it is important to recognize that in most cases, the main driver for the election is the possibility of a lower WBA in the subsequent UI benefit period, but other factors are also relevant. For example, if the break in TAA approved training is longer than allowed for TRA to be payable, the AAW may not be an eligible TAA recipient for purposes of the HCTC, if available. In the latter scenario, it may be more advantageous to opt for the UI eligibility because, during an extended break in TAA approved training in which TRA is not payable, the UI benefit may allow the AAW to be an eligible TAA recipient and potentially be eligible for the HCTC.

Proposed paragraph (e)(5) provides that the AAW must have no unexpired waiting period applicable for such worker for any UI, except when collecting TRA.

Proposed paragraph (f) combines the requirements in 20 CFR 617.11(a)(2)(vi) and 20 CFR 617.17. Proposed paragraph (f) also reorganizes and rephrases the paragraphs containing the specified means for meeting the Extended Benefits (EB) work test requirements in an easier to follow format. Proposed paragraph (f) provides that the AAW must be able and available for work and must meet the EB work test requirements set forth in proposed paragraph (f)(1) for each week TRA is claimed, except while enrolled in, or participating in, approved training, as explained in proposed paragraph (f)(2)(i). In addition, proposed paragraph (f)(2)(ii) provides that the EB work test requirements do not apply during a break in training that does not exceed 30 days. Lastly, proposed paragraph (f)(2)(iii) provides the weeks that the worker is not subject to the EB work test.

Proposed paragraph (f)(3) contains the definition of ''suitable work.'' Specifically, the term ''suitable work'' is either suitable work as defined in the applicable State law for claimants for regular compensation, or suitable work as defined in applicable State law provisions consistent with sec. 202(a)(3) of the EUCA. The applicable definition depends on an AAW's job prospects as discussed in 20 CFR 615.8(d). For an AAW with job prospects determined to be ''good,'' the applicable definition is that of claimants for regular compensation. Conversely, where a worker's job prospects are ''not good,'' the EUCA definition applies, and it considers any work within the worker's capabilities to be suitable. Lastly, the proposed definition, as well as the part 617 definition, excludes self-employment or employment as an independent contractor from the definition of ''suitable work.''

Proposed paragraph (g) follows the ''participation in training'' requirement of 20 CFR 617.11(a)(2)(vii) with a few significant differences. Proposed paragraph (g) no longer contains the definitions for ''enrolled in training'' and ''completed training'' in 20 CFR 617.11(a)(2)(vii)(D) because those definitions have been incorporated into subpart A of part 618. Proposed paragraph (g)(1) provides the general requirement that an AAW be enrolled or participating in approved training or have a training waiver approved under proposed § 618.735, of this proposed subpart G, in place in order to receive Basic TRA. Proposed paragraph (g) specifically references Basic TRA because the participation in training requirements differ from Additional TRA and Completion TRA.

Proposed paragraphs (g)(2) through (4) explain the circumstances in which an AAW may receive Basic TRA for weeks in which the general requirement in proposed paragraph (g)(1) has not been met. Proposed paragraph (g)(2) provides the Department's position that the participation in training requirement does not apply to a worker before what is commonly referred to as the ''26/26-week deadline'' for enrollment in training found in sec. 231(a)(5)(A)(ii) of the Act and incorporated into proposed § 618.725. Thus, an AAW may receive Basic TRA up to the applicable training enrollment deadline in proposed

§ 618.725 without meeting the participation in training requirement. Applying the participation in approved training requirement before the training enrollment deadline would undermine one purpose of the deadlines: to provide sufficient time to identify and make arrangements for an appropriate training program. Further, applying the participation in approved training requirement before the deadlines would cause some AAWs who do not participate in approved training before the training enrollment deadline to be denied eligibility for the HCTC (if available) because, by not meeting a requirement for TRA eligibility, they would not be an ''eligible TAA recipient'' as is required to receive the HCTC.

Proposed paragraph (g)(3), is substantially similar to 20 CFR 617.11(a)(2)(vii)(B). This proposed provision represents the interpretation announced in administrative guidance (TEGL No. 11–02, Change 3). It waives the training requirement for claims for Basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA (after publication of the certification of the appropriate worker group, as provided in proposed § 618.715(a) of this subpart G), and for weeks before notification that an AAW is covered by a certification and is fully informed of the requirements for enrollment in training.

Proposed paragraph (g)(4) codifies the long-standing Departmental interpretation that an AAW may receive Basic TRA after completing approved training even though the AAW will no longer be participating in approved training. To continue to receive TRA upon completion of training, the AAW must otherwise be eligible for Basic TRA and must have met the participation in approved training requirements in proposed paragraph (g)(1) of this section in a timely fashion.

Furthermore, an AAW whose participation in a TAA approved training program occurred on a part-time basis, in part or in its entirety, may receive Basic TRA after completing such training, even though no TRA eligibility was established or received at the time. This accommodates the statutory requirement that part-time TAA training is permissible and that after completion of the training, Basic TRA may be payable if the remaining eligibility requirements of the Act are met.

Section 618.725 Training Enrollment Deadlines

Proposed § 618.725 does not have a counterpart in 20 CFR part 617 but is administered by States based on administrative guidance. Proposed § 618.725 establishes the deadlines by which an AAW must be enrolled or participating in approved training, or have a training waiver in effect as a condition for receiving TRA. These deadlines are commonly referred to as the training enrollment deadlines or the ''26/26-week deadlines.'' There are five possible deadlines outlined in sec. 231(a)(5)(A)(ii) of the Act and in proposed § 618.725(a). The training enrollment deadlines are: (1) The last day of the 26th week after the worker's most recent qualifying separation; (2) the last day of the 26th week after the week in which the certification covering the worker is issued; (3) 45 days after the later of the above two dates, if there are extenuating circumstances to justify an extension in the enrollment period; (4) the last day of a period where there was a failure by the State to provide the worker with timely information related to the applicable deadlines; or (5) the last day of a period to be approved for enrollment after the termination of a waiver. These training enrollment deadlines are implemented in proposed § 618.725(a)(1) through (5) and are discussed below in the preamble discussion of those paragraphs. Although the Act does not provide a deadline for the issuance of a training waiver, the Department's position is that the deadlines in proposed § 618.725(a) are also applicable to the issuance of a training waiver. If the training is approved but not available at the time, a waiver of such training is appropriate.

Proposed paragraphs (a)(1) and (2) implement the training enrollment deadlines that require an AAW to be enrolled in training or have a waiver granted no later than the last day of the 26th week after either the worker's most recent qualifying separation or the last day of the 26th week in which the certification was issued to receive Basic TRA. This is also what is known as the ''26/26-week deadlines.'' The training enrollment deadlines are established by sec. 231(a)(5)(A)(ii)(I) and (II) of the Act.

Proposed paragraph (a)(3) implements the deadline in sec. 231(a)(5)(A)(ii)(III) of the Act that allows an AAW 45 additional days after the later of the training enrollment deadlines described above, if there are extenuating circumstances that justify the extension. The Act does not elaborate on what are extenuating circumstances. Proposed paragraph (a)(3) explains that extenuating circumstances are those that constitute good cause—unusual situations that are beyond the control of the AAW and that make enrollment within the otherwise applicable deadline impossible or unreasonable. Additional discussion of extenuating circumstances and good cause is found in the preamble for proposed § 618.730.

Proposed paragraph (a)(4) implements sec. 231(a)(5)(A)(ii)(V) of the Act. The Department determined the ''last day of a period determined by the Secretary'' to enroll in training to be the Monday of the first week occurring 60 consecutive calendar days following the date of the AAW's proper notification.

Proposed paragraph (a)(5) implements sec. 231(a)(5)(A)(ii)(V) of the Act, added by TAARA 2002, which directs the Department to determine the deadline by which an AAW must enroll in approved training after the termination of a waiver. The Department provides a deadline of the Monday of the first week occurring 30 consecutive calendar days following the day of termination. The Department has determined that 30 calendar days is sufficient time for a worker whose waiver was terminated or revoked to be advised of, and consider, training options, select an option, and enroll in training.

Proposed paragraph (b) provides three exceptions to the training enrollment deadlines listed in proposed paragraph (a) of this section. Proposed paragraph (b)(1) extends the training enrollment deadline in specific circumstances when a denial of a TRA application is later overturned on appeal or reconsideration. Proposed paragraph (b)(2) is the Department's interpretation of the Special Rule with Respect to Military Service established in sec. 233(i) of the Act for purposes of the training enrollment deadline. If an AAW who is a member of a reserve component of the Armed Forces and has served a period of duty during the AAW's Basic TRA eligibility period, but before enrolling in training, the AAW's training enrollment deadline will be the last day of the 26th week following the last day of the AAW's period of duty. Additional rules regarding sec. 233(i) of the Act are contained in proposed § 618.884.

Section 618.730 Good Cause

Proposed § 618.730 does not have a counterpart in 20 CFR part 617 but is administered by States based on administrative guidance that implements sec. 234(b) of the Act. The Act uses three different concepts where exceptions to certain deadlines are appropriate: Extenuating circumstances, justifiable cause, and good cause. However, the Act does not explicitly define these terms. Upon review of the Act, the Department proposes that for purposes of the TAA Program, extenuating circumstance, justifiable cause, and good cause will have the

same meaning and application. In determining whether to apply the exceptions allowed under these provisions, States should consider the following: Whether the State failed to provide timely notice of the need to act before the deadline passed; whether factors outside the control of the worker prevented the worker from taking timely action to meet the deadline; whether the worker attempted to seek an extension of time by promptly notifying the State; whether the worker was physically unable to take timely action to meet the deadline; whether the employer warned, instructed, threatened, or coerced the worker in any way that prevented the worker's timely filing of an application for TRA or enrolling in training; whether the State failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA; or whether there are other compelling reasons or circumstances that would prevent a reasonable person from meeting a deadline.

Proposed § 618.730 simplifies previously issued administrative guidance. Proposed paragraph (a) provides that States must apply the good cause exception for waiving the time limitations with respect to an application for TRA, the training enrollment deadline, and the receipt of a training waiver, if the AAW makes a showing of good cause. Proposed paragraph (b) provides that for good cause to exist, the AAW must have acted diligently yet been unable to complete the task described in proposed paragraph (a) of this section because of exigent circumstances. Finally, proposed paragraph (c) provides that good cause must always be determined on a worker-by-worker basis.

The following factors should be considered when determining whether good cause exists:

(1) Whether the State failed to provide timely notice of the need to act before the deadline passed;

(2) Whether factors outside the control of the worker prevented the worker from taking timely action to meet the deadline;

(3) Whether the worker attempted to seek an extension of time by promptly notifying the State;

(4) Whether the worker was physically unable to take timely action to meet the deadline;

(5) Whether the employer warned, instructed, threatened, or coerced the worker in any way that prevented the worker's timely filing of an application for TRA or enrolling in training;

(6) Whether the State failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA; and

(7) Other compelling reasons or circumstances that would prevent a reasonable person from meeting a deadline.

Section 618.735 Waiver of Training Requirement for Basic Trade Readjustment Allowances

Proposed § 618.735 addresses waivers of the training requirement as a condition for receiving Basic TRA. This proposed section differs substantially from the waiver provisions in 20 CFR 617.19(a)(2) and (b) through (d) because there are fewer statutory bases for waiver now. The Act, at sec. 231(c), has three conditions for waivers of the training requirement and the statutory language for these conditions is used in the proposed regulatory text. The Department requests comments offering more descriptive language about the bases of these remaining three waiver criteria.

Proposed paragraph (a) reorganizes and rephrases 20 CFR 617.19(a)(2) and implements the requirement of sec. 231(c) of the Act that a State may issue a waiver of the training requirement to an AAW if it finds that training is not feasible or appropriate for one or more of the reasons listed in proposed paragraph (b) of this section. Proposed paragraph (a) also explains that the waiver must contain the information required in proposed paragraph (c) of this section, and newly specifies for the sake of clarity that no waiver of the training requirement is permitted for Additional TRA or Completion TRA eligibility. Finally, proposed paragraph (a) requires, as discussed in the preamble of proposed § 618.720(g) of this subpart G that a waiver must be issued no later than the latest of the applicable training enrollment deadlines described in proposed § 618.725 of this subpart G.

Proposed paragraph (b) replaces most of 20 CFR 617.19(b)(2)(i) and (ii) implements sec. 231(c) of the Act and sets forth the permissible bases for waiving the training requirement. Before TAAEA, TAARA 2002 permitted a waiver of the training requirement where one of six conditions for finding that the training requirement is not feasible or appropriate was met. Prior to TAARA 2002, the Department was not limited to prescribed conditions for determining whether training is not feasible or appropriate. TAAEA reduced the waiver conditions to the three that are detailed in proposed § 618.735(b). This reduction in the types of waivers available was to place an additional emphasis on the training component of the TAA Program rather than an emphasis on income support. At least one of these conditions must be cited in any determination that training is not feasible or appropriate for an AAW. Proposed paragraphs (b)(1) through (b)(3) of this section identify the three conditions, mostly verbatim from the Act; however, some of them elaborate on the statutory requirement, as explained below.

Proposed paragraph (b)(1) implements the statutory waiver criterion that the AAW is unable to participate in training for health reasons. Proposed paragraph (b)(2) implements the statutory waiver criterion that the first available enrollment date for the approved training of the worker is within 60 consecutive calendar days after the date of the waiver determination or, if later, there are extenuating circumstances for the delay in enrollment. Proposed paragraph (b)(2) also repeats the 60 consecutive calendar day deadline almost verbatim from the statutory language and, for consistency, interprets the phrase ''extenuating circumstances'' by applying the good cause provisions at proposed § 618.730 for determining if there are extenuating circumstances. Proposed paragraph (b)(3) implements the statutory waiver criterion that a waiver of the training requirement may be issued if training is unavailable.

Proposed paragraph (c) governs the contents of a waiver and provides that a waiver does not take effect unless it contains, at a minimum, six specific items of information. Proposed paragraph (c) is modified from 20 CFR 617.19(a)(2)(i) through (vii) to account for the statutory change concerning allowable conditions for issuing a waiver, and is slightly reorganized to make it easier to follow. In particular, the requirement for the recipient's signature has been modified to account for current claims-taking practice and to permit evidence of the AAW's receipt and acknowledgement of the waiver by means other than the worker's signature. Electronic signatures are also permitted. States may use paper-based or electronic files (or a combination thereof) for documentation purposes. Records in either format must be made available to the Department upon request or access to those systems must be provided to the Department upon request for oversight purposes, in accordance with proposed subpart H, and further discussed in proposed paragraph (h) of this section.

Proposed paragraph (d) has no corollary in part 617 and was added to clarify the parameters for requesting a waiver. Proposed paragraph (d) advises

that as a best practice, States may find it helpful to determine if an AAW's initial assessment indicates the need for a waiver. Proposed paragraph (d) also allows an AAW to request a waiver from the State before the applicable deadline in § 618.725.

Proposed paragraph (e) slightly modifies 20 CFR 617.19(a)(3) by simplifying the language in order to clarify the required contents of a waiver determination denial. It requires that whenever a waiver determination is a denial, the AAW to whom the denial pertains must be furnished with notice of the denial, and that the notice must contain certain specified information, including the right to appeal consistent with the procedures in proposed § 618.828 of subpart H.

Proposed paragraph (f) replaces 20 CFR 617.19(c)(1) due to statutory revisions. Proposed paragraph (f) implements the provisions of sec. 231(c)(2)(A) and (3)(B) of the Act. Proposed paragraph (f)(1) implements sec. 231(c)(2)(A) of the Act, which requires that a waiver be in effect for not more than 6 months after the date on which it is issued ''unless the Secretary determines otherwise.''

Proposed paragraph (f)(2) implements the statutory authority to extend a waiver beyond 6 months by providing two criteria that must be met in order for a State to extend a waiver. The first criterion is that training continues not to be feasible or appropriate for the AAW for one or more of the reasons described in proposed paragraph (b) of this section, even if the original conditions for issuing the waiver no longer apply, and the second criterion is that the worker has not yet exhausted their Basic TRA entitlement. The first criterion maintains the statutory requirement that a waiver be in effect only if one or more of the specified conditions for the waiver are met. The Department is proposing the second criterion because a waiver of the training requirement cannot be extended if the worker has exhausted Basic TRA eligibility. The Department has concluded that these criteria provide the maximum flexibility to extend a waiver within the spirit of the statutory requirements for such waivers.

Paragraph (f)(3) implements sec. 231(c)(3) of the Act by requiring regular review of the waivers. States are required first to review the waiver 3 months after it is issued to determine if one or more of the criteria in paragraph (b) of this section apply, but they are encouraged to review the waiver every 30 consecutive calendar days during this period. After the first 3 months, States are required to review the waivers on a monthly basis. The Department has concluded this requirement will be an effective means of ensuring that the waiver criteria continue to be met for the duration of the waiver. A failure to review waivers regularly would undermine the statutory requirement that waivers remain in effect only as long as the basis for a waiver continues to apply.

Proposed paragraph (g) revises 20 CFR 617.19(c) and implements sec. 231(c)(2)(B) of the Act, by requiring that a waiver be revoked if the waiver criteria are no longer met and that the AAW be notified in writing of the revocation. The notice to the worker must contain the same information as what would be required in a denial of waiver issued under proposed paragraph (e) of this section. The revocation must contain appeal rights. Omitted from the regulation in proposed paragraph (g) are two suggestions from 20 CFR 617.19(c)(2) and (3) that have been removed because they do not impose substantive requirements. The first states, ''For example, a written notice of revocation shall be issued to the [AAW] concurrent with the approval of the training in which the [AAW] has enrolled (if such training is scheduled to commence within 30 days), and shall not be issued prior to such approval.'' The second reads, ''State agencies may incorporate a revocation section in the waiver form or on a separate revocation form.''

Proposed paragraph (h) revises 20 CFR 617.19(d) and implements the statutory requirement in sec. 231(c)(3)(C) of the Act. Proposed paragraph (h) implements this requirement by requiring States to transmit, upon request only, a copy to the Department of any or all waivers or revocations of waivers together with a statement of the reasons for the waiver or revocation. As a practical matter, a separate statement of reasons will not need to be submitted if the waiver follows the requirements of proposed paragraphs (c) and (f) and contains the reasons for the waiver or revocation. Information on waivers, at the individual level, is also submitted to the Department via the performance and service reports submitted by the State under sec. 249B of the Act. Electronic copies are acceptable.

Section 618.740 Evidence of Qualification for Basic, Additional, and Completion Trade Readjustment Allowances

Proposed § 618.740 is modeled after 20 CFR 617.12 and provides the requirements for evidence of qualification for Basic, Additional, and Completion TRA. If the firm provides a worker list to the State with enough information to assist an AAW to apply for TAA Program benefits and services, the State should make every effort to use the information provided to expedite the application process and not delay the application process by asking the worker for duplicate information.

Proposed paragraph (a) is substantially the same as 20 CFR 617.12(a) and contains the requirement that States obtain the basic information necessary to establish whether a TRA applicant is eligible to receive TRA. However, proposed paragraph (a) excludes the requirement in 20 CFR 617.12(a)(2) that a State must obtain a TRA applicant's average weekly wage for all AAWs. This information is not administratively necessary in the case of a TRA applicant who is totally separated from adversely affected employment, but is needed for partially separated AAWs.

Proposed paragraphs (b) and (c) include only one change from 20 CFR 617.12(b) and (c) and address obtaining alternative information where records are unavailable. Whereas 20 CFR 617.12(c) requires verification by the employer of information received from other sources, proposed paragraph (c) requires such verification only ''if possible.'' This change acknowledges that in some cases the employer might have gone out of business, so that obtaining the required verification is virtually impossible.

Proposed paragraph (d), concerning the data on which a State must base a determination on TRA entitlement and benefit amounts, is substantively similar to 20 CFR 617.12(d), but, rather than requiring the State to make adjustments to the suspect data and make its determinations on the basis of the adjusted data, requires the State to make its determinations from the best available information. This change provides States with more flexibility.

Proposed paragraph (e) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It is included as a clarification in response to technical assistance provided to States by the Department. Proposed paragraph (e) instructs States to follow established methods used for processing regular UI claims. If, for example, the employer is provided 10 days to respond to a request for information under regular UI, then the same process should be used for TRA. If an employer does not respond within the established timeframe, the State must act on the best available information.

Section 618.745 Weekly Amounts of Basic, Additional, and Completion Trade Readjustment Allowances

Proposed § 618.745, governing the determination of an AAW's weekly amount of TRA, whether Basic, Additional, or Completion, is modeled after 20 CFR 617.13. Proposed paragraph (a) is similar to 20 CFR 617.13(a) except that it reformats the section, simplifies the language, and incorporates the eligibility of partially separated workers for TRA. It specifies that partially separated workers' weekly benefit amount must be calculated under applicable State law. The NPRM removes the language in 20 CFR 617.13(a) that discusses ''varying amounts related to wages with separate employers'' because this was an exception used only by one State at the time of the last promulgation of these rules. That State no longer uses that exception, so this language is not needed. Proposed paragraph (b) has been changed from 20 CFR 617.13(b), and replaced with language from sec. 232(b) of the Act, except some language has been simplified and it cross-references proposed § 618.705 of this subpart G, as the term ''training allowance'' is not defined in the Act.

Proposed paragraph (c), requiring specified reductions to the TRA weekly amount, follows 20 CFR 617.13(c) in some respects. Specifically, proposed paragraph (c)(1) explains that the weekly amount of TRA payable under the section will be reduced (but not below zero) by income that is deductible from UI under the disqualifying income provisions of the applicable State or Federal UI law. The NPRM implements the earnings disregard in sec. 232(a)(2) that allows TRA recipients participating in approved training to earn up to their most recent weekly UI benefit amount without a reduction in their TRA payment. Proposed paragraph (c)(2), which requires a deduction of the training allowance (including a training allowance referred to in proposed paragraph (b) of this section) is modified from 20 CFR 617.13(c)(2). Proposed paragraph (c)(3) is taken directly from sec. 232(c) of the Act but some language is simplified, and again, a cross-reference is provided to § 618.705 to define the term ''training allowance.''

Proposed paragraph (c)(4) is intended to resolve a conflict between sec. 232(c) of the Act and a provision in subchapter IV of the Higher Education Act (20 U.S.C. chapter 28, subchapter IV). Specifically, sec. 232(c) of the Act requires that an AAW's TRA weekly benefit amount be reduced by the amount of a training allowance (note the term ''training allowance'' is defined in proposed § 618.705) to which the worker was entitled for that week under any other Federal law. The Higher Education Act, at 20 U.S.C. 1087uu, prohibits taking into account Federal student financial assistance received under subchapter IV of the Higher Education Act, or under Bureau of Indian Affairs student assistance programs, in determining the need or eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal program financed in whole or in part with Federal funds. The provision at 20 CFR 617.13(c)(2) interprets training allowances referred to in sec. 232(c) of the Act as including specified types of payments that constitute Federal student financial assistance under 20 U.S.C. 1087uu. Proposed paragraph (c)(4) resolves this conflict by excluding the receipt of Federal student financial assistance from the definition of ''training allowance'' in paragraphs (c)(2) and (3) of this section. As a result, the receipt of Federal student financial assistance is not excluded from the weekly amount of TRA payments, nor are weeks in which Federal student financial assistance is paid to be deducted from the maximum number of weeks for which TRA can be paid.

Proposed paragraph (c)(5) is substantially the same as 20 CFR 617.13(c)(3) and requires that TRA payments be reduced by any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law that apply to AAWs in training.

Section 618.750 Maximum Amount of Basic Trade Readjustment Allowances

Proposed § 618.750 explains how to calculate the maximum amount of Basic TRA. It is derived from 20 CFR 617.14, with a few substantive and organizational differences. The calculation in proposed paragraph (a) is largely the same as 20 CFR 617.14(a), except for two changes. The first change is that additional compensation is not included in the total sum of UI entitlement that must be subtracted as part of the calculation of the maximum amount of Basic TRA. This results from an amendment by TAARA 2002, and retained by TAARA 2015, at sec. 231(a)(3)(B), that an AAW need not exhaust additional compensation funded by a State and not reimbursed from Federal funds and, accordingly, this entitlement is not reduced from the maximum amount of TRA payable in the first benefit period. This allows a State to pay TRA either before or after additional compensation.

The second change concerns the reduction for the total sum of the AAW's UI entitlement. Paragraph (a)(2) of 20 CFR 617.14 provides that a worker's UI reduction must include, in addition to any UI to which the worker was entitled, any UI to which the worker would have been entitled had the worker applied for it during the worker's first benefit period. The last sentence of that paragraph adds that in calculating the worker's maximum TRA amount, the worker's full UI entitlement for the first benefit period must be subtracted, regardless of the amount, if any, actually paid to the worker.

This last sentence of 20 CFR 617.14(a)(2) created an unintended result for AAWs who, during the first UI benefit period exhausted regular compensation, became eligible for EB under 20 CFR part 615 and, while continuously unemployed, could not receive the full EB entitlement because prior to EB exhaustion, the EB period triggered ''off'' such that no further EB benefits were payable in the State. This proposition created a ''manifest injustice'' because, while the statutory and regulatory language implies that the full entitlement must be reduced, the AAW could not have filed and received such benefits. The Department has determined that the reduction of benefits is mandated in the event the AAW could have filed but did not because such AAW was not eligible for many reasons such as returned to work or chose not to file. In this case, the AAW would have been able to receive the benefit had the worker filed and met all other eligibility requirements. A similar situation occurs when a worker becomes eligible for a supplemental compensation benefit amount, collects a few weeks but forgoes the full entitlement because the worker's benefit year ends and such worker is now entitled to regular compensation in a second benefit year. Reducing the entire supplemental compensation entitlement amounts to another example of a ''manifest injustice'' if the AAW is not eligible for the remaining entitlement in the future. Accordingly, the Department's revised position is that if, and only if, the benefit was available to the AAW, it must be reduced.

There is another situation to consider and clarify such as when an AAW, during the first UI benefit period, has exhausted regular compensation, became entitled and received TRA, and subsequently becomes eligible for EB or the supplemental compensation (in such first benefit period). The EB and/or supplemental compensation arising from the first UI benefit period must be exhausted prior to resuming TRA.

Consequently, TRA must be suspended. The AAW will receive the full entitlement to EB and/or the supplemental compensation until exhaustion or until the worker is eligible for a subsequent UI benefit period. The amount of EB and/or supplemental compensation payable subsequent to the TRA paid during the first UI benefit period reduces the maximum amount of TRA payable such that the AAW will receive the balance, if any. The amount of TRA already paid in the first benefit period also reduces the maximum TRA benefit amount payable. The initial amount of TRA paid is not to be construed as an overpayment, as the AAW was entitled to such benefit at the time and properly paid.

Proposed paragraph (b), which contains exceptions to the maximum TRA amount calculation is substantively unchanged from 20 CFR 617.14(b)(1) and (2). However, proposed paragraph (b) excludes 20 CFR 617.14(b)(3) that references additional weeks and provides that nothing in that paragraph will affect an AAW's eligibility for supplemental, increased, or additional allowances. The Department has concluded that this language is unnecessary.

Finally, another difference between proposed § 618.750(b) and 20 CFR 617.14(b) is that the heading for proposed § 618.750 explicitly provides that this section applies only to calculating the maximum amount of Basic TRA. The heading for 20 CFR 617.14 does not contain this limitation, but 20 CFR 617.14(b)(3) effectuates the same result by explicitly excluding Additional TRA from the maximum amount calculation. The Department has determined it can accomplish the same result simply by modifying the section heading.

Section 618.755 Eligibility Period for Basic Trade Readjustment Allowances

Proposed § 618.755, establishing the Basic TRA eligibility period, differs from 20 CFR 617.15. Proposed paragraph (a) uses different phrasing to state that AAWs are ineligible to receive Basic TRA for any week of unemployment beginning after the close of the 104-week period beginning with the first week following the week in which the AAW's most recent qualifying separation occurred except as provided in paragraphs (b) and (c). As provided in the revised definitions on separations, this change is needed to track the plain English meaning and language of the Act. Additional exceptions established under sec. 233(h) of the Act are discussed in proposed § 618.770. Deadlines and eligibility periods may also be impacted by periods of military service, as discussed in proposed § 618.884, and by equitable tolling, discussed in proposed § 618.888. Use of the word ''qualifying separation'' in proposed § 618.755(a) in place of ''total qualifying separation'' as used in 20 CFR 617.15(a) incorporates the same maximum eligibility period in the case of partially separated AAWs. Section 233(a)(2) of the Act provides that no Basic TRA may be paid after the close of the 104-week period after an AAW was most recently ''totally separated from adversely affected employment.'' The Act does not address when the receipt of Basic TRA must end for partially separated workers, though theirs count as qualifying separations for TRA as proposed in § 618.720(b). The Department proposes to limit the receipt of Basic TRA to 104 weeks for both partially and totally separated workers, and use of the term ''qualifying separation'' in proposed paragraph (a) effects this result.

Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. This is a longstanding practice that is proposed for codification. It addresses situations where certifications issued after delays associated with litigation following denials of petitions resulted in covered worker groups with a limited eligibility period or expired eligibility periods in which to receive Basic TRA. Proposed paragraph (b) tolls the eligibility period during the pendency of any judicial or administrative appeal of the Department's denial and establishes the 104-week eligibility period with the week that begins after the certification.

Section 618.760 Qualifying Requirements for, and Timing and Duration of, Additional Trade Readjustment Allowances

Proposed § 618.760, establishing the qualifying requirements for, and duration of, Additional TRA, has no specific counterpart in 20 CFR part 617; however, most of the provisions in proposed § 618.760 are contained in various sections of 20 CFR part 617 and have been updated through administrative guidance in the form of Operating Instructions. These requirements should be codified.

Proposed paragraph (a) contains Additional TRA qualifying requirements and is largely unchanged from 20 CFR 617.11(a)(2) (TRA qualifying requirements), 20 CFR 617.15(b)(2) (training application filing deadlines), and 20 CFR 617.15(b)(3) (requirement of participation in training except during breaks in training). Proposed paragraph (a)(2) specifies that the AAW must have exhausted Basic TRA before establishing eligibility for Additional TRA. This addition is intended to clarify that Additional TRA is not a permissible alternative to Basic TRA for an AAW who missed the training enrollment deadlines in § 618.725 and who lacks good cause for failure to meet such deadlines.

Proposed paragraph (b), governing the duration of Additional TRA, closely follows the definition of ''eligibility period'' for Additional TRA in 20 CFR 617.3(m)(2). The only substantive difference is that an AAW may receive up to 65 weeks of Additional TRA during a 78-week period, as required by sec. 233(a)(3) of the Act.

Proposed paragraph (b)(1) addresses the first potential start date for the receipt of Additional TRA, which is the period immediately following the last week of entitlement to Basic TRA. Proposed paragraph (b)(2) provides the second potential start date for the receipt of Additional TRA, which is the period beginning with the first week of approved training, if the training starts after the last week of Basic TRA. Proposed paragraph (b)(3) provides the third possible start date for Additional TRA, which is the first week in which training already in progress is approved under subpart F. Proposed paragraph (b)(3) is similar to 20 CFR 617.3(m)(2)(iii).

Section 618.765 Qualifying Requirements for, and Timing and Duration of, Completion Trade Readjustment Allowances

Proposed § 618.765, providing the qualifying requirements for, and duration of, Completion TRA, is a new section because Completion TRA was added by TAAEA and administrative guidance was issued to States. Proposed § 618.765 codifies sec. 233(f) of the Act as well as provisions in administrative guidance implementing the provision and resolving policy issues arising from the implementation.

Proposed paragraph (a) describes the qualifying requirements and proposed paragraphs (a)(1) through (3) contain the eligibility criteria to receive Completion TRA. Completion TRA can be paid only if the AAW meets the qualifying requirements for, and has subsequently exhausted, Basic and Additional TRA. Proposed paragraph (a)(4) requires that, during the period in which the AAW is eligible to receive Completion TRA, if at any time the AAW fails to meet the eligibility criteria in proposed paragraphs (a)(1) through (3), the State must make no further payments to the

AAW. For example, if a worker has been meeting training benchmarks as required in proposed paragraph (a)(3)(i) and was expected to complete approved training within the established period, but at the point of payment of week five, there is an indication that approved training will not be completed within the established period, Completion TRA payments must cease. However, weeks of Completion TRA previously paid based on information that was correct at the time of payment is properly paid, and therefore States must not treat them as overpayments.

Proposed paragraph (b) describes that sec. 233(f) of the Act gives the Department discretion to establish the eligibility period within which the 13 weeks of Completion TRA are payable and training must be completed in order to meet the Completion TRA eligibility requirements. Proposed paragraph (c) explains that the Department determined that the eligibility period for Completion TRA will be the 20-week consecutive calendar period beginning with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended for justifiable cause in accordance with proposed § 618.770(a). Proposed paragraph (d) requires that States have a process for taking Completion TRA applications and goes on to say that although the 20-week period may begin at the end of Additional TRA, a State must not automatically begin Completion TRA the week following the end of Additional TRA. States may not amend the AAWs approved training program to provide for a later 20-week eligibility period for Completion TRA if: (1) Training is interrupted after the AAW has filed a claim for Completion TRA; and (2) that interruption leads to a training completion date that occurs after the 20-week eligibility period in the approved training program. The 20-week eligibility period to receive up to 13 weeks of Completion TRA allows for the flexibility of a break in training of up to 7 weeks, but no more. In this scenario, since the amended training completion date is after the 20-week eligibility period in the approved training program, the worker will no longer be eligible for Completion TRA. In the same scenario, if a worker has not yet filed a claim for Completion TRA, the eligibility period for Completion TRA has not begun. In that case, the State may amend the AAWs approved training program to provide for a later training completion date and correspondingly later 20-week eligibility period for Completion TRA.

Section 618.770 Special Rule for Justifiable Cause

Proposed § 618.770 addresses the Special Rule for Justifiable Cause contained in sec. 233(h) of the Act. There is no similar provision in 20 CFR part 617. Proposed paragraph (a) allows for an extension of the Basic, Additional, and Completion TRA eligibility periods for good cause according to the same good-cause standard found in proposed § 618.730, as discussed in the preamble for that section. Proposed paragraph (b) specifies that while the eligibility period for Basic, Additional, and Completion TRA may be extended for justifiable cause as determined by the State, the maximum benefit amount and number of weeks this benefit may be received must not change.

Section 618.775 Payment of Trade Readjustment Allowances During Breaks in Training

Proposed § 618.775, governing payment of TRA, whether Basic or Additional, during breaks in training, is substantially the same as 20 CFR 617.15(d) except that, as the result of a statutory change to sec. 233(e) of the Act, it extends the maximum number of days a break may last without interrupting TRA payments from 14 days to 30 days. Proposed paragraph (a) eliminates the provisions in 20 CFR 617.15(d)(5) and (6), concerning the effect of breaks in training on Basic and Additional TRA payments and eligibility periods, because the maximum eligibility periods for Basic and Additional are covered in detail in §§ 618.750, 618.755, and 618.760. Proposed paragraph (b) provides a basis for counting days similar to 20 CFR 617.15(d). Proposed paragraph (c) addresses breaks in training for Completion TRA and references the eligibility period for Completion TRA in proposed § 618.765. No payments for breaks in training are allowed, and the worker only can be paid Completion TRA for each week of approved training, and then only if all of the Completion TRA eligibility criteria are met. The 20-week consecutive calendar period within which an AAW may receive up to 13 weeks of Completion TRA, in accordance with § 618.765 of this subpart G, allows the further flexibility of continuing eligibility to accommodate any break in training (scheduled or unscheduled) of up to but no longer than 7 weeks, so long as the worker completes the approved training by the end of the 20-week eligibility period.

Section 618.780 Disqualifications

Proposed § 618.780, governing disqualifications from receiving TRA, is structured the same as 20 CFR 617.18. Proposed paragraph (a) is as the same as 20 CFR 617.18(a) but is titled ''General rule'' instead of ''State law applies.'' Proposed paragraph (b)(1)(i) is unchanged from 20 CFR 617.18(b)(2)(i). Proposed paragraph (b)(1)(ii) removes the specific language in 20 CFR 617.18(b)(2)(ii) requiring training combined with work to be more than 8 hours a day or 40 days in a week. Instead, an AAW may refuse work because such work either would require discontinuation of approved training or interfere with successful participation in TAA approved training.

Proposed paragraph (b)(2)(i) follows 20 CFR 617.18(b)(2)(i), except that it adds clarifications. Proposed paragraph (b)(2)(i) omits language in 20 CFR 617.18(b)(2)(i) that a disqualification under that paragraph applies to not just Basic TRA but also to ''any other payment'' under part 617. The Department determined this language is both inaccurate and unnecessary. It is inaccurate because participation in training is not an eligibility requirement for job search or relocation allowances, so that a TRA disqualification under proposed paragraph (b)(2)(i) would not affect the AAW's entitlement to those payments. It is unnecessary because provisions in other sections of this proposed subpart G, and other proposed subparts, are sufficient to ensure that a worker who fails to meet the participation in training requirement, would not receive benefits for which participation in training is required as a condition of receiving such benefits. Specifically, proposed §§ 618.760 and 618.765 prohibit payment of, respectively, Additional TRA and Completion TRA for any week in which the worker did not participate in training.

Secondly, proposed paragraph (b)(2)(i) includes two clarifications not contained in 20 CFR 617.18(b)(2)(i). The first is that an AAW who has justifiable cause (as described in paragraph (b)(3)(iii)) for a failure to begin participation in approved training, or for ceasing participation in such training, may receive Basic TRA for any week in which such failure or cessation occurred if the worker otherwise meets the requirements of this subpart G. The Department concludes that if an AAW is unable to begin or continue participation in training through no fault of the worker, it is appropriate to permit the worker to continue to collect Basic TRA. In these situations, a waiver

of the training requirement is not needed. The second clarification is that failure to begin participation in training, cessation of participation in training, or revocation of a waiver normally does not change the eligibility periods in proposed §§ 618.755, 618.760(b), and 618.765(b).

Proposed paragraph (b)(2)(ii) is a new provision but is helpful if a person reading proposed § 618.780 in isolation overlooks the exception to the participation in training requirement contained in proposed § 618.720(g)(2). Proposed paragraph (b)(2)(ii) provides that the disqualification in proposed paragraph (b)(2)(i) does not apply to an AAW for TRA claims for weeks beginning before the filing of an initial claim for TRA, nor for any week beginning before the worker is notified that they are covered by a TAA Program certification and is fully informed of the disqualification rules.

Proposed paragraph (b)(3) provides the interpretation of three terms used in proposed paragraph (b)(2). Proposed paragraphs (b)(3)(i) and (ii) interpret, respectively, ''failed to begin participation'' and ''ceased participation'' in training the same as in 20 CFR 617.18(b)(2)(ii)(A) and (B). Both interpretations require that an AAW participate in all classes and activities in the training program, and the Department thereby intends that the worker be disqualified from receiving TRA if the worker misses even a single class or activity in the training program in a week without justifiable cause. TAA approved training is meant to provide AAWs with the opportunity to find new employment as quickly and efficiently as possible. The Department has determined that the best way to carry out this intent, ensure that TAA Program funds are effectively spent, and improve program performance, is to require that the AAWs who receive those funds participate in every class and activity in their approved training program unless there is justifiable cause.

Proposed paragraph (b)(3)(iii) interprets ''justifiable cause'' to mean ''good cause'' under proposed § 618.730 and as discussed in the preamble for that section. Specifically excepted, however, are excused absences, whether or not those would otherwise meet the stringent standard of good cause. This exception is proposed so that workers in training are held to the same standard as other students.

Proposed paragraph (c), prohibiting payment of TRA to an AAW for any week during which the worker is receiving OJT, is substantively similar to 20 CFR 617.18(c).

Proposed paragraph (d), prohibiting payment of TRA to an AAW for any week during which the worker is receiving part-time training, does not have a comparable section in 20 CFR part 617, as it is a new statutory requirement in sec. 236(g) of the Act, which has been implemented provisionally via administrative guidance in the form of Operating Instructions.

H. Subpart H—Administration by Applicable State Agencies

Proposed subpart H governs the administrative requirements and rules that States must follow in delivering TAA Program benefits and services. Proposed subpart H mirrors subpart G of 20 CFR part 617 with a few exceptions. These exceptions include organizing sections differently for improved clarity; revising provisions to reflect recent statutory amendments and policy determinations; and adding new sections to address requirements for veterans' priority of service, general fiscal and administrative requirements, and TAA Program performance. Proposed subpart H also excludes some provisions that are contained in subpart G of 20 CFR part 617 because they are based on expired laws. Other major changes cover topics such as merit staff requirements; actions the Department may take in the absence of an executed Governor-Secretary Agreement; State submissions of administrative rulings and waivers of training; veterans' priority of service requirements; program performance requirements; and overpayment requirements and instructions.

Section 618.800 Scope

Proposed § 618.800 sets out the scope for subpart H. This provision states that subpart H covers the administrative requirements governing the TAA Program. No similar provision exists in subpart G of 20 CFR part 617. However, OMB's Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900 also apply to the TAA Program.

Section 618.804 Agreements With the Secretary of Labor

Proposed § 618.804 addresses the agreements between the States and the Secretary (known as Governor-Secretary Agreements) that are required under sec. 239 of the Act before a State may deliver TAA Program benefits and services. It follows 20 CFR 617.59, but reorders the provisions and edits them for clarity. Proposed § 618.804 omits the provision at 20 CFR 617.59(d) requiring a newly executed agreement following amendments to the Act. The Department concludes that requiring this could delay services to trade-affected workers and cause unnecessary interruptions in program operations. Although the Department will require amended Governor-Secretary Agreements in certain circumstances, including for significant statutory changes, services will not be suspended while that process is completed. This section also lists the contents of the Governor-Secretary Agreements, which derive from the requirements of the Act.

Proposed paragraph (a) is the same as 20 CFR 617.59(a) and requires States to execute a Governor-Secretary Agreement. Proposed paragraph (b), which provides the requirements for executing a Governor-Secretary Agreement, is significantly rephrased but remains substantively unchanged from 20 CFR 617.59(b). Proposed paragraph (b) recognizes the current practice of executing agreements. A new sentence, indicating the statutorily mandated consequences to a State of not entering into a Governor-Secretary Agreement, has been added to proposed paragraph (b). Should a State not execute a Governor-Secretary Agreement, sec. 3302(c)(3) of the Federal Unemployment Tax Act (FUTA) requires that credits provided to employers under FUTA will be suspended in that State until a Governor-Secretary Agreement is executed. Paragraph (b)(2) also requires the State to execute an amended Governor-Secretary Agreement, upon the Secretary's request, in response to legislative, regulatory, or operational changes. This is a change from 20 CFR 617.59(d), which required the States to execute an amended agreement with the Secretary prior to administering amendments to the TAA provisions of the Act. This revised provision gives the Secretary the authority to require States to execute a new Governor-Secretary Agreement when there are amendments to the Act or other changes to the program that require amending the Governor-Secretary Agreement. This provision does not require a new Governor-Secretary Agreement before the State can continue to implement the program. Proposed paragraph (a)(3) contains the same requirement as 20 CFR 617.59(b), that an agreement will be executed on behalf of the United States by the Secretary.

Proposed paragraph (c) requires that the executed Governor-Secretary Agreement be available for public review to individuals and organizations, upon request. This was previously required in 20 CFR 617.59(c).

Proposed paragraph (d) establishes the CSA as an agent of the United States for purposes of receiving applications and providing payments in accordance with the Act. A similar provision appears in 20 CFR 617.59(e). The changes here act to conform the regulation more closely to secs. 239 and 241 of the Act, which expressly identify CSAs as agents of the United States only for these particular purposes.

Proposed paragraph (e) discusses breach of the Governor-Secretary Agreement, the impact on certain employer tax credits in a State deemed in breach, and requires the Department to provide reasonable notice and an opportunity for a hearing before determining that a State has breached the Governor-Secretary Agreement. This rephrases 20 CFR 617.59(f), but is not a new provision.

Proposed paragraph (f) provides that the Department is responsible for monitoring and reviewing State compliance with the Governor-Secretary Agreement. It modifies 20 CFR 617.59(g) by removing language assigning this responsibility to the ETA Regional Administrators. Although the ETA Regional Administrators retain primary responsibility for oversight of the grants provided to States under this part, the Department's methods of oversight have changed over time. There are now multiple units within the Department involved in components of grants management and oversight in addition to the regional offices. It also omits the reference in 20 CFR 617.59(g) to ''periodic'' monitoring and review because Departmental review is now an ongoing process.

Proposed paragraph (g) requires States to comply with the staffing flexibility requirements proposed in § 618.890. There is no similar provision in 20 CFR 617.20.

Proposed paragraph (h) provides a nonexhaustive list of mandatory terms for Governor-Secretary Agreements between the Secretary and States. The terms include the following:

- Provisions consistent with the requirements of sec. 239 of the Act (19 U.S.C. 2311) providing for these Governor-Secretary Agreements (proposed paragraph (h)(1)). This reminds States of, and ensures compliance with, sec. 239 of the Act without listing all its requirements.
- Authorization for the States to issue waivers under proposed § 618.725 (waiver of the training requirement for Basic TRA) and the requirement that the State submit, upon request, to the Department a copy of each such waiver and, if not already contained within each waiver, a statement of the reasons for such waiver (proposed paragraph (h)(2)).
- The requirement that the State supply data to the Department on national TAA Program performance goals identified in applicable regulations, the Department's written directives, or any other written means used to communicate such goals (proposed paragraph (h)(3)). This is a new requirement designed to implement guidance from OMB on the Government Performance and Results Act of 1993 (GPRA). GPRA requires, among other things, that Federal agencies take steps to improve the performance outcomes of federally funded programs. While proposed § 618.864 also requires States to report specified data on TAA Program performance outcomes to the Department, the Department has concluded that including a specific provision in the Governor-Secretary Agreements requiring reporting of performance data would emphasize to States the importance of pursuing improved performance outcomes in the TAA Program.
- Provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers (proposed paragraph (h)(4)). There are numerous workforce development programs aimed at serving dislocated workers, but the TAA Program is the only program that specifically serves trade-affected workers. Thus, to ensure the most efficient and effective use of Federal funds, the Department is establishing the TAA Program as the primary source of funds for trade-affected workers. This is not a new requirement. It has been included in Governor-Secretary Agreements. Operationally, this means that while groups of workers covered under a filed petition are to be served with WIOA rapid response and other funds, once a petition is certified under subpart B, the source of funding must shift to the TAA Program. The Department's regional offices will continue to provide technical assistance related to this matter.

Proposed paragraph (i) is revised from 20 CFR 617.59(i) and provides for the operation of the TAA Program absent a Governor-Secretary Agreement with a State. Proposed paragraph (i) provides that, should the need arise to operate the program in a State without a Governor-Secretary Agreement, the Department will issue administrative guidance informing trade-affected workers within that State, and the other States, about how the program will operate. This paragraph also sets out a list of options the Department may pursue should a State fail to execute a Governor-Secretary Agreement or be found in violation of the Governor-Secretary Agreement. The Department may execute an agreement with another State to operate the TAA Program; execute an agreement with a qualified organization that meets all requirements of the TAA regulations within the State to operate the TAA Program; or may operate the TAA Program directly. In the only instance this has ever occurred since the establishment of the TAA Program, the Department operated the program directly, but each situation is unique and the NPRM maintains the Department's flexibility to choose the option best suited to the circumstances. The Department encourages comments regarding this topic. Proposed paragraph (j) updates 20 CFR 617.59(h) to replace references to programs and services under the Workforce Investment Act with a reference to WIOA and adds a clarification of what constitutes a CSA.

Section 618.808 State Rulemaking

Proposed § 618.808 modifies 20 CFR 617.54 and breaks the section into paragraphs. This section provides States the authority and some flexibility to establish laws, regulations, procedures, or other policies related to the administration of the TAA Program while ensuring the Department can still administer the uniform interpretation of the program throughout the United States. Proposed paragraph (a) rewords 20 CFR 617.54 and replaces the generic term ''supplemental procedures'' with specific references to the establishment of laws, regulations, procedures, or other policies not inconsistent with the Act, this part 618, or administrative guidance issued by the Department. Proposed paragraph (b) retains the requirement in 20 CFR 617.54 that certified copies of the proposed law, regulation, procedure, or other policy be provided to the Department, but removes the requirement for them to be submitted on a form supplied by the Department to accommodate the improvements in technology that make this process much easier. Proposed paragraph (c) is unchanged from 20 CFR 617.54 and requires that all laws, regulations, procedures, or policies by the States be reviewed and approved by the Department before taking effect. It also authorizes temporary approval by the Department, in cases of administrative necessity, for a period not to exceed 90 days. Proposed paragraph (d) allows the Department, after providing the State notice of at least 30 days, to withdraw a previous approval. This modifies 20 CFR 617.54, which does not have a specific minimum period for reasonable notice.

Proposed paragraph (e) differs from 20 CFR 617.54 and requires States to follow State UI law requirements for public notice and opportunity for hearings on rulemaking. Proposed paragraph (e) more broadly also requires the State to follow any other State or Federal law that may require such public notice and opportunity for hearing. This change accommodates the possibility that other laws that require public notice of changes to State plans or procedures, such as WIOA, could apply.

Section 618.812 Subpoenas

Proposed § 618.812, authorizing States to issue and enforce subpoenas, is substantially the same as 20 CFR 617.53, with one significant clarification. Proposed paragraph (a) changes 20 CFR 617.53 to identify the purposes for which subpoenas may be issued. These provisions align with the Department's longstanding interpretation of the provision. Proposed paragraph (b) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that States may use subpoenas to gather information on individual members of a certified worker group. This addition clarifies the Department's position and addresses the challenges that States face in obtaining timely information from employers in order best to serve trade-affected workers. Lastly, proposed paragraph (c) is the same as 20 CFR 617.53 with only minor rewording.

Section 618.816 Trade Adjustment Assistance Program Benefit Information and Provision of Services to Workers

Proposed § 618.816 contains requirements the States must meet in providing TAA Program benefit information and services to trade-affected workers. It is significantly modified from 20 CFR 617.4 and has been moved from its previous location to this subpart; however, the purpose of 20 CFR 617.4, to instruct what benefit information must be provided, is unchanged. Proposed § 618.816 omits some provisions in 20 CFR 617.4 that the Department concludes are unnecessary or redundant. It updates other provisions and adds new provisions to reflect the various amendments to the Act that have occurred since the last rulemaking occurred. It also includes some of the requirements historically contained in the agreements with the States, for purposes of formal codification in regulation and allowing for public comment.

Proposed paragraph (a), requiring States to provide general program information and advice to trade-affected workers, is very similar to 20 CFR 617.4(a) and contains only minor language changes. This requirement derives from the obligation in sec. 225(a) of the Act to provide information to trade-affected workers about the benefits and services available to workers and their associated applications and timelines. The information provided to workers must cover all benefits and services available under the TAA Program, including the HCTC, if available.

Proposed paragraph (b) is a new provision mandated by the Act that requires States to provide rapid response assistance and appropriate career services, consistent with sec. 134 of WIOA, to all groups of workers covered by a petition filed under subpart B. The Governor, upon receipt of a petition for TAA, must ensure the availability of WIOA rapid response assistance (described as ''rapid response activities'' in 20 CFR 682.300, *et seq.*) and appropriate career services to the groups of workers covered by the petition. These services are to be provided as soon as possible after the petition is filed. The Department strongly encourages States to make the full suite of career services available under title I of WIOA available to groups of workers using rapid response funding to maximize layoff aversion. These services must be made available regardless of whether the petition is ultimately certified.

Proposed paragraph (c) implements sec. 235 of the Act and requires States to provide specified employment and case management services to trade-affected workers. This is a new provision that replaces 20 CFR 617.21. Proposed paragraph (c)(2) requires that, should there be insufficient TaOA funds available under the TAA Program to provide these services, States must make arrangements to make available these services through other Federal programs, such as WIOA.

Proposed paragraph (d)(1) requires States to provide assistance to groups of workers to file petitions for TAA. It combines requirements contained in 20 CFR 617.4(b) and (e)(2), simplifies the language of those provisions, and adds the authorization for States to file a petition on behalf of a group of workers. Section 239(g)(2) of the Act requires a State to facilitate the early filing of petitions for any group of workers that the State considers ''likely'' to be determined eligible. Proposed paragraph (d)(2) provides guidance on a determination of ''likely to be eligible.'' This means that the State has a reasonable belief that a group of workers may be impacted by foreign trade. Likelihood can be determined, for example, by the existence of certifications in the same industry, sector, supply chain, or for another location of the same firm. It may also be based on observations of the State, information provided by impacted workers, the employer, a union, press coverage, industry reports, or other similar sources. Proposed paragraph (d)(3) is reworded from 20 CFR 617.4(b) to remove the specific reference to ''unorganized'' workers. Proposed paragraph (d)(4) is not addressed in 20 CFR 617.4 but is authorized by sec. 225(a) of the Act, and it establishes that the State shall provide whatever assistance is necessary to enable groups of workers to prepare petitions or applications for program benefits. The State must assist in the filing of the petition where there is a likelihood of eligibility, despite any objections from other entities. Entities that may object, such as firms, should be reminded that a certification under the TAA Program does not have an additional financial cost to the firm.

Proposed paragraph (e) requires States to provide certain information and assistance to trade-affected workers after issuance of a certification covering their worker group. The provisions in proposed paragraph (e) are substantively similar to 20 CFR 617.4, but this paragraph rephrases and reorganizes them for clarity and simplicity. This section continues to implement sec. 225(b) of the Act, which requires written notices to each trade-affected worker, via the mail, and a general notice through newspaper advertisements. Proposed paragraph (e)(1), which was previously in 20 CFR 617.4(c), implements sec. 225(a) of the Act and requires States to inform the State board on vocational and technical education or equivalent agency, and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B and of projections, if available, of the needs for training under subpart F as a result of such certification. These efforts should be coordinated with State and local workforce development boards (LWDBs) established under WIOA. Proposed paragraph (e)(2) is similar 20 CFR 617.4(d)(1) but adds to the information that must be included in the written notice mailed to each worker covered by a certification, including information regarding the training enrollment deadlines (set forth in proposed § 618.720(c)) that are a condition of TRA eligibility. Proposed paragraph

(e)(2)(viii) specifically requires the State to include a Babel notice. A Babel notice is a short statement in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages. Although this is the first explicit reference to this requirement in TAA Program regulations, this is not a new requirement for workforce development or UI programs. The Department already addressed this practice in administrative guidance, specifically UIPL No. 30–11, ''State Responsibilities Regarding Limited English Proficient (LEP) Individuals,'' and TEGL No. 26–02, ''Publication of Revised Guidance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient (LEP) Persons,'' which both seek to ensure full implementation of title VI of the Civil Rights Act. Proposed paragraph (e)(3) provides that it is permissible to obtain a list of workers that are partially or totally separated from adversely affected employment or threatened with separation via subpoena pursuant to proposed § 618.812. Proposed paragraph (e)(4) maintains the requirement that notice of certification be published in a newspaper of general circulation. In particular, the Department is interested in learning what the States believe to be the most effective and least burdensome ways of ensuring that workers covered by a certification receive notice and a meaningful opportunity to receive TAA benefits should they so choose.

This NPRM eliminates the provision in 20 CFR 617.4(d)(2) that exempts the State from publishing a newspaper notice if the State can substantiate that all workers have received written notice about the certification. Upon further review of this regulation, the Department has concluded that this is not consistent with the notification requirements contained in sec. 225(b)(2) of the Act. The Department welcomes comments related to the definition of ''newspaper of general circulation'' and the interpretation of that term as it relates to the significant expansion in digital media since the original promulgation of 20 CFR part 617.

Proposed paragraph (e)(5) codifies sec. 239(f) of the Act and requires that upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part 618. There is no direct similar provision in the existing rule.

Proposed paragraphs (e)(6) and (7) are new provisions, added for the first time, and have no comparable counterparts in existing regulations or in administrative guidance. Proposed paragraph (e)(6) requires, in addition to the written notices sent by mail, that the State also use one method of modern electronic communication, such as email, to inform workers of the certification. The Department has concluded that the use of modern communication methods will better give notice to workers of their entitlement to TAA benefits and, if applicable, other program opportunities available under the public workforce system. Proposed paragraph (e)(7) allows States the flexibility to use social media and other means to reach workers.

Proposed paragraph (f) requires States to provide specific benefit assistance to workers. In addition to all of the benefits described in detail in this part 618, States must also include information on the HCTC, if available as described in subparagraph (B) of sec. 35(b)(1) of the Internal Revenue Code of 1986. Proposed paragraph (f)(1) is modeled on 20 CFR 617.4(e)(1) but is rephrased for clarity. One minor change from 20 CFR 617.4(e)(1) is that proposed paragraph (f)(1) omits the reference to UI claimants because it might be confusing. The Department interprets sec. 225(b)(1) of the Act to require that the State provide notice to each member of a worker group that it can reasonably identify as being covered by a certification whether or not that worker has applied for UI. This is especially important for AAIWs who are still employed and, thus, will not file a UI claim but are still potentially eligible for TAA approved training and employment and case management services. Where a petition has already been certified, the State must provide TAA Program information to all trade-affected workers covered by the certification. Where a petition is still pending, the State must provide the TAA Program information to the trade-affected workers covered by the petition following issuance of the certification.

Proposed paragraph (f)(2) combines the requirements of 20 CFR 617.4(e)(3) and (4) into a single paragraph because they are closely related. The language has been changed to emphasize the need for the State to provide in a timely manner the information and employment and case management services that trade-affected workers are entitled to receive to preserve eligibility for TAA Program benefits.

Section 618.820 Determinations of Eligibility; Notices to Individuals

Proposed § 618.820 contains procedural requirements that apply to State benefit determination and redetermination processes. There are three substantive changes from 20 CFR 617.50. The first is in proposed paragraph (d), which excludes an exception contained in 20 CFR 617.50(d) that the State law and regulations do not apply where they are inconsistent with the letter or purpose of 20 CFR part 617. This exception is unnecessary because this paragraph applies only to matters that, by the terms of Federal law, are decided under State law. The second difference is in proposed paragraphs (f) and (g). Proposed paragraph (f) requires the prompt payment of benefits when due, a requirement adopted from standard procedures under UI. Proposed paragraph (g) is unchanged from 20 CFR 617.50(g). Lastly, the language from 20 CFR 617.50(b) has been simplified and incorporated into the NPRM. There is no operational impact as a result of the revised language. The Department has also made other nonsubstantive changes to simplify the language in this section.

Section 618.824 Liable State and Agent State Responsibilities

Proposed § 618.824, concerning the respective responsibilities of a liable State and agent States, updates 20 CFR 617.26 to reflect secs. 235, 237, 238, and 245 of the Act and reorganizes the requirements. In addition, the definitions for agent State and liable State are now found in subpart A of part 618. The changes are discussed below.

Proposed paragraph (a) is largely unchanged from 20 CFR 617.26(a) but reorders information and breaks it up into subordinate paragraphs. Proposed paragraph (a)(3)(i) adds the requirement for liable States to provide rapid response and appropriate career services (as described in sec. 134 of WIOA) to a group of workers for whom a petition is filed as required by sec. 221(a)(2)(A) of the Act. Proposed paragraph (a)(3)(ii) is new and provides that career services established under other Federal laws must also be made available to the group of workers, to the extent authorized by those laws. This NPRM does not attempt to identify all Federal laws that may be applicable. It is included to ensure that trade-affected workers are fully integrated into the public workforce system and are not excluded from any career services available to other dislocated workers. Proposed paragraph (a)(3)(iii) is new and has no comparable counterpart in

existing regulations or in administrative guidance. It clarifies for the first time that, in some instances, the liable State may seek assistance from one or more agent States in the provision of rapid response and appropriate career services, especially in situations where residency of the group of workers is divided into two or more States. Proposed paragraph (a)(4) updates language from 20 CFR 617.26(a) but has the same meaning. Proposed paragraph (a)(5) is new but codifies administrative guidance. It requires a liable State to provide lists of eligible TAA recipients and eligible RTAA recipients to the IRS. These lists are necessary for the IRS to determine who is potentially eligible to receive the HCTC and must be provided if HCTC is available, as States have been doing in accordance with administrative guidance. Also, the specific reference in 20 CFR 617.26(a) that ''the liable State also is responsible for publishing newspaper notices'' alerting the public to certifications is omitted here as unnecessary because it is contained in proposed § 618.816(e)(4).

Proposed § 618.824(b) is largely unchanged from 20 CFR 617.26(b) but reorders information and breaks it up into subordinate paragraphs. Proposed paragraph (b)(4) contains new language requiring the provision of employment and case management services, as described in subpart C. Proposed paragraph (b)(6) contains new language referencing subpart F and requires agent States to secure and pay the cost of any approved training and subsistence and transportation payments, according to determinations issued by the liable State. Whether the agent or liable State was responsible for payment of job search and relocation allowances was omitted from 20 CFR 617.26. Proposed paragraph (b)(7) is new and establishes that the agent State is responsible for the payment of job search and relocation benefits. Lastly, proposed paragraph (b)(8) adds language that requires agent States to assist in other activities and functions required by the Governor-Secretary Agreement, and is modified to specify that this includes assisting in the review of petitions by verifying such information and providing such other assistance as the Department may request. In certain circumstances, especially when layoffs occur near a border between States, there may be multiple agent States. Workers may choose to access services at a one-stop center closer to their residence rather than near their place of adversely affected employment. This may result in there being multiple agent States involved in serving the same group of workers.

Proposed § 618.824(c) is new and clarifies that in most instances, the liable State and agent State are the same State, and that, when this occurs, the State is responsible for all activities listed in proposed § 618.824(a) and (b).

Section 618.828 Appeals and Hearings

Proposed § 618.828 provides requirements governing appeals and hearings of TAA Program determinations and redeterminations. It reiterates the requirements in 20 CFR 617.51, but slightly rephrases the language for clarity and also adds two new paragraphs. Proposed paragraph (a) largely follows 20 CFR 617.51(a), but notes that there are exceptions to the general rule that the applicable State law applies to appeals of TAA determinations or redeterminations. Proposed paragraph (b), clarifies that, as an exception to the general rule concerning appeals in proposed paragraph (a), a complaint that a determination or redetermination under this part 618 violates applicable Federal nondiscrimination laws administered by the Department, must be handled in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and/or 38, as provided in proposed § 618.894 (Nondiscrimination and equal opportunity requirements). This clarification helps ensure that proper procedures are followed where a claimant alleges discrimination. Proposed paragraph (c) follows 20 CFR 617.51(b) requiring appeals to be decided with a degree of promptness.

Proposed paragraph (d) is new and has no comparable counterpart in existing regulations or in administrative guidance. It addresses for the first time the impact of a reversal of a denial of a training program. In the case of a redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed. No costs of training may be paid unless such costs actually were incurred for training in which the individual participated, and no TRA may be paid with respect to any week during which the individual was not actually participating in the training.

Section 618.832 Overpayments; Penalties for Fraud

Proposed § 618.832, concerning overpayments, fraud, and penalties for fraud, generally repeats 20 CFR 617.55, but reorganizes the section for clarity. Proposed § 618.832 slightly rephrases some of the provisions in 20 CFR 617.55 and also contains a few substantive differences from 20 CFR 617.55. Proposed § 618.832 omits provisions in 20 CFR 617.55(h) on use of TAA Program funds to offset other debts. Because of the importance the Department places upon these provisions, proposed subpart H devotes a separate proposed section to this issue, § 618.836.

Proposed paragraph (a)(1) updates the requirements in 20 CFR 617.55(a) based on the amended statute. The most significant change is that the decision to waive overpayments under certain conditions is now mandatory rather than optional. While the no-fault requirement remains, as described in proposed § 618.832(a)(1)(i) and (ii), instead of an ''equity and good conscience'' standard described in 20 CFR 617.55(a)(1)(ii), States must look to whether repayment would constitute a financial hardship. Proposed paragraph (a)(2) provides rules for the administration and interpretation of financial hardship for overpayment waiver purposes.

Proposed paragraph (a)(3) requires that workers be provided a reasonable opportunity to demonstrate that they were without fault and are unable to repay their TAA Program overpayments and, therefore, are eligible for waivers of overpayments. As a result of Congressional action, see Public Law 111–5, sec. 1855(2), 123 Stat. 115, 394 (2009), the Department is also changing the language related to financial hardship. A financial hardship exists where the funds would otherwise be needed to pay for ordinary and necessary living expenses after taking into account the income and other resources reasonably available to the individual and their household. This is a significant change in operations and the Department is seeking to establish a national standard. Comments on this topic are encouraged and appreciated.

Proposed paragraph (b) is substantially the same as 20 CFR 617.55(b), but reorders and slightly rewords the language. It provides the statutory requirement for a lifetime disqualification from receipt of benefits under the Act for anyone found to have knowingly provided a false representation or nondisclosure of material fact.

Proposed paragraph (c) follows 20 CFR 617.55 in that, prior to requiring repayment, a State or the Department, as appropriate, must provide notice of the determination to the individual and an opportunity for a fair hearing. Only then, can a decision become final and repayment be required, unless a ruling has already been made by a court, in

which case, that requirement has been met and repayment can be required.

Proposed paragraph (d) provides instructions related to overpayments under training, job search and relocation allowances, and RTAA, primarily following the existing provisions in 20 CFR 617.55(c). Proposed paragraph (d)(2) adds some further clarification providing that if an AAW or AAIW (although AAIWs are ineligible for job search or relocation allowances) fails to complete a training, job search, or relocation without good cause, the portion not completed is an overpayment, but that costs for the completed portions are not overpayments. If, for example, a trade-affected worker completed 3 out of 4 semesters of an approved training program, and then did not complete the last semester without good cause, any payments made for the fourth semester would become overpayments under this part 618. Proposed paragraph (d)(3) is new and has no comparable counterpart in existing regulations or in administrative guidance. It establishes for the first time that for purposes of proposed § 618.832(d), a trade-affected worker has good cause if the worker acted diligently yet was unable to complete the training, job search, or relocation because of an exigent circumstance. The State must determine whether good cause exists on a worker-by-worker basis. Proposed paragraph (d)(5) has no corresponding provision in 20 CFR part 617. It provides the rules for addressing overpayments under RTAA. If a State has verified continued eligibility, as required by proposed § 618.515(c), then payments made after an AAW's wages have changed that were correct and accurate at the time they were made (based on all the information available at that time) are considered payments to which the AAW was entitled under sec. 243 of the Act. Such payments are not overpayments subject to proposed § 618.832. The Department encourages comments related to proposed paragraph (d), specifically with respect to how to treat failure to complete as it relates to overpayments.

Proposed paragraph (e) carries forward the provisions from 20 CFR 617.55(a)(2)(ii)(C)(*5*), with changes concerning recovering an overpayment from the affected person's State UI entitlement and also adds some new provisions. Because 20 CFR 617 contains no provision for cross-program offsets, proposed paragraph (e)(2) adds language requiring overpayment recovery from State UI, as required by the Middle Class Tax Relief and Job Creations Act, subject to the limitation on the amount that may be recovered from any single payment in proposed paragraph (e)(3). Proposed paragraph (e)(3) is new and limits recoveries from all types of UI described in proposed paragraph (e) to no more than 50 percent of each of the affected person's State or Federal UI payments. This limitation would implement the limitation in sec. 243(a)(2) of the Act. However, since the Act sets the 50 percent deduction as a ceiling, proposed paragraph (e)(3) requires each State to follow its own law if its law provides for a lower limit.

Proposed paragraph (f) repeats the requirements of 20 CFR 617.55(g) but makes one change. It changes the requirement that State procedures for detection and prevention of fraudulent TAA Program overpayments be ''commensurate with'' those for UI to a requirement that State procedures to be ''the same as'' those for UI. This language change clarifies that States must apply processes used for the detection and prevention of overpayments under UI to TAA Program benefits as well. The Department concluded from oversight activities that most States' processes did not meet the ''commensurate with'' standard. Based on oversight reviews conducted by the Department, States have not sufficiently or equitably enforced the detection and prevention of overpayments under the TAA Program. The Department proposes to further clarify that States must apply the same detection and prevention measures to the TAA Program to increase and simplify compliance

Proposed paragraph (g) follows 20 CFR 617.55(i) in explaining who is a ''person'' for purposes of proposed §§ 618.832 and 618.836, except for two modifications. The modifications are that proposed paragraph (g) explicitly includes a ''training provider as well as the officers and officials thereof'' and ''a trade-affected worker or other individual.'' The first of these changes closes a loophole that may have allowed officers and officials of training providers to avoid culpability and liability in instances of fraud and recovery of debts to the United States. The second change makes it clear that TAA Program participants (trade-affected workers) and nonparticipants (other individuals) may also be found culpable and liable under the fraud and debt recovery portions of this rule.

Proposed paragraph (h) is new and implements sec. 244 of the Act establishing penalties for knowingly making a false statement, not disclosing a material fact, or causing others to do so. The penalties established by the Act are imprisonment for not more than 1 year, a fine under title 18 of the United States Code, or both. Because these penalties are imprisonment or a fine under the Federal criminal code, the Department views the penalties as criminal sanctions rather than administrative penalties, which cannot be imposed absent the safeguards and higher standards of proof afforded criminal defendants. Suspected violations must be reported to the U.S. Department of Labor Office of the Inspector General.

Section 618.836 Recovery of Debts Due the United States or to Others by Trade Adjustment Assistance Offset

Proposed § 618.836 governs the use of TAA Program benefits to offset debts that a benefit recipient owes to others. Proposed paragraph (a) largely follows 20 CFR 617.55(h)(1) but rephrases it for clarity and adds RTAA. The authority for this requirement is the Debt Collection Act of 1982 (Pub. L. 97–365) and its implementing regulations in 29 CFR part 20.

Proposed paragraph (b) makes a significant change in 20 CFR 617.55(h)(2), which prohibits using TAA Program funds to pay debts owed to any State or other person or entity except that it permits offset for debts owed for child support and alimony required to be collected under State and Federal law. Proposed paragraph (b) changes this to provide that TAA Program benefits may only be used to recover debts owed to others to the same extent allowed under Federal UI law. The Department proposes this change because the exception in 20 CFR 617.55(h)(2) goes beyond Federal law and singles out one specific instance in which SSA requires or permits collection of debts but ignores others. For example, SSA sec. 303(e)(2) requires a State to deduct ''child support obligations'' from ''any unemployment compensation otherwise payable to an individual.'' Under SSA sec. 303(e)(2)(B), this deduction is applicable to TRA. However, SSA sec. 303(e)(1) defines ''child support obligations'' as ''only includ[ing] obligations which are being enforced pursuant to a plan described in [sec. 454 of SSA] which has been approved by the Secretary of Health and Human Services under part D of title IV of [SSA].'' It therefore does not permit deductions for alimony or for child support, in general, as provided by 20 CFR 617.55(h)(2), but only for child support obligations of the type specified. UIPL No. 45–89 (55 FR 1886, Jan. 19, 1990) explained in detail the deductions permitted under SSA sec. 303(e)(2). Other SSA provisions

permit deductions from State UI for other purposes. These SSA provisions, like sec. 303(e)(2), apply to TRA. For example, sec. 303(d)(2)(A) of SSA permits offset of UI to recover uncollected over-issuances of food stamps under sec. 303(e)(2)(B)(iii). The Department concludes that all TAA Program benefits, which relate closely to TRA and RTAA, should follow the same rules for the offset of benefits as Federal UI law, except as provided under proposed paragraph (a).

Section 618.840 Uniform Interpretation and Application of the Act and Regulations

Proposed § 618.840 repeats the requirements in 20 CFR 617.52, but with some reorganization and a few substantive changes.

Proposed paragraphs (a) and (b) repeat the requirements in 20 CFR 617.52(a) and (b), except that they replace the references to 20 CFR part 617 with references to part 618. The Department has also revised the rules of construction to remove two references to ''the Act.'' The Department has reconsidered this language and acknowledges Congress's statement in sec. 288 of the Act that ''[i]t is the sense of Congress that'' the Department should apply the provisions of the Act ''with the utmost regard for the interests of workers, firms, communities, and farmers petitioning for benefits.'' The Department agrees with this goal and this NPRM gives the utmost regard to those petitioning for benefits.

Proposed paragraph (c)(1)(i) modifies the requirement in 20 CFR 617.52(c)(1) that States automatically forward to the Department a copy of each administrative decision rendered under the TAA Program. Instead, States must submit administrative decisions only upon request by the Department. The Department has determined that this requirement is unduly burdensome. There is one exception to this rule, expressed in paragraph (c)(1)(ii). The Department will require States to submit to the Department all decisions appealed to the State's highest UI administrative appeals authority, which is the highest level of administrative appeal. In some States, this body is known as the Board of Review, Board of Appeals, or Unemployment Insurance Commission. For States without such an agency, this provision does not apply. This process provides the Department an opportunity to resolve issues before they become judicial actions. States are also encouraged to send to the Department any other administrative decision that it determines is erroneous or contrary to the Act, regulations, or administrative guidance. Proposed paragraph (c)(1)(iii) applies to all State or Federal court decisions and notices of pending State or Federal court actions and requires all State and Federal court decisions and notices to be sent to the Department. This includes notices by a State or Federal court of a hearing date or court date as well as all rulings related to the action.

Proposed § 618.840(c)(2) through (6) retains the provisions in 20 CFR 617.52(c)(2) through (6). These provisions set out the relationship between the Department and the State with regard to determinations, redeterminations, and judicial proceedings under the Act. Proposed paragraph (d) retains the remaining provisions from 20 CFR 617.52(c)(3).

Section 618.844 Inviolate Rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance

Proposed § 618.844 repeats the requirements in 20 CFR 617.56 concerning inviolate rights to TAA with no substantive change.

Section 618.848 Veterans' Priority of Service

Proposed § 618.848, a new section, establishes priority of service requirements for the TAA Program. Under 38 U.S.C. 4215, eligible veterans and specified covered persons are entitled to priority of service in Department-funded workforce development programs, if the individual otherwise meets the eligibility requirements for the program. 38 U.S.C. 4215(b). This proposed section requires States to give priority for approval and funding of TAA Program benefits and services to trade-affected workers meeting the requirements for veterans' priority of service. In particular, this priority would become effective if the TAA Program has already allocated the full fiscal year funds for TaOA, and States have exhausted a significant proportion of their available funds. In that case, each State must give priority to veterans and to the specified categories of covered persons, over other trade-affected workers' applications for services, in approving and funding TaOA.

Section 618.852 Recordkeeping and Disclosure of Information Requirements

Proposed § 618.852 repeats the requirements in 20 CFR 617.57 concerning recordkeeping and disclosure of information but makes a few changes. Proposed paragraph (a) is very similar to 20 CFR 617.57(a), with two changes. First, proposed paragraph (a) omits reference to reporting form ETA–563. This particular report is no longer required. Rather, required reporting will be governed by proposed § 618.864. Second, proposed paragraph (a) adds that States are required to maintain records that contain any information the Department determines to be appropriate in support of any reports the Department may require, including the reports specified in proposed §§ 618.860(f) and 618.864(e). Paragraph (a) also contains a cross-reference to the record retention requirements of the Uniform Guidance at 2 CFR 200.333. Per the Uniform Guidance, States are required to retain records, in general, for 3 years after the last action taken on that record (determination, appeal, payment, inclusion in a performance or financial report, etc.). Proposed paragraph (a)(4) requires States to document that employment and case management services described in subpart C were provided or offered to a participant. This is not a new requirement; however, this was not previously explicitly stated in regulation. This NPRM allows for paper-based or electronic case management systems, or a combination thereof. All records must be available for review by the Department.

Proposed paragraph (b) retains the requirements in 20 CFR 617.57(b) with regard to confidentiality requirements but reformats the section and adds a subordinate paragraph addressing information a State obtains in support of the Department's investigation of a petition for certification of the eligibility of a group of workers. Proposed paragraph (b)(1) addresses confidentiality and the disclosure of personally identifiable information (PII). The language in proposed paragraph (b) is consistent with the language in the Governor-Secretary Agreements with the States, which more broadly encompasses any State and Federal confidentiality and disclosure requirements that might apply to TAA Program information. To facilitate the provision of services, States should have workers sign a release of information document. Proposed paragraph (b)(2) notes that information obtained by the State for the Department in support of an investigation under subpart B must comply with the requirements in subpart B of this regulation.

Proposed paragraph (c) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It explicitly allows for the use of paper and electronic records or a combination thereof. This paragraph requires that regardless of the medium used, the

records must be available for review for oversight purposes. This addition addresses the improvements in technology and means of transmitting, storing, and maintaining documents that have occurred since the publication of 20 CFR part 617.

Proposed paragraph (d) is new, added for the first time, and has no comparable counterpart in existing regulations or in administrative guidance. It addresses the use of electronic signatures. The Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229) establishes that electronic contracts and electronic signatures have the same legal standing and enforcement as traditional paper contracts signed in ink.

Section 618.856 Information, Reports, and Studies

Proposed § 618.856 retains the language in 20 CFR 617.61 requiring States to submit such information and reports and conduct such studies as the Department requires for TAA Program purposes.

Section 618.860 General Fiscal and Administrative Requirements and Cost Classification

Proposed § 618.860 is a new section that contains general fiscal and administrative requirements applicable to State administration of the TAA Program. It is modeled on WIOA regulations, but with significant differences. Proposed § 618.860 contains no requirements that States are not already required to meet. These requirements come from the Act, OMB guidance at 2 CFR part 200, the Department-specific regulations at 2 CFR 2900, and the Department's administrative guidance and regulations. The Department is including this section in subpart H to highlight these requirements and improve compliance by States and other entities receiving TAA Program funds.

States should consult the appropriate regional office for additional technical assistance related to classification of costs under the TAA Program or other requirements in this section.

Proposed paragraph (a)(1) requires compliance with the Uniform Guidance at 2 CFR part 200 and the Department's specific requirements at 2 CFR part 2900.

Proposed paragraph (a)(2) provides that the period of expenditure for TAA Program funds granted for employment services, training, and job search and relocation allowances is 3 years. This provision follows sec. 245(b) of the Act. Funds to pay TRA and RTAA benefits are available for expenditure only in the fiscal year for which they are awarded.

Proposed paragraph (a)(3) provides that equipment, as described in 2 CFR 200.33, and computing devices, as described in 2 CFR 200.20, includes equipment acquired with TAA Program funds under TAA Program Annual Funding Agreements. This provision restates existing Federal requirements and responds specifically to two situations observed in the States. First, in the case of a State's internal reorganization, any equipment purchased in prior years with TAA Program funds must continue to be used for the TAA Program. Second, proposed paragraph (a)(3) makes clear that the provisions of 2 CFR 200.313 apply to equipment purchased under the TAA Program.

Proposed paragraph (a)(4) requires, (see 2 CFR 200.307(e)(2)), that TAA Program grant recipients apply the addition method to all program income earned under TAA Program grants. The instructions for the quarterly financial report for the TAA Program also contain this requirement.

Proposed paragraph (b) provides guidance on cost classification as administrative costs under the TAA Program, as authorized by sec. 235A of the Act and described in each TAA Program Annual Funding Agreement, which States are required to submit annually. Paragraph (b)(1) provides that the Department will include each fiscal year's administrative cost limitation in grant documents or annual funding agreements. Paragraph (b)(2) provides a definition of ''administrative costs'' under the TAA Program. Although the language in this section is similar to WIOA, there is one significant difference. Under the TAA Program, administrative costs do not automatically become program costs when expended at the subrecipient level. Proposed paragraph (b)(2)(i) through (xviii) lists costs deemed administrative costs, following WIOA except as described above. Proposed paragraph (b)(3) addresses when awards to subrecipients or contractors are administrative costs. Proposed paragraph (b)(4) provides that, in compliance with the Uniform Guidance, costs for personnel and nonpersonnel must be properly allocated between program and administrative costs based on time worked or another equitable measure. Proposed paragraph (b)(5) indicates that costs for developing systems and procedures, including management information systems (MIS), required for administrative functions are to be charged as administrative costs. An MIS may include multiple components and while some of those components, or modules, will relate to services to individuals, others will be purely administrative, such as reporting. Where that is the case, States must appropriately allocate costs between the employment and case management and the administrative costs categories. Maintenance and enhancement of electronic case management systems to allow for improved case management services can be charged to employment and case management funds, rather than to related State administration funds. In addition, if multiple programs use an integrated MIS, States must also ensure that costs are properly allocated between those programs. Proposed paragraph (b)(6) reiterates the requirement to minimize duplication of efforts.

Proposed paragraph (c) addresses the requirement in 2 CFR 200.407 that grant recipients obtain the grantor's prior written approval before purchasing equipment, as defined in 2 CFR 200.33, using grant funds. No prior approval is required for the purchase of equipment with TAA Program funds. As provided in 2 CFR 200.439(b)(1), the Department retains the prior approval requirement for capital expenditures (2 CFR 200.13) and for capital assets (2 CFR 200.12), other than equipment.

Proposed paragraph (d) provides the audit requirements applicable to States and other entities administering the TAA Program under the Uniform Guidance.

Proposed paragraph (e) ensures compliance with the government-wide debarment and suspension requirements and drug-free workplace requirements.

Proposed paragraph (f) contains fiscal reporting requirements for States. This paragraph establishes, in accordance with 2 CFR 200.327 and 2 CFR 2900.14, that States are required to report financial results on an accrual basis. States must submit financial data on program activities as specified in reporting instructions. Paragraph (f)(4) requires States to maintain sufficient records to obligate participant funds on at least a quarterly, but no less than on a fiscal year basis, and periodically review obligations and de-obligate funds when a participant drops, completes, or is no longer eligible for training. States are encouraged to obligate and de-obligate funds on a semester-by-semester basis, when possible, to maximize the availability of funds.

Proposed paragraph (g) provides the statutory limit and minimum for administrative and employment and case management costs, respectively. Administrative costs under the TAA Program are limited to 10 percent of

allotted funds under sec. 235A of the Act. The Act also requires States to spend a minimum of 5 percent of funds allotted to them for employment and case management services described in subpart C. There is no corresponding regulation in 20 CFR part 617, but sec. 235A of the Act specifically authorizes this requirement. Compliance with the 10 percent maximum and 5 percent minimum will be monitored throughout the grant life cycle and enforced during the closeout process.

Paragraph (h) is a new requirement. This paragraph requires States to maintain sufficient and effective technology solutions required for reporting and the provision of services to participants. This requirement derives from several provisions of the Uniform Guidance at 2 CFR part 200. Under 2 CFR 200.205, for example, the Department is required to consider a grantee's quality of management systems, compliance with reporting requirements, and expenditure of funds. Specifically, 2 CFR 200.400(a) states that grantees are ''responsible for the efficient and effective administration of the Federal award through the application of sound management practices.'' The Department, based on its historical oversight of grantees, has found some MIS and information technology (IT) systems insufficient to allow the State to meet the requirement for ''efficient and effective administration.'' This requirement ensures a grantee's ability to serve participants, provide required performance and service reports, and meet financial management and reporting obligations.

Finally, paragraph (i) requires the States to dedicate an appropriate portion of funds (administrative and employment and case management) for the development, maintenance, and upgrading of MIS. An appropriate portion must be allocated to maintain and continuously improve the State's MIS. This portion will vary by State based on MIS deployment and usage. The Department has concluded, based on our oversight of the TAA Program, that States have historically failed to adequately budget for MIS activity. This has resulted in outdated systems that present a risk to the ability of States to provide TAA Program benefits to trade-affected workers and to provide the required performance and financial reports to the Department.

Section 618.864 Trade Adjustment Assistance Program Performance

Proposed § 618.864 is a new section that contains TAA Program performance requirements, as established by sec. 239(j) of the Act. The NPRM uses the term ''worker.'' This is taken directly from the Act. For purposes of proposed § 618.864, the term worker means a trade-affected worker. Proposed paragraph (a) requires States to report specified data on TAA Program performance outcomes to the Department and requires a description of the efforts made to improve outcomes for workers under the TAA Program. Specifically, States must report the primary indicators of performance identified in paragraph (b) of this section, which are very similar to those reported under WIOA.

Proposed paragraph (b)(1) identifies the primary indicators of performance. These are from the Act and are very similar to those established under WIOA. The Act uses the term ''workers'' and in this section the term ''workers'' refer to AAWs and AAIWs (trade-affected workers) as appropriate. AAIWs are eligible for training and employment and case management services only. However, in addition to reporting on the percentage of workers as WIOA does, the indicators also include a requirement to report on the number of workers who have achieved the indicator. In addition, unlike the WIOA programs, the TAA Program is not subject to the measure on effectiveness of serving employers. The primary indicators of performance under the TAA Program are:

- The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the second calendar quarter after exit from the program;
- The percentage and number of workers who received benefits under the TAA Program and who are in unsubsidized employment during the fourth calendar quarter after exit from the program;
- The median earnings of workers who are in unsubsidized employment during the second calendar quarter after exit from the program;
- The percentage and number of workers who received benefits under the TAA Program (excluding those in OJT and customized training) who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in the program or within 1 year after exit from the program; and
- The percentage and number of workers who received benefits under the TAA Program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.

Paragraph (b)(2) relates to the credential attainment indicator in paragraph (b)(1)(iv) and provides that, under the Act, workers who received benefits under the TAA Program and obtained a secondary school diploma or its recognized equivalent are only included in this indicator if they also obtained employment, or are in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

Consistent with sec. 239(j)(2)(B) of the Act, proposed paragraph (c) provides that the Department and a State may agree upon and establish additional indicators of performance. The Department is not proposing any additional measures at this time.

Proposed paragraph (d) requires States, under sec. 239(j)(3) of the Act, to use quarterly wage record information, as that term is defined in WIOA regulations at 20 CFR 677.175, in measuring progress on the primary indicators of performance and any additional measures established by the Department. The use of wage record information helps ensure the reporting of more complete and accurate performance outcomes. Per 20 CFR 667.175, quarterly wage record information means intrastate and interstate wages paid to an individual, the Social Security number (or numbers, if more than one) of the individual, and the name, address, State, and the Federal employer identification number of the employer paying the wages to the individual. Proposed paragraph (d) authorizes States to use Social Security numbers to measure the progress of TAA Program participants using quarterly wage information. Proposed paragraph (d) permits States to use supplemental information to obtain pertinent wage and employment data in accordance with TEGL No. 26–16, ''Guidance on the use of Supplemental Wage Information to implement the Performance Accountability Requirements under the Workforce Innovation and Opportunity Act.'' The Department encourages States to participate in data sharing agreements to access wage records. The Department will continue to develop administrative guidance to facilitate this process. Further, the Department, in tandem with the Department of Education, is developing a new State data sharing agreement to aid in the interstate exchange of wage record information to ensure States meet the performance

reporting requirements outlined in the NPRM.

Proposed paragraph (e) establishes performance reporting requirements for States. The Department plans initially to require the use of only the Participant Individual Record Layout (PIRL), as part of the DOL-Only Performance Accountability, Information, and Reporting System (OMB Control No. 1205–0521). States use the PIRL to submit required reporting elements. However, proposed paragraph (e) recognizes that the Department in the future might require reports that supersede or supplement this report. Proposed paragraph (e) also requires the verification or validation of reports as accurate.

Proposed paragraph (f) provides that the Department will publish the States' TAA Program performance annually in the form of a TAA Annual Report, as required by sec. 239(j)(4) of the Act, including on the Department's website. This program performance information will be provided at the State level. Due to restrictions on the release of PII, files containing the individual records will not be published or made available.

Proposed paragraph (g) implements the control measures required by sec. 239(i) of the Act. States are required to have a formal monitoring program in place that includes the review of participant case files on a regular basis. Section 239(i)(2) of the Act defines control measures as measures that are internal to a system used by a State to collect data and are designed to ensure accuracy and verifiability of such data. A number of administrative guidance documents provided additional information, in addition to the TAA Program and UI Annual Funding Agreements, the Trade Adjustment Assistance Data Integrity review process as described in proposed paragraph (g)(3), grant agreements, and Regional monitoring requirements are all part of effective control measures.

Proposed paragraph (g)(1) implements the control measures. Proposed paragraph (g)(2) describes that systems must be internal to the State. Proposed paragraph (g)(3) explains the purpose of the control measures and sets out a number of requirements. It codifies the Trade Adjustment Assistance Data Integrity review process used by the Department to verify and validate the data reported by the States in accordance with TEGL No. 04–14 (and any subsequent changes), ''Trade Adjustment Assistance Data Integrity.'' Proposed paragraph (g)(4) requires States to implement a formal monitoring program in compliance with the Uniform Guidance at 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900. The requirement to conduct program monitoring is not new. In addition to the requirement in the Uniform Guidance to conduct monitoring, administrative guidance established such a requirement, but the explicit inclusion of monitoring in the TAA Program regulations is new. The monitoring program must be designed to identify and share promising State practices, identify and correct deficiencies, and identify and address staff training needs. A minimum quarterly random sample of 20 cases must be audited and must include at least 2 certifications issued under subpart B. The four quarterly samples within a calendar year should also cover at least four different geographic areas of the State administering the program. The Department recognizes that in some States, it may be difficult to meet these requirements based on enrollment levels and the geographic distribution of certifications. If circumstances preclude a State from meeting these criteria, the State must contact the appropriate ETA regional office to design a monitoring program that better suits the TAA Program in that State, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

Proposed paragraph (h) implements sec. 249B(b) of the Act, which requires collection and reporting of specific information, and the proposed paragraph is taken from sec. 249B(b)(2) through (6) of the Act. Proposed paragraph (h) does not include references to sec. 249B(b)(1) of the Act (data on petitions filed, certified, and denied) as these data are collected internally by the Department and included in TAA Annual Report. Changes from statutory language include only the removal of additional statutory citations; proposed paragraph (h)(2), which replaces the phrase credits for health insurance costs under sec. 35 of the Internal Revenue Code with the HCTC; and proposed paragraph (h)(19) consolidates sec. 249B(b)(6) of the Act into one requirement to report on the total amount of the TaOA payments to the States in the aggregate and for each State. TaOA refers to funds to provide employment and case management services; training; and job search and relocation allowances, to trade-affected workers, and for related State administration. Subpart I discusses TaOA more broadly.

Section 618.868 Unemployment Insurance

Proposed § 618.868 retains the language of 20 CFR 617.58, but changes the reference from part 617 to part 618. This provision ensures that UI benefits are not denied or reduced by receipt of payment TAA benefits.

Section 618.872 Travel Under the Trade Adjustment Assistance Program

Proposed § 618.872 carries forward the FTR at 41 CFR chapters 300 through 304, and the policies of the Department, as the standard for State-provided travel, subsistence, and transportation benefits to TAA Program participants. This is not a new policy. The Department already enforces this requirement under 20 CFR 617.52 by ensuring the uniform interpretation of the rule—in this particular instance as it relates to payment of benefits related to travel costs. There has been some confusion over the years as to which travel policies apply to TAA Program participants. This NPRM makes it clear that TAA Program participants travel under the same rules as employees of the Department—allowing for consistent treatment of participants regardless of their location within the United States.

Section 618.876 Verification of Eligibility for Program Benefits

Proposed § 618.876 implements the requirements at sec. 239(k) of the Act for States to verify a participant is in satisfactory immigration status. Section 239(k) of the Act directs States to use the immigration status verification system in 42 U.S.C. 1320b–7(d) for purposes of reestablishing a worker's eligibility for unemployment compensation The Department has historically interpreted this verification requirement, for the TAA Program, to require participants to meet the requirements for eligibility under UI, including the requirement that the participant be authorized to work in the United States. This is because UI eligibility is a requirement of TRA and RTAA, and training can be approved only where there is ''a reasonable expectation of employment following completion of . . . training'' (sec. 236(a)(1)(C) of the Act). Without authorization to work in the United States, there can be no reasonable expectation of employment following completion of training.

While the Personal Responsibility and Work Opportunity Reform Act (PRWORA) ordinarily prescribes the categories of aliens eligible for Federal public benefits, which includes many of the benefits offered under the TAA Program, as a required one-stop partner under WIOA the TAA Program is governed by WIOA sec. 188 and the corresponding regulations, which limit the scope of PRWORA's application. WIOA sec. 188(a)(5) specifically

requires that participation in programs and activities and receipt of funds under WIOA title I be available to ''citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Attorney General to work in the United States.'' 29 U.S.C. 3248(a)(5). Thus, for immigration status verification under the TAA Program, ''satisfactory immigration status'' is not defined by PRWORA, but by WIOA and the eligibility requirements of the TAA Program itself.

As proposed paragraph (b) explains, for participants who obtained UI, the Act considers the initial verification required by sec. 239(k) of the Act to have been completed through use of the Systematic Alien Verification for Entitlement (or SAVE) program maintained by the United States Customs and Immigration Service (or USCIS) at the time eligibility for UI benefits was determined. The State is not required to reverify the participant's immigration status unless the documentation used during the initial verification is set to expire during the period the participant is eligible to receive TAA benefits.

Proposed paragraph (c) requires the State to redetermine periodically the eligibility of a noncitizen or national to ensure their continued satisfactory immigration status. The timing of the redetermination is based on the expiration date of materials used during the initial verification process and reverification must be done before the individual's status expires.

Section 618.884 Special Rule With Respect to Military Service

Proposed § 618.884 codifies the special rule with regard to military service established in sec. 233(i) of the Act. Proposed paragraph (a) provides that a State may waive any requirement of this part that the State determines is necessary to ensure that an AAW who is a member of a reserve component of the Armed Forces and serves a period of duty described in proposed paragraph (a)(2) is eligible to receive TRA, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty. Proposed paragraph (b) defines period of duty for various classes of military service. Although the Act uses the phrase ''may waive,'' the Department strongly encourages States to apply this rule broadly to provide service members the most flexible access to the TAA Program allowed by law.

Section 618.888 Equitable Tolling

Proposed § 618.888 originates from administrative guidance. It clarifies that TAA Program deadlines may be equitably tolled and provides the limited circumstances under which equitable tolling may be available. Proposed paragraph (a) sets out a uniform test for determining when equitable tolling is available. It adopts the exacting standards for equitable tolling applied by the U.S. Supreme Court in a variety of contexts. See, *e.g., Menominee Indian Tribe of Wisc.* v. *United States,* 136 S. Ct. 750, 755 (2016); *Pace* v. *DiGuglielmo,* 544 U.S. 408, 418 (2005).

Proposed paragraph (b) sets out a burden-shifting framework for equitable tolling in one unique circumstance—when the State fails to give required notice to a worker of a particular benefit (or potential benefit) and so the deadline for that benefit (or potential benefit) runs without the worker's knowledge. This circumstance only applies when the particular notice is one expressly required by this part 618. If a worker alleges (or claims) that the State failed to give such required notice, the State can rebut that evidence definitively by showing that the worker received actual notice by other means. Proposed paragraph (b) acts to emphasize to States the importance of complying with the notice requirements in this part 618. It should not be construed to otherwise lessen or lighten a worker's burden to show entitlement to equitable tolling in other circumstances.

Proposed paragraph (c) explains that a deadline equitably tolled is tolled for as long as the extraordinary circumstance preventing timely filing exists. Once the extraordinary circumstance is removed, then the deadline clock begins ticking again.

Finally, proposed paragraph (d) sets a limit on how long a deadline may be equitably tolled: 36 months. For example, if a deadline were to require the submission of an application by September 15, 2020, but extraordinary circumstances prevented timely submission, the latest the application could possibly be submitted, even with the benefit of equitable tolling, is September 15, 2023. The 36-month limit strikes a balance between, on the one hand, fairness and equity for individual workers and, on the other, the need for clarity and efficiency in the operation of the program as a whole. If equitable tolling were permitted to extend deadlines longer, or indefinitely, at least two adverse consequences would result. First, financial planning for the TAA Program would be more difficult because of potentially large numbers of dormant claims. Second, administration of the program would become more costly as State-level employees and reviewers applied the equitable-tolling test rather than simply accepting or denying claims; the fact-finding difficulties associated with older, stale evidence would compound this problem. All this work would leave fewer resources for workers themselves. The Department seeks comments on the establishment of this limit.

Section 618.890 Staffing Flexibility

Proposed § 618.890 on staffing flexibility amends the current rule at this same section (§ 618.890) to clarify that only certain activities under the TAA Program need to be performed by staff covered by a system meeting Federal merit personnel criteria regardless of whether they are funded by the TAA Program. This is a significant change. The Department has received inquiries in recent years about the applicability of the Federal merit system standards, promulgated by the U.S. Office of Personnel Management (OPM) in 5 CFR 900.603, to the TAA Program. These standards apply to the States' administration of, among other things, the UI program as a condition of the States receiving administrative grants.

The changes give States the freedom to staff employment case management services in the most effective and efficient way, using a combination of State employees, local government employees, contracted services, and other staffing models in the way that makes the most sense for them. This allows States to provide these services in a more seamless manner along with other programs co-located at the American Job Centers. One-size-fits-all merit-personnel-system staffing requirements have been part of the TAA regulations only since 2010, see 75 FR 16988 (Apr. 2, 2010), though they were part of the Governor-Secretary Agreements from 1975 to 2005. Based on program oversight activity and observations of operations at the State and local level, the Department now concludes that States should have the flexibility to use the staffing solutions that are most appropriate for their unique situations. In imposing the staffing requirements in 2010 by regulation, the Department stated that its purpose was promoting consistency, efficiency, accountability, and transparency. See id. at 16994–95. The Department values these goals but recognizes that they can be met by approaches other than a requirement

mandating one-size-fits-all merit staffing. This proposed rule fulfills other valuable policy objectives as well. Allowing States flexibility in their administration of the TAA Program gives them the opportunity to innovate, better integrates WIOA services, and may improve efficiency by focusing States on serving employers, workers, and training programs rather than complying with one-size-fits-all staffing requirements. Under the proposed rule, the Department would continue to hold States accountable for complying with their Governor-Secretary Agreements, consistent with the Act and its implementing regulations.

The Act requires States to provide the benefits and services authorized under the Act for trade-affected workers and to secure appropriate services provided through the one-stop delivery system established under WIOA. To avoid imposing barriers to integration of services among the one-stop partner programs, the regulations proposed here allow such services to be provided by State staff, local staff, or other local one-stop center employees. WIOA envisions an integrated workforce development system that provides streamlined service delivery of the WIOA partner programs, including the TAA Program. For services under WIOA's adult, dislocated worker, and youth programs, Congress did not require, nor does the Department require, that they be provided with personnel that meet Federal merit personnel system criteria. States and local areas have discretion in how to staff the provision of WIOA programs and services, and they have adopted a variety of staffing approaches—local-area staff, contractors, and State employees. The specific staffing requirements in the current TAA Program regulations may inhibit full integration of the TAA Program with WIOA's other services. This proposal, if finalized, would allow States to use the same service-delivery model for both the TAA Program and WIOA.

Some staffing requirements remain. Proposed paragraph (a) provides that the merit staff provisions of SSA apply to the appeals process under applicable State law. This is required by the Act at sec. 239(e) (19 U.S.C. 2311(e)) and also comports with the staffing requirements for State unemployment insurance offices.

Proposed paragraph (b) requires that all determinations on eligibility must be made by State staff, with the exception of the functions in paragraph (a) of this section, which must be carried out by merit staff. This aligns with sec. 239(e) of the Act as well as the staffing requirements for State unemployment insurance offices and ensures access to the appeals process under applicable State law.

Proposed paragraph (c) explains that all other functions under the TAA Program may be carried out using a variety of staffing models. Those models could include State staff under a merit-personnel system, other State staff, local providers, one-stop partners, or a combination of these solutions.

The Department has concluded that it is authorized to provide States this flexibility. When imposing the staffing requirements in 2010, the Department stated that ''promulgation of the merit staffing rule is within the discretionary authority delegated to it to interpret the Trade Act and administer the TAA program.'' 75 FR 16988, 16990. The Department also noted that ''the Trade Act does not directly address merit staffing; the legislative history is ambiguous, and for 30 years Congress did not expressly repudiate the Department's longstanding interpretation of the Trade Act as requiring merit staffing.'' Id. The Department also relied on the Federal district court decision in *Michigan* v. *Herman,* 81 F. Supp. 2d 840 (W.D. Mich. 1998), a case construing the staffing requirements under the Wagner-Peyser Act. There, the court held that the Department's interpretation of the Wagner-Peyser Act as requiring merit-personnel staffing was ''reasonable and permissible,'' but also observed that ''there is ample basis for a conflicting interpretation of the Wagner-Peyser Act's requirements.'' Id. at 848.

The Department recognized then that it had discretion to impose staffing requirements in the absence of a clear congressional mandate in one direction or the other. By the same token, the Department has discretion to remove those staffing requirements. It proposes to do so here for the reasons described above.

This means that TAA Program funding may be used to pay for employment and case management services rendered by State merit staff, State staff, and non-State staff, such as local providers, one-stop partners, and so on. The NPRM would require all determinations on eligibility for program benefits be approved by State staff.

Section 618.894 Nondiscrimination and Equal Opportunity Requirements

Proposed § 618.894 has no corresponding section in 20 CFR part 617 and addresses the applicability of the nondiscrimination and equal opportunity requirements contained in 29 CFR parts 31, 32, 35, 36, and 38.

Proposed paragraph (a) notifies States and subrecipients of financial assistance under the TAA Program that, as recipients of Federal financial assistance, they are subject to the requirements of 29 CFR parts 31, 32, 35, and 36, which set forth prohibitions relating to discrimination.

Proposed paragraph (b) notifies States and subrecipients of financial assistance under the TAA Program of the circumstances under which they are subject to 29 CFR part 38, which implements the nondiscrimination and equal opportunity provisions in sec. 188 of WIOA. It states that WIOA nondiscrimination regulations apply to States and subrecipients that operate their TAA programs and activities ''as part of the one-stop delivery system'' as provided in 29 CFR 38.2(a)(2). Since States and entities that carry out ''activities authorized under chapter 2 of title II of the Trade Act of 1974'' (29 U.S.C. 3151(b)(1)(B)(vii)) are required one-stop partners, WIOA nondiscrimination regulations apply to them ''to the extent that the programs and activities are being conducted as part of the one-stop delivery system'' (29 CFR 38.2(a)(2)). Coverage under this provision is not limited to States or subrecipients that colocate their operations in a one-stop center. Proposed paragraph (b)(2) notifies States and subrecipients they are also subject to 29 CFR part 38 if they otherwise meet the definition of ''recipient'' in that part.

Proposed paragraph (c) directs those with questions about the cited nondiscrimination provisions to the Department's Civil Rights Center.

Proposed paragraph (d) explains how the cited nondiscrimination provisions affect the applicability of any other Federal nondiscrimination laws, or any relevant State or local laws, to the TAA Program. Proposed paragraph (d)(1) provides that proposed § 618.894 does not affect any rights regarding, or protections against, discrimination provided by other Federal laws. Proposed paragraph (d)(2) likewise provides that proposed § 618.894 does not affect any rights regarding, or protections against, discrimination provided by other State and local laws, except as described in paragraph (d)(3). Finally, paragraph (d)(3) prohibits States from engaging in discrimination that is prohibited by 29 CFR parts 31, 32, 35, 36, and 38 (as applicable) in the areas pertaining to the TAA Program: The reception of aid, benefits, services, training or employment; participation in TAA programs and activities; employment at a State; and practice in

any occupation or profession. A State or local antidiscrimination law is incompatible if it, among other examples, provides less protection to an individual than that provided by 29 CFR part 31, 32, 35, 36, or 38; if it permits favoritism prohibited by those parts; or if it does not provide an exception to antidiscrimination law provided by those parts.

Section 618.898 Applicable State Law

Proposed § 618.898 is substantially the same as 20 CFR 617.16 and eliminates only minor outdated citations and 20 CFR 617.16(e) describing liable State, which has been incorporated into proposed § 618.824. The term ''applicable State law'' has been defined in proposed subpart A rather than in this proposed section. The separate paragraph addressing workers entitled to UI under the Railroad Unemployment Insurance Act in 20 CFR 617.16(d) is also proposed for removal because it has been incorporated into the proposed definition of ''applicable State law'' in § 618.110.

I. Subpart I—Allocation of Funds to States for Training and Other Activities

Proposed subpart I revises the regulations currently found at 20 CFR 618.900 through 618.940. The Department first published these regulations on April 2, 2010 (75 FR 16988); they became effective May 3, 2010. The proposed updates in this NPRM reflect subsequent statutory revisions and policy updates. Subpart I addresses the Act's provisions at secs. 236(a)(2) and 245 and establishes how funds appropriated for TaOA are allocated by the Department to the States. Some highlights of changes to the regulation include introduction of a new term, TaOA; a statutory update of the annual funding limit; and an update to the reserve fund request process. This proposed subpart also addresses the recapture and reallocation provisions established by sec. 245(c) of the Act.

Section 618.900 Annual Cap on Funds Available for Training and Other Activities

Proposed § 618.900 is revised to remove the introductory sentence and include additional revisions to the existing rule at 20 CFR 618.900, as discussed below. Proposed § 618.900(a) summarizes what services may be paid under the funding, and introduces a new term, ''Training and Other Activities,'' and its acronym, TaOA, both of which refer to the benefits and services described in secs. 235 through 238 of the Act. TaOA benefits and services are: Employment and case management services, training, job search and relocation allowances, and related State administration. Since sec. 236(a)(2)(A) of the Act was amended by TAAEA, and retained in TAARA 2015, to provide that the annual cap applies to funding for TaOA, not just to training under sec. 236, this new term is adopted to include these additional benefits and services. The phrase ''payments that may be made'' in the existing rule at 20 CFR 618.900 is replaced by ''funds made available,'' to accord with the language of sec. 236(a)(2)(A) of the Act. This section is also updated to reflect TAARA 2015's annual funding limit of $450,000,000 for FYs 2015 through 2021.

Proposed § 618.900(b) is new and explains the statutory period of availability of funds set out at sec. 245(b) of the Act. Funds allocated to States under the TAA Program for TaOA can be spent in the fiscal year awarded and the next 2 fiscal years, for a maximum altogether of 3 fiscal years.

Section 618.910 Initial Allocation of Funds

Proposed § 618.910 updates the language in the existing rule at 20 CFR 618.910 to reflect statutory changes and minor grammatical corrections and other clarifications. These changes primarily relate to indicating, consistent with proposed § 618.900(a), that the annual funding cap in sec. 236(a)(2)(A) of the Act applies to TaOA, not only to the training services described in sec. 236. Proposed § 618.910(a) through (f)(1) contain nonsubstantive changes to enhance the readability of the section.

Proposed § 618.910(f)(2) moves into a separate paragraph the first sentence of the existing rule at 20 CFR 618.910(f)(3) giving each of the four factors listed in proposed paragraphs (f)(1)(i) through (iv) equal weight. Proposed § 618.910(f)(3) retains the rest of the existing rule at 20 CFR 618.910(f)(3) but removes the word ''weighted'' in referring to the factors.

The existing rules at 20 CFR 618.910(f)(2) and (4) are both removed. However, under its authority at sec. 236(a)(2)(C)(ii)(V) of the Act, the Department may, through promulgation of changes to the rule, adjust the weights provided in proposed paragraph (f)(2), or add additional factors. Any needed changes to the formula in the future can be done through rulemaking, which will benefit from the views of the public and the procedural safeguards of the notice-and-comment process.

Section 618.920 Reserve Fund Distributions

Proposed § 618.920 describes the reserve fund request process established by sec. 236(a)(2)(D). Proposed § 618.920(a) updates the existing rule at 20 CFR 618.920(a) by removing the language that restricts a State from receiving additional funds for administrative costs or employment and case management costs without also requesting additional funds for training. Funds are not awarded by the Department against these specific line items, so there is no way for the Department to award funds in this manner. Furthermore, the statutory limitation on administrative cost, established by sec. 235A(1) of the Act, always applies.

The existing rule at 20 CFR 618.920(b) is divided into proposed § 618.920(b) and (c) for organizational purposes. There are minor edits in the NPRM, as well as a reference to TaOA instead of training funds. There are no substantive changes to the existing rule at 20 CFR 618.920(b).

Section 618.930 Second Distribution

Proposed § 618.930 updates the existing rule at 20 CFR 618.930 regarding the second distribution of TaOA funds, by changing the reference from training funds to TaOA funds, and makes other minor language clarifications and organizational changes.

Section 618.940 Insufficient Funds

Proposed § 618.940 modifies the existing rule at 20 CFR 618.940 to include the expanded list of benefits and services in addition to training for which funds may be expended. The Department will communicate by administrative guidance to States as necessary regarding the continued operation of the TAA Program if the Department determines that there are insufficient funds available for the remainder of a fiscal year. The intent of the existing rule at 20 CFR 618.940 is unchanged.

Section 618.950 Recapture and Reallocation of Training and Other Activities Funds

Proposed § 618.950 is new and provides the description of recapture and reallocation procedures that the Department may use to implement the recapture and reallocation provisions of sec. 245(c) of the Act. Although the Department is including this provision in the NPRM, this is an extreme action that will only be taken in the event of a catastrophic event. This will not be an annual process.

Consistent with sec. 245(c) of the Act, proposed § 618.950(a)(1) provides that funds remaining unobligated at the end of the second or third fiscal year after the funds were provided to the State may be recaptured. Proposed § 618.950(a)(2) provides that those recaptured funds may be reallocated in accordance with the procedures established in this section of the NPRM.

Proposed § 618.950(b) sets out the circumstances under which the Department may recapture and reallocate funds. The Department may recapture and reallocate unobligated funds when it is determined there are, or are projected to be, insufficient funds in a State or States to carry out TaOA for a fiscal year, or when the recapture and reallocation of funds would likely promote the more efficient and effective use of funds among the States. The Department concludes these procedures provide the necessary flexibility to promote sound financial practices, and use the limited available funds most effectively, by directing unobligated funds that are not likely to be spent to those States that are more in need of such funds in order to continue to provide program services.

Proposed § 618.950(c) and (d) provide the methodology that will be used during the recapture and reallocation process. If the Department determines that there are, or are projected to be, insufficient funds in a State or States to carry out TaOA for a fiscal year, proposed § 618.950(c) allows the Department to recapture unobligated funds from the State or States with the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the year in which the funds were awarded, and reallocate them to the States with, or projected to have, insufficient funds.

Proposed § 618.950(d) allows the Department to recapture funds from the State or States with the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the year in which the funds were awarded, and reallocate them to the States with the lowest percentage of unobligated or unexpended funds or to all States from which funds are not being recaptured.

Proposed § 618.950(e) provides that if the Department determines to recapture and reallocate funds under this section, an administrative notice must be sent to the States describing the methodology used and the amounts to be recaptured from and reallocated to each affected State not less than 15 business days in advance of the recapture of funds.

Lastly, proposed § 618.950(f) makes clear that the reallocation of funds under this section does not extend the period of availability for those funds.

Neither 20 CFR part 617 nor 20 CFR part 618 discuss funding for TRA or RTAA. This NPRM does not provide regulatory text for TRA or RTAA funding since those allocations are made through the Department's administration of the UI Program. The one exception, as provided by sec. 235A(1)(C) of the Act, and addressed in proposed subpart H, involves the use of TAA Program funds for the administration of RTAA.

V. Agency Determinations

A. Legal Authority

The Trade Act of 1974 (Pub. L. 93–618), title II, chapter 2, established the programs collectively known as the Trade Adjustment Assistance Program (TAA Program) (codified at 19 U.S.C. 2271 *et seq.*). This statute has been amended many times since its enactment, including multiple amendments since 2002 that have substantially affected the TAA Program (*e.g.,* Pub. L. 107–210 (2002); Pub. L. 111–5 (2009); Pub. L. 112–40 (2011); Pub. L. 114–27 (2015)). The Department's existing regulations under the Act, codified at 20 CFR parts 617 and 618, and 29 CFR part 90, have not been fully updated in response to the various statutory amendments to the Act. As a result, some portions of the existing regulations may not reflect current law. Section 248(a) of the Act (19 U.S.C. 2320(a)) requires that the Department prescribe such regulations as are necessary to carry out the provisions of the Act. Therefore, the Department seeks to develop and issue an NPRM that proposes to update and consolidate the existing regulations in order to fully implement all statutory amendments to the TAA Program.

B. Executive Orders 12866 (Regulatory Planning and Review), 13563 (Improving Regulation and Regulatory Review), and 13771 (Reducing Regulation and Controlling Regulatory Costs)

Under E.O. 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Id. Based on the analysis below, this NPRM is not an economically significant regulatory action under sec. 3(f) of E.O. 12866.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

E.O. 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017. This NPRM is expected to be an E.O. 13771 deregulatory action, because the cost savings associated with the rule are larger than the anticipated costs of the rule. Costs associated with the rule are from rule familiarization, the development of IEPs for trade-affected workers seeking training or job search allowances, and the implementation of two IC forms. Cost savings associated with the rule are from revisions to the definition of ''final determination'' related to judicial appeals and from streamlining the reconsideration process.

Outline of the Analysis

Section V.B.1 describes the need for the NPRM, and section V.B.2 describes the process used to estimate the costs of the NPRM and the general inputs used such as wages and number of affected entities. Section V.B.3 explains how the provisions of the NPRM would result in quantifiable costs, cost savings, and transfer payments, and presents the calculations the Department used to estimate them. In addition, section V.B.3 describes the qualitative costs, transfer payments, and benefits of the NPRM. Finally, section V.B.4

summarizes the estimated first-year and 10-year total costs, cost savings, net cost savings, and transfer payments of the NPRM. Section V.B.5 describes the regulatory alternatives that were considered during the development of the NPRM.

Summary of the Analysis

The Department estimates that the NPRM would result in costs, cost savings, and transfer payments. As shown in Exhibit 1, the NPRM is expected to have an average annual cost of $5,952 and a total 10-year cost of $46,383 (with 7-percent discounting). The NPRM is estimated to have annual cost savings of $79,654 and total 10-year cost savings of $559,456 (with 7-percent discounting). Cost savings associated with the rule are from revisions to the definition of ''final determination'' related to judicial appeals and from streamlining the reconsideration process. In addition, the NPRM is estimated to result in annual transfer payments of $564,257 and total 10-year transfer payments of $3,963,105 (with 7-percent discounting). The Department estimates that the NPRM would result in net cost savings of $626,333 discounted at 3 percent and $513,073 discounted at 7 percent, both expressed in 2018 dollars. For the purpose of E.O. 13771, the annualized net cost savings in 2016 dollars, when perpetuated, is $71,434 discounted at 7 percent.[12]

EXHIBIT 1—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COST SAVINGS, AND TRANSFER PAYMENTS OF THE NPRM

[2018 dollars]

	Costs	Cost savings	Net cost savings [a]	Transfer payments
Undiscounted 10-Year Total	$59,523	$796,540	$737,017	$5,642,570
10-Year Total with 3% Discounting	53,132	679,465	626,333	4,813,227
10-Year Total with 7% Discounting	46,383	559,456	513,073	3,963,105
.				
10-Year Average	5,952	79,654	73,702	564,257
Annualized with 3% Discounting	6,229	79,654	73,425	564,257
Annualized with 7% Discounting	6,604	79,654	73,050	564,257
Perpetuated Net Cost Savings [a] with 7% Discounting (2016 dollars)			71,434	

[a] Net Cost Savings = [Total Cost Savings] − [Total Costs].

The costs of the NPRM are those associated with State staff needing to familiarize themselves with the new regulations, the development of IEPs for trade-affected workers, and the implementation of two IC forms (*i.e.,* ETA Form 8561, Study of Domestic Industry, and ETA Form 9185, Application for Reconsideration). The largest contributors to the cost savings of the NPRM are from revisions to the definition of ''final determination'' related to judicial appeals and from streamlining the reconsideration process. See the cost and cost savings subsections of section V.A.3 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department was unable to quantify one cost, three transfer payments, and the benefits of the NPRM. We describe these costs and transfer payments, along with the rule benefits, qualitatively in section V.A.3 (Subject-by-Subject Analysis).

1. Need for Regulation

On June 29, 2015, the Trade Preferences Extension Act of 2015 (Pub. L. 114–27) was signed into law. Title IV reauthorizes the TAA for Workers program through 2021; it is known as TAARA 2015.

The regulations governing the current TAA Program were last updated in 1994, with only minor changes made in 2007 [13] and 2010. Since that time, multiple TAA Program reauthorizations and amendments have occurred. In addition, a recent reauthorization and reform of the public workforce system, WIOA (Pub. L. 113–128), reaffirms the TAA Program as a mandatory partner program in the one-stop delivery system.

The Department has addressed all TAA Program reauthorizations and amendments through administrative guidance. As a result, a combination of regulations and a patchwork of administrative guidance guides the worker-group certification process at the Federal level and the administration of individual benefits and services at the State level.

The NPRM would promote transparency by setting out in binding regulation the major principles by which the TAA Program operates, and they would provide the public and courts with the Department's authoritative interpretation of the Act. The NPRM would also include changes that increase States' flexibility to administer the program, improve service delivery, and reduce costs. In addition, the NPRM would incorporate clarifications that draw upon the Department's expertise gained from decades of experience operating the TAA Program.

Through the NPRM, the Department seeks to modernize its TAA Program regulations to reflect changes to the workforce, technology, and the administration of the program that have occurred since the Department's last comprehensive update to the regulations in 1994. The Department also seeks to consolidate all applicable program regulations into a single section of the CFR.

The goal of the TAA Program is to help each participating worker obtain, as quickly as possible, suitable employment when possible and nonsuitable employment otherwise. This goal will be accomplished by providing trade-affected workers access to training that will allow workers to compete for work at the highest skill levels and highest wages achievable, given the workers' preexisting skill levels, abilities, and education, and the

[12] Based on OMB's E.O. 13771 guidance memo, M–17–21, perpetuated net cost savings for the purposes of E.O. 13771 are presented in 2016 dollars. Net cost savings in 2018 dollars are converted to 2016 dollars using the GDP deflator from the Bureau of Economic Analysis. BEA. (2019). ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.'' Retrieved from: *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&select_all_years=0&nipa_table_list=13&series=a&first_year=2000&scale=-99&last_year=2019&categories=survey&thetable=x.*

[13] Minor changes were made to 29 CFR part 90.

current and projected labor market, and do so as quickly as possible. The TAA Program includes the RTAA benefit, which may be available to workers 50 years of age or older. The TAARA 2015 reauthorization and amendment of the TAA Program restored the major expansions in TAA worker group eligibility to service sector workers and workers who are affected by trade from any country, including countries that do not have Free Trade Agreements with the United States, including China and India.

2. Analysis Considerations

The Department estimated the costs, cost savings, and transfer payments of the NPRM relative to the existing baseline, that is, the current practices for complying with, at a minimum, the TAA Program as currently codified at 20 CFR parts 617 and 618, and 29 CFR part 90, as well as in administrative guidance.[14] The Department explains how the required actions of States, government agencies, and other related entities were linked to the expected costs, cost savings, transfer payments, and benefits.

In accordance with the regulatory analysis guidance articulated in OMB Circular A–4 and consistent with the Department's practices in previous rulemakings, this regulatory analysis focuses on the likely consequences of the NPRM (*i.e.,* costs, cost savings, transfer payments, and benefits that accrue to entities affected). The analysis covers 10 years (2019 through 2028) to ensure it captures major costs, cost savings, and transfer payments that accrue over time. The Department expresses all quantifiable impacts in 2018 dollars and uses 3-percent and 7-percent discounting following OMB Circular A–4.

Exhibit 2 presents the number of entities that would be affected by the requirements of the NPRM. The Department provides these estimates and uses them throughout this analysis to estimate the costs, cost savings, and transfer payments of the NPRM.

EXHIBIT 2—NUMBER OF AFFECTED ENTITIES BY TYPE [a]

Entity type	Number
States (total) [b]	52
Additional trade-affected workers that will require an IEP due to a comprehensive and specialized assessment (annual) [c]	23
Number of firms that will participate in domestic industry study each year (annual) [d]	12
Number of applications for reconsideration submitted each year (annual)	25

[a] Unless otherwise noted, the number of affected entities was obtained from Trade Act Participant Report (TAPR)—State quarterly reporting and record keeping information; Management Information System (MIS)—OTAA's petition database. Data as of December 5, 2017.
[b] The 52 States used for purposes of this analysis consist of the 50 States, the District of Columbia, and Puerto Rico.
[c] The Department derived this number by taking the average of the annual number of individuals who received training, job search, or relocation allowances (i.e., program exiters) in FY 2013 through FY 2017.
[d] Since 1998, the Department has conducted three domestic industry studies. However, for purposes of this analysis, the Department estimates that it will conduct one study per year.

Estimated Number of Workers and Level of Effort [15]

The Department presents the estimated average number of trade-affected workers and the estimated average level of effort required per worker for each activity in the subject-by-subject analysis. To derive these estimates, Department TAA Program experts estimated the average levels of effort and the average number of workers needed for each activity to meet the requirements relative to the baseline (*i.e.,* the current practice under the TAA Program). These estimates are the national averages for all States; thus, some States could experience higher actual costs, cost savings, or transfer payments, while these impacts could be lower for other States.

Compensation Rates

In the subject-by-subject analysis, the Department presents the labor and other costs associated with the implementation of the provisions of the NPRM. Exhibit 3 presents the compensation rates for the occupational categories expected to experience a change in the level of effort (workload) due to the NPRM. We use Bureau of Labor Statistics (BLS) mean hourly wage rates for State government and private sector employees.[16] [17] [18] We use OPM and U.S. courts wage rates for Federal employees.[19] [20] We adjust the wage rates

[14] Current TEGLs related to the TAA Program can be found at *https://www.doleta.gov/tradeact/law/directives-guidance/.*

[15] Trade Act Participant Report (TAPR)—State quarterly reporting and record keeping information; Management Information System (MIS)—OTAA's petition database. (2017). Unpublished data.

[16] BLS. (2019). ''May 2018 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999200—State government, excluding schools and hospitals (OES designation).'' Retrieved from: *http://www.bls.gov/oes/current/naics4_999200.htm.* The May 2018 mean hourly wages were adjusted to December 2018 values using Employment Cost Indices (ECI) for State and local government workers. ECI data were obtained from ''Table 7. Employment Cost Index for total compensation, for State and local government workers, by occupation and industry (not seasonally adjusted).'' BLS. (2019). ''Employment Cost Index Historical Listing—Volume V, Continuous Occupational and Industry Series, September 1975-March 2019 (December 2005=100).'' Retrieved from: *https://www.bls.gov/web/eci/ecicois.pdf.*

[17] BLS. (2019). ''May 2018 National Occupational Employment and Wage Estimates by Ownership: Cross-industry, private ownership only: SOC Major Groups in Cross-industry, private ownership only (OES designation).'' Retrieved from: *https://www.bls.gov/oes/current/000001.htm.* The May 2018 mean hourly wages were adjusted to December 2018 values using Employment Cost Indices (ECI) for private industry workers. ECI data were obtained from ''Table 5. Employment Cost Index for total compensation, for private industry workers, by occupation and industry, Continuous occupational and industry series (not seasonally adjusted).'' BLS. (2019). ''Employment Cost Index Historical Listing—Volume V—Continuous Occupational and Industry Series, September 1975–March 2019 (December 2005=100.'' Retrieved from: *https://www.bls.gov/web/eci/ecicois.pdf.*

[18] ETA Form 9185 (Application for Reconsideration) may be filed by a company official, a union representative, two workers, or a State. To estimate the average hourly wage rate for the person completing ETA Form 9185, the Department used a weighted-average based on the percent of petitioners by type (in FY 2017) and the corresponding hourly rate: (1) Company/union officials account for 21% of petitioners at an hourly labor wage rate of $60.60 per hour; (2) workers account for 17% of petitioners at an hourly labor wage rate of $24.71 per hour; (3) States account for 62% of petitioners at an hourly labor wage rate of $24.96 per hour. This calculation results in a weighted average resulted of $32.40 ([0.21 × $60.60] + [0.17 × $24.71] + [0.62 × $24.96]).

[19] Office of Personnel Management (OPM). (2018). ''Salary Table 2018–DCB Incorporating the 1.4% General Schedule Increase and a Locality Payment of 28.22% for the Locality Pay Area of Washington-Baltimore-Arlington, DC–MD–VA–WV–PA.'' Retrieved from: *https://www.opm.gov/policy-data-oversight/pay-leave/alaries-wages/salary-tables/pdf/2018/DCB_h.pdf.* Federal employee wage rates are used to estimate cost savings associated with reconsiderations and judicial appeals. Because these two processes are conducted by Headquarter staff, the Department uses DC–MD–VA–WV–PA wage rates to estimate labor costs.

[20] U.S. Courts. (2019). ''Judicial Compensation.'' Retrieved from: *http://www.uscourts.gov/judges-judgeships/judicial-compensation.*

to reflect total compensation, which includes nonwage factors such as overhead [21] and fringe benefits (*e.g.,* health and retirement benefits). For the State government employees, we use an overhead rate of 41 percent and a fringe benefits rate of 59 percent. The fringe benefits rate is derived from the ratio of average total compensation [22] to average wages and salaries in 2018.[23] For the private sector employees, we use an overhead rate of 57 percent and a fringe benefits rate of 43 percent.[24] The fringe benefits rate is derived from the ratio of average total compensation [25] to average wages and salaries in 2018 for the private sector.[26] For the Federal Government, we use an overhead rate of 37 percent [27] and a fringe benefits rate of 63 percent.[28] We then multiply the loaded wage factor by the corresponding occupational category wage rate to calculate an hourly compensation rate.

The Department uses the hourly compensation rates presented in Exhibit 3 throughout this analysis to estimate the labor costs for each provision.

EXHIBIT 3—COMPENSATION RATES

[2018 dollars]

Position	Grade level	Average hourly rate	Loaded wage factor components		Hourly compensation rate
			Overhead factor	Fringe benefits factor	
		a	b	c	d = a + (a × b) + (a × c)
Private Sector Employees:					
Employment Counselor	N/A	$21.79	0.57	0.43	$43.58
Attorney		74.49			148.98
Individual Completing ETA Form 8561, Domestic Industry Study		60.60			121.20
Individual Completing ETA Form 9185, Application for Reconsideration		32.40			64.80
State Government Employees:					
Employment Counselor	N/A	24.96	0.40	0.60	49.92
Attorney		45.20			90.40
Federal Government Employees:					
Investigator	GS–11, Step 5	36.95	0.37	0.63	73.90
Certifying Officer	GS–14, Step 5	62.23			124.46
Attorney	GS–14, Step 7	65.89			131.78
District Court Clerk	GS–13, Step	36.36			72.72
District Court Judge	N/A 1	100.00			200.00

Transfer Payments

The Department provides an assessment of transfer payments associated with the NPRM. In accordance with OMB Circular A–4, we consider transfer payments as payments from one group to another that do not affect total resources available to society.

3. Subject-by-Subject Analysis

The Department's analysis below covers the expected costs, cost savings, and transfer payments of the NPRM.

The Department emphasizes that many of the provisions in the NPRM are existing requirements in regulation, statute, or administrative guidance. The NPRM would codify these practices under one set of regulations and, therefore, they are not considered ''new'' burdens resulting from the NPRM. Accordingly, the regulatory analysis focuses on new costs, cost savings, and transfer payments that can be attributed exclusively to the NPRM.

Costs

The following sections describe the costs of the NPRM.

Quantifiable Costs

a. Rule Familiarization

When the NPRM takes effect, State staff will need to read and interpret the regulations. Through this review, State staff will familiarize themselves with the structure of the new regulation. Based on previous experience on similar rulemaking efforts, the Department anticipates that non-legal (program) staff will review the new regulations during the first year to identify any new provisions relevant to their operations. The Department also anticipates that legal staff will review the new

[21] The Department derived these overhead factors based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

[22] BLS. (2019). ''2018 Employer Costs for Employee Compensation.'' Retrieved from: *https://www.bls.gov/ncs/ect/data.htm.* Total compensation for all workers. Average Series ID CMU3010000000000D, CMU3010000000000P. To calculate the average total compensation in 2018, we averaged the total compensation for all workers for Quarters 1 through 4.

[23] BLS. (2019). ''2018 Employer Costs for Employee Compensation.'' Retrieved from: *https://www.bls.gov/ncs/ect/data.htm.* Wages and salaries for all workers. Average Series ID CMU3020000000000D, CMU3020000000000P. To calculate the average wage and salary in 2018, we averaged the wages and salaries for all workers for Quarters 1 through 4

[24] The Department derived this overhead factor based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

[25] BLS. (2019). ''2018 Employer Costs for Employee Compensation.'' Retrieved from: *https://www.bls.gov/ncs/ect/data.htm.* Total compensation for all workers. Average Series ID CMU2010000000000D, CMU2010000000000P. To calculate the average total compensation in 2018, we averaged the total compensation for all workers for Quarters 1 through 4.

[26] BLS. (2019). ''2018 Employer Costs for Employee Compensation.'' Retrieved from: *https://www.bls.gov/ncs/ect/data.htm.* Wages and salaries for all workers. Average Series ID CMU2020000000000D, CMU2020000000000P. To calculate the average wage and salary in 2018, we averaged the wages and salaries for all workers for Quarters 1 through 4.

[27] The Department derived this overhead factor based on Department administrative guidance, developed with OIRA, on how to include overhead costs in regulatory impact analyses.

[28] Department of Labor. (2018). ''DOL-Only Performance Accountability, Information, and Reporting System; OMB Control No. 1205–0521.'' Retrieved from: *https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201802-1205-003.*

regulations during the second year, as denials and other legal issues need to be resolved. As a result, reviewing the new regulation will impose an initial one-time cost in each of the first 2 years.

To estimate the first year cost of rule familiarization, the Department multiplied the number of States (52) by the estimated number of non-legal staff that will conduct the activity (2 State employment counselors). The Department then multiplied this product by the amount of time required to review the rule (2 hours) and by the hourly compensation rate ($49.92 per hour). This calculation results in a one-time undiscounted cost of $10,383 in the first year of the NPRM.

In the second year, the Department estimates that two-thirds of the States will have legal staff review the rule. Therefore, to calculate the one-time cost of rule familiarization in the second year, the Department multiplied the number of States (52) by two-thirds (⅔ or 0.67) and by the estimated number of legal staff conducting the activity (2 State attorneys). The Department then multiplied this product by the amount of time required to review the rule (2 hours), and by the hourly compensation rate ($90.40 per hour). This calculation results in a one-time undiscounted cost of $12,656 in the second year of the NPRM.

The sum of these first- and second-year one-time costs yields a total average annual undiscounted cost of $2,304. The total costs over the 10-year period are estimated at $23,039 undiscounted, or $22,010 and $20,758 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is $2,580 and $2,956 at 3- and 7-percent discount rates, respectively.

b. Development of IEPs for Trade-Affected Workers Seeking Training or Job Search Allowances

Under proposed § 618.350(a), States must make available an IEP to all trade-affected workers and establish an IEP for trade-affected workers who apply for training under subpart F, or AAWs who apply for a job search allowance under subpart D, prior to the worker receiving those benefits and services. An IEP is an individualized career service under WIOA sec. 134(c)(2)(A)(xii)(II) and is developed jointly by the WIOA program participant and career planner when determined appropriate by the one-stop center or one-stop partner. The IEP is an ongoing strategy to identify employment goals, achievement objectives, and an appropriate combination of service for the participant to achieve their employment goals. To ensure efficient use of time and resources, the Department is proposing that, if an IEP has been developed under WIOA, or other partner program, it will be reviewed once the participant becomes a trade-affected worker to ensure it has certain components required by the TAA Program, as listed in proposed § 618.350(c). If the IEP does not contain all required components, the IEP must be supplemented by the State in conjunction with the trade-affected worker to ensure it is fully compliant with the TAA Program requirements.

Based on program data, the Department estimates that, each year, States will need to develop or supplement IEPs for 23 trade-affected workers [29] that apply for training and job search allowances and do not yet have an IEP or whose IEP does not contain all of the required components.

To estimate the costs associated with developing or supplementing IEPs, as a result of requiring IEPs for training and job search allowance applicants, the Department multiplied the estimated number of affected trade-affected workers (23) by the cost per IEP ($24.96).[30] This calculation results in an annual undiscounted cost of $574. The total cost over the 10-year period is estimated at $5,740 undiscounted, or $4,896 and $4,032 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is $574 at both 3- and 7-percent discount rates.

c. Other Quantifiable Costs

Other quantifiable costs of the NPRM stem from the implementation of two IC forms: (1) ETA Form 8561, Study of Domestic Industry; and (2) ETA Form 9185, Application for Reconsideration.

The Department is reactivating ETA Form 8561 A/B/C, Standard Questionnaire for Manufacturing Firms, by revising it as ETA Form 8561, Study of Domestic Industry. The Department will use ETA Form 8561 to collect information from firms within an industry subject to an investigation by the International Trade Commission under sec. 202 of the Act. The Department then will use the information collected to produce a report for the President, as required under sec. 224 of the Act. The report will contain information on the number of workers in the domestic industry producing the like, or directly competitive, article who have been, or are likely to be, certified as eligible for adjustment assistance, and the extent to which the adjustment of such workers to the import competition may be facilitated using existing programs. The Department anticipates conducting one industry study per year, and that each firm will submit one response. To estimate the costs associated with the implementaion of ETA Form 8561, the Department multiplied the number of firms that will participate in each industry study (12) by the amount of time required to complete the form (1 hour) and by the hourly compensation rate ($121.20 per hour). This calculation results in an annual undiscounted cost of $1,454.

The Department is also implementing a new form: ETA Form 9185, Application for Reconsideration. ETA Form 9185 standardizes the information required by regulations for an aggrieved party to seek administrative reconsideration of a termination of investigation, termination or partial termination of a certification, or a negative determination of a petition. To estimate the costs associated with this form, the Department multiplied the estimated number of applications that will be submitted each year (25) by the amount of time required to complete the application (1 hour) and by the hourly compensation rate ($64.80 per hour). This calculation results in an annual undiscounted cost of $1,620.

The sum of these costs yields a total annual undiscounted cost of $3,074. The total cost over the 10-year period is estimated at $30,744 undiscounted, or $26,225 and $21,593 at 3- and 7-percent discount rates, respectively. The annualized cost over the 10-year period is $3,074 at both 3-and 7-percent discount rates.

Nonquantifiable Costs

a. Criteria for Certification of Worker Groups

Proposed § 618.225 substantially updates 29 CFR 90.16(b) to describe the criteria the Department uses to certify worker groups, which has expanded significantly under sec. 222 of the Act. It also identifies factors under consideration in determining whether a criterion has been met. The revised language provides transparency on how investigations are conducted, the importance of information collected, and how the information is used. The proposed new provisions reflect the requirements of the Act, existing Departmental practices, and, in some

[29] The Department derived this number by calculating the average of the annual number of individuals who received training, job search, or relocation allowances (*i.e.,* program exiters) in FY 2013 through FY 2017.

[30] The cost per IEP is estimated by multiplying the hourly compensation rate of a State employment counselor ($49.92 per hour) by the time spent developing the IEP (0.50 hours), resulting in a cost estimate of $24.96.

instances, thresholds for select criteria. The proposed provision also includes teleworkers and staffed workers because they are frequently performing the same work as other trade-affected workers in the subject firm or subdivision and are under the subject firm's control.

As a result of this proposed change, the Department will need to spend de minimis time to update forms. The Department has no data to determine if the number of applications that will be submitted would change and, therefore, cannot quantify any potential cost related to a change in the number of applications due to this proposed change.

Cost Savings

The following sections describe the cost savings of the NPRM.

Quantifiable Cost Savings

a. Reconsideration

Currently, the process for reconsiderations (29 CFR 90.18) has two steps. Applicants request a reconsideration, and the Department either accepts or denies the request. Acceptance or denial results in a posting to the **Federal Register** and a notification to the applicant. If accepted, the reconsideration process begins, and a decision is reached. If denied, the petitioner likely will appeal to the USCIT.

The Department proposes to eliminate the step requiring the certifying officer to make and issue a determination on whether or not a reconsideration will be initiated (29 CFR 90.18(c)). The Department concluded that eliminating this step would decrease time and burden, and simplify the process.

Under the new process in proposed § 618.245, the Department will initiate an investigation on all valid reconsideration applications, conduct the required review, and post the results via the **Federal Register** and the Department's website. Although this new process will not eliminate reconsiderations, the Department estimates that it will reduce the processing time involved for all reconsiderations by approximately 33 percent, as there will be no initial review of the request or related notification. Thus, under the new process, the cost per reconsideration will be 67 percent of the cost under the current process. The Department estimates that the cost per reconsideration under the current process is $1,857.[31] Under the new process, the Department estimates that the cost per reconsideration will be $1,244 (0.67 × $1,857 per reconsideration). Under the current and revised processes, approximately 25 reconsiderations are filed per year, and the Department concludes that will not change. To estimate the cost savings associated with this proposed change, the Department subtracted the cost per reconsideration under the new process ($1,244) from the cost per reconsideration under the current process ($1,857) and then multiplied by the number of reconsiderations filed per year (25). This yields an average annual undiscounted cost savings of $15,325. The total cost savings from the new reconsideration process over the 10-year period is estimated at $153,250 undiscounted, or $130,725 and $107,636 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is $15,325 at both 3- percent and 7-percent discount rates.

b. Judicial Appeals

Under existing regulations, all determinations rendered by the Department are final determinations subject to judicial review. As a result, nearly any determination rendered by the Department can be appealed to the USCIT (29 CFR 90.19).

In the NPRM, the Department would define only determinations on reconsideration issued under §§ 618.240(g) and 618.245 as final determinations and, therefore, only these determinations are subject to judicial review through the USCIT. This will reduce the time and effort spent by Department employees, petitioners, and the USCIT on appeals that have not yet been subject to the reconsideration process. These appeals require legal counsel for the Department and for the appellant, and associated fees are involved with the proceedings. By revising the definition of ''final determinations'' and through the revisions to the reconsideration process, the Department concludes that the number of judicial appeals will be reduced to one per year.

The Department estimates the cost savings from reducing the number of judicial appeals by subtracting the estimated number of judicial appeals under the NPRM (one per year) from the current number of judicial appeals per year (five per year) and multiplying by the cost per appeal ($21,443).[32] This

[31] The Department estimates the cost to process a reconsideration based on the cost to process a full petition due to data availability. The Department estimates that the cost to process a reconsideration under the current process is 86 percent of the cost to process a full petition. This estimate is based on an average of 60 days to process a reconsideration compared to a median of 70 days to process a full petition (60/70 = 86 percent).

The Department estimates an investigator spends 100 percent of their time, or 2,080 hours, processing petitions. The investigator processes 100 petitions per year. Therefore, the cost per petition for an investigator to process is estimated by multiplying the hourly compensation rate ($73.90 per hour) by the hours they work per year (2,080 hours) and dividing by the number of petitions processed per year (100 petitions per year). This results in a cost per petition for an investigator of $1,537. The Department estimates a certifying officer manager spends 75 percent of their time (1,560 hours) and a nonmanager certifying officer spends 100 percent of their time (2,080 hours) processing petitions. Certifying officers process an estimated 376 full petitions per year. Based on this data, a manager certifying officer spends 4 hours per petition (1,560/376) and a nonmanager certifying officer spends 6 hours per petition (2,080/376). The Department uses an average of nonmanager and manager hours per petition to estimate the average certifying officer's time to process a petition (5 hours). To estimate the cost per petition for a certifying officer, the Department multiplied the hourly compensation rate ($124.46 per hour) by the number of hours spent processing a full petition (5 hours). This results in a cost per petition for a certifying officer of $622.

The Department, therefore, estimates the full cost of processing a full petition as the sum of the cost for an investigator to process a petition and the cost for a certifying officer to process a petition. Summing these costs results in an estimated cost of $2,159 to process a petition. The cost per reconsideration is, therefore, estimated as $1,857 based on the cost per reconsideration being 86 percent of the cost of processing a full petition.

[32] The cost per appeal is estimated from the cost to the appellant, the Department, and the USCIT to process an appeal. Based on USCIT court fees (*https://www.cit.uscourts.gov/sites/cit/files/Schedule%20of%20Fees.pdf*), the appellant must pay fees for attorney admission ($81), a filing fee ($400), and a charge for each type of fee ($304) for a total of $785 in fees to appeal. The appellant also must have a private sector attorney prepare for the appeal and appear in court. The Department estimates this cost by multiplying the hourly compensation rate ($148.98 per hour) by the sum of time the private sector attorney must spend to prepare (40 hours) and the time spent in court (12 hours). These estimates include time spent responding to filings and other actions outside of court proceedings. The result is a cost per appeal for the appellant of $8,532.

The Department has a cost per appeal for a DOL and DOJ attorney to prepare and attend court and a remand cost. The Department estimates the remand cost by multiplying the current cost per reconsideration ($1,857) by 1.5, resulting in a remand cost of $2,785. To estimate the cost of a DOL and DOJ attorney, the Department multiplied the hourly compensation rate ($131.78 per hour) by the sum of time the DOL and DOJ attorney must spend to prepare (40 hours) and the time spent in court (12 hours). The result is a cost per appeal for the Department of $9,638.

The cost to the USCIT is the court time for a district court judge and district court clerk. The Department estimates the cost of court time for a judge by multiplying the hourly compensation rate ($200.00 per hour) by the time spent in court and the time spent reviewing the filings related to the appeal (12 hours), resulting in a cost estimate of $2,400. The Department estimates the cost of court time for a clerk by multiplying the hourly compensation rate ($72.72 per hour) by the time spent in court (12 hours), resulting in a cost estimate of $873. The cost to the USCIT for an appeal is therefore estimated as $3,273.

The cost per appeal is therefore estimated as the sum of the cost to the appellant ($8,532), the cost

Continued

yields average annual undiscounted cost savings of $64,329. The total cost savings from the reduction in judicial appeals over the 10-year period is estimated at $643,290 undiscounted, or $548,739 and $451,820 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is $64,329 at both 3- and 7-percent discount rates.

Relative to the baseline (*i.e.,* current practice under the TAA Program), the two issues described above are expected to result in average annual undiscounted cost savings of $79,654. The total cost savings over the 10-year period is estimated at $796,540 undiscounted, or $679,465 and $559,456 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is estimated at $79,654 at both 3- and 7-percent discount rates.

Transfer Payments

The following sections describe the transfer payments of the NPRM.

Quantifiable Transfer Payments

a. Merit Versus Non-Merit Staff

Currently, States must engage only State merit staff to perform TAA-funded functions undertaken to carry out the State's responsibilities under the Act (20 CFR 618.890). Non-merit staff that provide employment and case management services to trade-affected workers cannot charge their time to TAA Program funds.

Proposed § 618.890 on staffing flexibility amends the current regulation to clarify that only certain activities under the TAA Program need to be performed by personnel covered by a system meeting the criteria of the Federal merit personnel system regardless of whether they are funded by the TAA Program. This results in a transfer payment because non-merit staff will be performing the same work at a lower wage than the currently used merit staff. As a result, providing employment and case management services by non-merit staff will result in transfer payments from employees to the States because there are no labor-hours freed and only a decline in wages.

The Department estimates that half the States, and therefore half the participants, will take advantage of the flexibility provided by the NPRM.

The Department estimates that the cost of providing employment and case management services by State merit staff is $8,885,710 annually.[33] The Department estimates the cost of providing employment and case management services by non-merit staff is $7,757,196 annually, due to the lower hourly wage for the typical non-merit staff employee.[34] The Department, therefore, estimates transfer payments associated with removing the restriction to allow States to charge time for non-merit staff to TAA Program funds by subtracting the cost of non-merit staff ($7,757,196) from the cost of State merit staff ($8,885,710) and multiplying by 0.5 to account for the Department's estimate that half the States will use the flexibility provided by the NPRM. This yields average annual undiscounted transfer payments of $564,257. The total transfer payments from removing the restriction to allow States to charge time for non-merit staff to TAA Program funds over the 10-year period is estimated at $5,642,570 undiscounted, or $4,813,227 and $3,963,105 at 3- and 7-percent discount rates, respectively. The annualized cost savings over the 10-year period is $564,257 at both 3- and 7-percent discount rates.

Nonquantifiable Transfer Payments

a. Change in the Definition of ''Group''

Under proposed § 618.110 (definition of ''group of workers''), the Department updates the definition of ''group'' to mean at least two workers employed or formerly employed by the same firm, or an appropriate subdivision. The proposed definition also includes teleworkers and staffed workers, because they are frequently performing the same work as other trade-affected workers in the subject firm or subdivision and are under the subject firm's control. Separated workers are included in the definition because they, too, may be trade-affected workers. Because of a lack of data on the additional number of beneficiaries, the Department is unable to quantify the transfer. The Department expects the change to be small.

b. Suitable Work Versus Suitable Employment

Proposed § 618.400 explains the scope of the subpart, and is a provision not contained in current regulations. Proposed § 618.400 contains one substantive departure from current regulations in that it identifies the goal of providing job search and relocation allowances to help AAWs secure and, if necessary, relocate to ''suitable employment'' as defined in sec. 236 of the Act, instead of merely assisting AAWs in finding ''suitable work'' as current regulations have provided. Proposed § 618.405 contains general provisions and revises and consolidates current 20 CFR 617.30 and 617.40. Proposed § 618.405(a) retains the content in 20 CFR 617.30, except that it replaces the reference to ''securing a job'' with ''suitable employment'' to align with the change to the goal of the subpart.

This proposed change would modify the eligibility requirement, for both job search and relocation allowances, that there be no ''suitable work'' available in the local area to the requirement that there be no ''suitable employment'' available in the local area. ''Suitable employment'' is generally work at higher skill levels and wage rates than is ''suitable work'' (*i.e.,* a job is less likely to meet the higher ''suitable employment'' standard and such jobs will, therefore, be less likely to be available). Thus, this proposed change

to the Department ($9,638), and the cost to the USCIT ($3,273). This cost is $21,443.

[33] To estimate the cost of State merit staff providing employment and case management services, the Department first estimated the amount of time spent providing the services. Of the 16,375 total exiters in 2017, 9,803 received training and 6,572 received only case management services. The average duration of training is 413 days, and the average duration of case management services is 195 days. Staff have a minimum contact requirement of 30 days, and contact is estimated to take 1 hour. Therefore, the Department estimated the time spent by staff providing training services to an exiter by dividing the average duration of training (413 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 13.8 hours. The Department, therefore, estimates the hours required for training services to all exiters that received training by multiplying the number of exiters receiving training (9,803) by the time spent by staff providing them services (13.8 hours), resulting in an estimate of 135,281 hours. The Department estimated the time spent by staff providing case management services only to an exiter by dividing the average duration of case management (195 days) by the minimum contact requirement (30 days) and multiplying by the time of contact (1 hour), resulting in an estimate of 6.5 hours per exiter receiving case management services. The Department, therefore, estimates the hours required for case management services to all exiters that received case management services only by multiplying the number of exiters receiving only case management services (6,572) by the time spent by staff providing them services (6.5 hours), resulting in an estimate of 42,718 hours.

To estimate the cost of State merit staff providing employment and case management services, the Department summed the time required to provide training services (135,281 hours) and the time required to provide case management services only (42,718 hours), which results in a total of 177,999 hours. The Department then multiplied the total hours by the hourly compensation rate of a State employment counselor ($49.92 per hour) resulting in a cost estimate of $8,885,710.

[34] To estimate the cost of non-merit staff in providing employment and case management services, the Department summed the time required to provide training services (134,955 hours) and the time required to provide case management services only (42,718 hours), which results in a total of 177,999 hours. The Department then multiplied the total hours by the hourly compensation rate of a private sector employment counselor ($43.58 per hour), resulting in a cost estimate of $7,757,196.

would simplify the operation of the TAA Program by using the same standard—suitable employment—as the factor for approval of training, job search allowances, and relocation allowances. Program performance data shows that AAWs who relocate have a wage replacement rate exceeding 100 percent, which means that this proposed change should have little or no impact on the number of AAWs and is not quantifiable.

c. Length of Training and Apprenticeships

Proposed § 618.635(c) is new and establishes apprenticeship provisions that specifically provide that both registered apprenticeships under the National Apprenticeship Act, as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of a recognized postsecondary credential, are approvable TAA Program training activities. These provisions are based on a combination of secs. 236(a)(5)(A)(iii) and 236(a)(5)(G) of the Act. The requirement that an apprenticeship lead to an industry-recognized credential differentiates an apprenticeship from regular OJT.

The NPRM would revise TAA length of training requirements applicable to apprenticeships. In addition, under the NPRM, TAA Program funds could be used to pay for the educational and instructional component of the apprenticeship until completion of the apprenticeship, which, in some cases, could be up to 5 years. In particular, the TAA Program would provide for reimbursement to the employer for the paid-work component of the apprenticeship for up to 130 weeks. Reimbursement would be up to 50 percent of the employer's training costs based on the wage rate of the trade-affected worker.

The increased flexibility in the use of TAA Program funds may result in an increase in apprenticeships; however, the Department is unable to quantify this and seeks public comment. The Department expects that funding adjustments would need to be made for trade-affected workers requiring additional funding due to participation in a registered apprenticeship. The proposed provision would result in transfers of funds between States and the Federal Government. The total amount of expenditures that may be accrued at the national level, however, will not change and is therefore not quantified.

Other Key Changes With No Economic Impact

TGAAA and TAAEA introduced statutory program changes, and the TAARA 2015 amendments restored these improvements. The NPRM proposes to codify the provisions associated with these improvements, currently implemented via administrative guidance, into the TAA Program regulations. The Department analyzed these proposed provisions to determine if they have any additional cost or result in transfer payments when compared to the baseline. Based on this analysis, the Department determined that no costs or transfer payments are associated with the program improvement provisions.

a. A set of provisions requiring services to all trade-affected workers, including AAIWs who have not yet separated from adversely affected employment but are threatened with separation (subpart A, § 618.110; subpart C, § 618.310; and subpart F, § 618.655)

Under this set of provisions, AAIWs must be provided TAA Program services, as appropriate, before the worker's separation from employment, ideally allowing these workers to transition to new employment without experiencing a gap in employment or by reducing the amount of time needed to complete the training program after the separation, or both, and reducing the worker's overall period of unemployment. Under the current regulations, the Department could not begin providing services to serve AAIWs until they are laid off. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

b. Provisions that expand trade-affected worker eligibility to include those workers in firms that supply service-sector workers, expanding coverage to the largest growing sector of the economy (subpart B, § 618.225(a) and (b))

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

c. Provision that makes workers in firms identified in International Trade Commission ''injury'' determinations ''automatically'' certified (subpart B, § 618.225(c))

No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

d. Provisions providing funding for individualized case management services (subpart C, §§ 618.310, 618.330, 618.335, 618.345, 618.350, and 618.360)

Employment counseling and reemployment services have been required under the TAA Program since implementation of chapter 2 of title II of the Trade Act of 1974. The current requirements are found at 20 CFR 617.20 and 617.21. This set of provisions includes the development of a reemployment plan and assessments. The language in the existing regulation, however, uses outdated terminology. The NPRM would update this language. Case managers are to ensure trade-affected workers receive job placement services, develop individual assessment-based employment and training programs, and provide career counseling. Under the current regulations, funds for individualized case management services are not authorized, requiring these services to be made available through partner programs such as Wagner-Peyser or WIOA. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

e. Provisions that eliminate the requirement for AAWs to apply for and wait to attain a separate group certification to be eligible for the RTAA program (subpart E, §§ 618.500 and 618.505)

AAWs receiving RTAA can work full time or part time and receive training, which would allow this population to regain skills to stay competitive. RTAA replaces ATAA, a program piloted in the TAA Program under TAARA 2002. Neither RTAA nor ATAA are included in current regulations. No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

f. Provisions that introduce Completion TRA and require trade-affected worker training benchmarks to monitor training progress regularly and allow for amendments of a training program to help ensure successful training outcomes (subpart F, § 618.660; and subpart G, § 618.755)

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

g. A provision that eliminates training waivers based on recall, marketable skills, and retirement (subpart G, § 618.725(b))

No costs or transfer payments are associated with this provision, as it is

codifying current administrative guidance.

h. A set of provisions that expands the deadline for enrolling in training to qualify for TRA, providing trade-affected workers more time to consider their training options (subpart G, § 618.720(c)(1), (2), and (4))

No costs or transfer payments are associated with these provisions, as they are codifying current administrative guidance.

i. A provision that allows States to apply Federal ''good cause'' waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances (subpart G, § 618.720(c)(5))

This provision allows States to apply Federal ''good cause'' waiver provisions to TAA Program deadlines allowing for trade-affected workers to retain benefits due to extenuating circumstances. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

j. Subpart G, § 618.775

This provision enables AAWs to elect TRA over UI based on a second UI claim in circumstances that result in lower weekly benefit amounts from part-time or short-term work. No costs or transfer payments are associated with this provision, as it is codifying current administrative guidance.

Qualitative Benefits Discussion

The TAA Program includes the RTAA benefit, which may be available to AAWs 50 years of age or older. Reauthorization of the program restored the major expansions in TAA worker group eligibility to service sector workers and to workers affected by trade from any country, including countries that do not have Free Trade Agreements with the United States including China and India.

A 2012 evaluation of the TAA Program showed that TAA Program participants who undertook training recorded better employment outcomes than those who received only income support and that TAA Program participants almost entirely closed the gap between their wages in the previous employment and their wages in the new employment within 4 years, and, by one measure, had pulled slightly ahead.[35] The evaluation also found that TAA Program participants were engaged in some form of productive activity at about the same rate as the comparison group.

a. Streamlining and Consolidation of TAA Program Regulations

As stated above, the regulations governing the TAA Program have not been updated since 1994. Since that time, multiple reauthorizations and amendments have occurred. All TAA Program reauthorizations and amendments were implemented through administrative guidance. As a result, the States must use a combination of regulations and a patchwork of administrative guidance to operate the program.

The NPRM would provide a legally binding set of rules to guide the worker-group certification process at the Federal level and the individual benefit and training authorization process at the State level, and provide Federal and State courts with the Department's authoritative interpretation of TAARA 2015. The NPRM also would update the TAA Program and consolidate all applicable program regulations into a single section of the CFR.

b. Support to American Workers That Have Lost Their Jobs as a Result of Foreign Trade

The objective of the TAA Program is to provide trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to (re)build skills for future jobs. For over 40 years, the TAA Program has assisted U.S. workers who have lost or may lose their jobs as a result of foreign trade. Benefits and services include: employment and case management services (*e.g.,* career counseling); training; job search and relocation allowances; TRA; RTAA for AAWs aged 50 and older; and, if available, the HCTC.

Since 1975, the TAA Program has served over two million U.S. trade-affected workers. In FY 2017, an estimated 94,017 trade-affected workers became eligible for TAA Program benefits and services. Nearly 75 percent of trade-affected workers obtained employment within 6 months of completing the TAA Program, and over 90 percent of those who found work retained their jobs 6 months later.

Trade-affected workers come from a variety of backgrounds and industries, and therefore, many enter the program with a wide array of skills and experience. Most trade-affected workers who enter the program, however, face similar challenges in obtaining reemployment. Trade-affected workers have no postsecondary degree typically, an average age of 49, and an average of 12 years of experience in a specific job that may no longer exist.[36] The TAA Program is designed to serve the needs of this unique population best, which it continues to do.

An ever-changing global marketplace drives the 21st-century economy. For America to outcompete other countries, its workers need to have the skills and support to take advantage of new opportunities the 21st-century economy presents. The TAA Program sets out to do that by providing the best opportunities for American workers to reenter the workforce.

4. Summary of the Analysis

Exhibit 4 summarizes the estimated total costs, cost savings, and transfer payments of the NPRM over the 10-year analysis period. The annual costs, cost savings, and transfer payments do not reach $100 million in any given year. Thus, the NPRM is not economically significant.

The Department estimates the annualized costs of the NPRM at $6,604, the annualized cost savings at $79,654, and the annualized transfer payments at $564,257, at the 7-percent discount rate. When the Department uses a perpetual time horizon to allow for cost comparisons under E.O. 13771, the annualized costs of the rule are $5,101, the annualized cost savings are $79,654, and the annualized transfer payments are $564,257, all at 7-percent discounting.

The Department estimates the net cost savings of the NPRM at $513,073 at a discount rate of 7 percent.

[35] Social Policy Associates and Mathematica Policy Research. (2012). ''The Evaluation of the Trade Adjustment Assistance Program: A Synthesis of Major Findings.'' Retrieved from: *https://wdr.doleta.gov/research/FullText_Documents/ETAOP_2013_08.pdf.*

[36] U.S. Department of Labor, Employment and Training Administration. (2018). ''Trade Adjustment Assistance for Workers Program: Fiscal Year 2017.'' Retrieved from: *https://www.doleta.gov/tradeact/docs/AnnualReport17.pdf.*

EXHIBIT 4—ESTIMATED MONETIZED COSTS, COST SAVINGS, NET COST SAVINGS, AND TRANSFER PAYMENTS OF THE NPRM

[2018 dollars]

	Costs	Cost savings	Net cost savings [a]	Transfer payments
2019	$14,032	$79,654	$65,622	$564,257
2020	16,304	79,654	63,350	564,257
2021	3,648	79,654	76,006	564,257
2022	3,648	79,654	76,006	564,257
2023	3,648	79,654	76,006	564,257
2024	3,648	79,654	76,006	564,257
2025	3,648	79,654	76,006	564,257
2026	3,648	79,654	76,006	564,257
2027	3,648	79,654	76,006	564,257
2028	3,648	79,654	76,006	564,257
Undiscounted 10-Year Total	59,523	796,540	737,017	5,642,570
10-Year Total with 3% Discounting	53,132	679,465	626,333	4,813,227
10-Year Total with 7% Discounting	46,383	559,456	513,073	3,963,105
10-Year Average	5,952	79,654	73,702	564,257
Annualized with 3% Discounting	6,229	79,654	73,425	564,257
Annualized with 7% Discounting	6,604	79,654	73,050	564,257
Perpetuated Net Cost Savings [a] with 7% Discounting (2016 dollars)	.....	.....	71,434	.....

[a] Net Cost Savings = [Total Cost Savings] − [Total Costs].

5. Regulatory Alternatives

OMB Circular A–4, which outlines best practices in regulatory analysis, directs agencies to analyze alternatives if such alternatives best satisfy the philosophy and principles of E.O. 12866. The Department has considered three alternatives as part of determining whether to issue this NPRM. These alternatives include: (1) To take no action, that is, make no regulatory changes; (2) to reduce the number and types of provisions in the regulations; and (3) to propose more stringent, less flexible regulations and provide clarification in administrative guidance. Each alternative is discussed in more detail below.

The Department considered the ''no action'' alternative, thereby, leaving the regulations in three separate parts in the CFR (*i.e.,* 20 CFR parts 617 and 618, and 29 CFR part 90) and continuing to use administrative guidance to operate the TAA Program. This alternative has the disadvantage of forcing States to use a combination of outdated regulations and a patchwork of administrative guidance to operate the program. The TAA Program requirements have changed substantially since 1994. As a result, the implementation of new regulations is necessary to achieve program compliance, integrate the TAA Program with the workforce development and education systems, and reduce the Department's and States' legal burden concerning petition issues raised in court cases and appeals.

The Department also considered scaling back the number and types of provisions in the regulations, except for those areas where there are statutory requirements for the Department to promulgate regulations. Examples of provisions that could be excluded are: (1) The primary indicators of performance; (2) the expansion of State responsibility for providing employment and case management services; (3) the integration of the TAA Program into the one-stop delivery system under WIOA and alignment with the WIOA Final Rule; (4) the increase in the maximum limit for job search and relocation allowances; (5) the addition of the RTAA, which was established under the 2009 Program amendments; (6) the addition of Completion TRA; and (7) the study and notifications regarding certain affirmative determinations. This regulatory alternative has the disadvantage of forcing the regulated community to follow statutory language for implementation. Considering many of these provisions are new, the statutory language would not provide sufficient detailed guidance to implement the provisions effectively, thereby, increasing the risk of noncompliance.

Finally, the Department considered proposing more stringent, less flexible regulations and relying on administrative guidance to provide clarification. Examples of provisions where the Department could be more prescriptive are: (1) Worker group eligibility requirements (2) employment and case management services; (3) training (*e.g.,* approval, cost, and type); (4) job search and relocation allowances; (5) Completion TRA and training benchmarks; and (6) RTAA. This alternative has the disadvantage of not providing enough flexibility to mold the TAA Program to the evolving needs of displaced workers and the changing economic landscape. Not only could this negatively affect participants, it could cost States and the Department more through decreases in efficiency from having to adhere to more restrictive and complex regulations. This would ultimately lead to participants being underserved due to the time and budgetary burdens that more stringent regulations would impose. Also, administrative guidance is not legally binding, and, therefore, not as an effective tool as flexible regulations.

The Department considered the three options above in accordance with the provisions of E.O. 12866 and chose to publish the NPRM to increase flexibility to States and trade-affected workers, improve participant outcomes, clarify overly technical or confusing language, update references and procedures, and

codify elements from administrative guidance.

The Department invites comments on these or other possible alternatives with the goal of ensuring a thorough consideration and discussion at the final rule stage.

C. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act of 1996, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

Because the entities impacted by the NPRM are the States, which do not qualify as small entities, the Department has determined that the NPRM would impact no small entities. Based on this determination, the Department certifies that the NPRM would not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The purposes of the PRA, 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations that require any party to obtain, maintain, retain, report, or disclose information. The IC requirements must also be submitted to OMB for approval.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The following information collections are part of the States' administration of the TAA Program. They have been previously reviewed and approved. They have not been impacted by this rule:

OMB Control Number 1205–0275—Trade Adjustment Assistance Program Reserve Funding Request

OMB Control Number 1205–0222—Unemployment Insurance Materials Transmittal

OMB Control Number 1205–0521—DOL-Only Performance Accountability, Information, and Reporting System

OMB Control Number 1205–0461—Employment and Training Administration Financial Report Form ETA–9130

The Department has determined that there is a new information collection contained in this rule. This collection is related to an aggrieved party seeking administrative reconsideration of a negative determination under sec. 222 of the Act, and the domestic industry study required by sec. 202 of the Act.

Petition Requirements; Investigations; Domestic Industry Study; Application for Reconsideration

Agency: DOL–ETA.

Title of Collection: Petition Requirements; Investigations; Domestic Industry Study; Application for Reconsideration.

Type of Review: New.

OMB Control Number: 1205–0NEW.

Description: The information contained in this collection is submitted by various parties, including individuals, company officials, unions, and State agencies. This information is collected in paper, by fax, via online forms, and by email. The information provided by these groups is used as part of an investigation by the Department to determine whether or not a group of workers has been adversely affected by foreign trade under the conditions and criteria established in sec. 222 of the Act. The Department is taking this opportunity to make changes to the forms in OMB Control Number 1205–0342 used in the petition and investigation process. These changes are designed to reduce burden, provide better instructions, and simplify the forms for use by the public. Form ETA–9185 is a new form used by aggrieved parties to seek administrative reconsideration of a negative determination. As part of this collection, the Department is reactivating Form ETA–8561 A/B/C, Standard, by renaming as Form ETA–8561, Study of Domestic Industry, and revising the content of the form. This was previously approved under OMB Control Number 1205–0194, and was in use until 1990 when it was discontinued. Form ETA–8561 is submitted by a firm within an industry subject to an investigation by the ITC under sec. 202 of the Act. This collection will eventually be included in OMB Control Number 1205–0342, however, the Department is not submitting this ICR under that control number because the reginfo.gov database, which is OMB's system for processing requests, allows only one ICR per control number to be pending at OMB during any given time, and the Department expects the unrelated ICR under control number 1205–0342 will be pending at OMB at the same time as this rule-related ICR; thus the existing control number will be encumbered. Requesting approval for a new information collection is a workaround used for administrative convenience. Once all of the outstanding actions are complete, the Department intends to submit a non-material change request to merge the collections so that the new requirements will be added to OMB Control Number 1205–0342.

Affected Public: State, Local, and Tribal Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Estimated Total Annual Respondents: 5,317.

Estimated Total Annual Responses: 5,497.

Estimated Total Annual Burden Hours: 12,977.

Estimated Total Annual Other Burden Costs: $1,545,779.76.

Regulations sections: 20 CFR 618.205, 618.210, 618.215, 618.220, 618.225, 618.230, 618.235, 618.240, 618.245, 618.250, 618.260.

Interested parties may obtain a copy free of charge of one or more of the IC requests submitted to OMB on the reginfo.gov website at *http://www.reginfo.gov/public/do/PRAMain.* From this web page select Department of Labor from the ''Currently under Review'' dropdown menu and look up the collection. You may also request a free copy of the IC by contacting the person named in the **ADDRESSES** section of this NPRM.

In addition to the 30 days provided for public comment on this proposal, the Department is providing an additional 30 days—for a total of *60 days* from the date this notice is published in the **Federal Register**—for public comment on the information collection requirements contained in the proposed rule as required by 5 CFR 1320.11(c).

Members of the public who wish to comment on the revisions to the paperwork requirements should direct comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503, Fax: (202) 395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

The Department encourages commenters also to submit their comments on these paperwork requirements to the rulemaking docket, Docket Number ETA–2019–0009, along with their comments on other parts of the proposed rule. After the 30 day comment period for Docket Number ETA–2019–0009 expires, commenters may submit IC-related comments on Docket Number ETA–2019–0010 for an additional 30 days.

The Department and OMB are 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 IT (*e.g.,* permitting electronic submission of responses).

E. Executive Order 13132 (Federalism)

E.O. 13132 requires Federal agencies to ensure that the principles of federalism established by the Framers of our Constitution guide the executive departments and agencies in the formulation and implementation of policies and to further the policies of the Unfunded Mandates Reform Act. Further, agencies must strictly adhere to constitutional principles. Agencies must closely examine the constitutional and statutory authority supporting any action that would limit the policy-making discretion of the States and they must carefully assess the necessity for any such action. To the extent practicable, State and local officials must be consulted before any such action is implemented. Section 3(b) of the E.O. further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

The Department has reviewed this NPRM revising the operation of a Federal benefit program in accordance with Executive Order 13132 and found that this rulemaking has no federalism implications. The TAA Program is a nationwide program funded with Federal funds in which the States voluntarily participate. Thus, the NPRM would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4, codified at 2 U.S.C. 1501 *et seq.*) requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and on private industry, except to the extent the regulations incorporate requirements specifically set forth in law. Title II of the UMRA directs agencies to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in $100 million or more expenditure (adjusted annually for inflation) in any 1 year by State, local, and tribal governments, in the aggregate, or by the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or tribal governments, or imposes a duty on the private sector that is not voluntary.

As explained in section V.B above, this NPRM does not include any Federal mandate that could result in increased expenditure by State, local, and tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. State governments administer the TAA Program as agents of the United States and are provided appropriated Federal funds for all TAA Program expenses.

G. Executive Order 13175 (Indian Tribal Governments)

E.O. 13175 addresses the unique relationship between the Federal Government and Indian tribal governments. It requires Federal agencies to take certain actions when regulations have tribal implications. Required actions include consulting with tribal governments prior to promulgating a regulation with tribal implications and preparing a tribal impact statement. E.O. 13175 defines regulations as having ''tribal implications'' when they have substantial direct effects 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. Because this NPRM addresses the worker-certification process at the Federal level, the individual benefit and training authorization process at the State level, State administration of the TAA Program, and the Department's distribution of TAA Program funds to the States, the Department concludes that it does not have tribal implications.

List of Subjects

20 CFR Part 617

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements.

20 CFR Part 618

Administrative practice and procedure, Employment, Fraud, Grant programs—Labor, Manpower training programs, Relocation assistance, Reporting and recordkeeping requirements, Trade adjustment assistance.

29 CFR Part 90

Administrative practice and procedure, Grant programs—labor, Reporting and recordkeeping requirements, Trade adjustment assistance.

Under the authority of 19 U.S.C. 2320(a) and for the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR parts 617 and 618 and 29 CFR part 90 as follows:

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS UNDER THE TRADE ACT OF 1974

■ 1. The authority citation for 20 CFR part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

Appendices A, B, and C to Part 617—[Transferred to Part 618 and Redesignated]

■ 2. Transfer appendices A, B, and C of part 617 to part 618 and redesignate the appendices as appendices to part 618.

PART 617—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 617.

■ 4. Revise 20 CFR part 618 to read as follows:

PART 618—TRADE ADJUSTMENT ASSISTANCE UNDER THE TRADE ACT OF 1974, AS AMENDED

Subpart A—General

Sec.
618.100 Purpose and scope.
618.110 Definitions.

Subpart B—Petitions, Investigations, and Determinations

Sec.
618.200 Scope.
618.205 Petitions.
618.210 Investigation.
618.215 Public hearings.
618.220 Use of subpoena.
618.225 Criteria for certification of a group of workers.
618.230 Evidence.
618.235 Determinations.
618.240 Termination of certification.
618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.
618.250 Amendments of certifications.
618.255 Judicial review of determinations.
618.260 Study regarding certain affirmative determinations by the Commission.
618.265 Availability of information to the public.

Subpart C—Employment and Case Management Services

Sec.
618.300 Scope.
618.305 The Trade Adjustment Assistance Program as a one-stop partner.
618.310 Responsibilities for the delivery of employment and case management services.
618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.
618.330 Assessment of trade-affected workers.
618.335 Initial assessment of trade-affected workers.
618.345 Comprehensive and specialized assessment of trade-affected workers.
618.350 Individual employment plans for trade-affected workers.
618.355 Knowledge, skills, and abilities of staff performing assessments.
618.360 Employment and case management services for trade-affected workers in training.

Subpart D—Job Search and Relocation Allowances

Sec.
618.400 Scope.
618.405 General.
618.410 Applying for a job search allowance.
618.415 Eligibility for a job search allowance.
618.420 Findings required.
618.425 Amount of a job search allowance.
618.430 Determination and payment of a job search allowance.
618.435 Job search program participation.
618.440 Applying for a relocation allowance.
618.445 Eligibility for a relocation allowance.
618.450 Findings required.
618.455 Determining the amount of a relocation allowance.
618.460 Determinations and payment of a relocation allowance.

Subpart E—Reemployment Trade Adjustment Assistance

Sec.
618.500 Scope.
618.505 Individual eligibility.
618.510 Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.
618.515 Continuing eligibility and timing of payments.
618.520 Benefits available to eligible adversely affected workers.
618.525 Determinations, redeterminations, and appeals.
618.530 Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.

Subpart F—Training Services

Sec.
618.600 Scope.
618.605 General procedures.
618.610 Criteria for approval of training.
618.615 Limitations on training approval.
618.620 Selection of training program.
618.625 Payment restrictions for training programs.
618.630 Training of reemployed trade-affected workers not in suitable employment.
618.635 Work-based training.
618.640 Supplemental assistance.
618.645 Voluntary withdrawal from a training program.
618.650 State standards and procedures for establishing reasonable cost of training.
618.655 Training for adversely affected incumbent workers.
618.660 Training benchmarks.
618.665 Amending approved training.

Subpart G—Trade Readjustment Allowances

Sec.
618.700 Scope.
618.705 Definitions.
618.710 Categories of Trade Readjustment Allowances.
618.715 Applications for Trade Readjustment Allowances and payment.
618.720 Qualifying requirements for Basic Trade Readjustment Allowances.
618.725 Training enrollment deadlines.
618.730 Good cause.
618.735 Waiver of training requirement for Basic Trade Readjustment Allowances.
618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.
618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.
618.750 Maximum amount of Basic Trade Readjustment Allowances.
618.755 Eligibility period for Basic Trade Readjustment Allowances.
618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.
618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.
618.770 Special rule for justifiable cause.
618.775 Payment of Trade Readjustment Allowances during breaks in training.
618.780 Disqualifications.

Subpart H—Administration by Applicable State Agencies

Sec.
618.800 Scope.
618.804 Agreements with the Secretary of Labor.
618.808 State rulemaking.
618.812 Subpoenas.
618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.
618.820 Determinations of eligibility; notices to individuals.
618.824 Liable State and agent State responsibilities.
618.828 Appeals and hearings.
618.832 Overpayments; penalties for fraud.
618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.
618.840 Uniform interpretation and application of this part.
618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.
618.848 Veterans' priority of service.
618.852 Recordkeeping and disclosure of information requirements.
618.856 Information, reports, and studies.
618.860 General fiscal and administrative requirements and cost classification.

618.864 Trade Adjustment Assistance Program performance.
618.868 Unemployment Insurance.
618.872 Travel under the Trade Adjustment Assistance Program.
618.876 Verification of eligibility for program benefits.
618.884 Special rule with respect to military service.
618.888 Equitable tolling.
618.890 Staffing flexibility.
618.894 Nondiscrimination and equal opportunity requirements.
618.898 Applicable State law.

Subpart I—Allocation of Funds to States for Training and Other Activities

Sec.
618.900 Annual cap on funds available for Training and Other Activities.
618.910 Initial allocation of funds.
618.920 Reserve fund distributions.
618.930 Second distribution.
618.940 Insufficient funds.
618.950 Recapture and reallocation of Training and Other Activities funds.

Authority: 19 U.S.C. 2320; Secretary's Order No. 03–2009, 74 FR 2279 (Jan. 14, 2009).

Subpart A—General

§ 618.100 Purpose and scope.

(a) *Purpose.* The Act establishes a Trade Adjustment Assistance for Workers (TAA) Program. The goal of the TAA Program is to help each worker participating in the program obtain suitable employment whenever possible, and to return to employment as quickly as possible.

(b) *Scope.* Global trade impacts thousands of workers each year across the United States. The TAA Program provides trade-affected workers with opportunities to obtain the skills, credentials, resources, and support necessary to become reemployed in a good job. The TAA Program's benefits and services include: Employment and case management services, training, out-of-area job search and relocation allowances, income support through Trade Readjustment Allowances (TRA), the Reemployment Trade Adjustment Assistance (RTAA) benefit for workers aged 50 or older who find qualifying reemployment, and, if available, the Health Coverage Tax Credit (HCTC). Together with its workforce development partners in the one-stop delivery system authorized under the Workforce Innovation and Opportunity Act (WIOA), the TAA Program helps retrain, retool, and rebuild the American workforce.

(c) *Effect.* The regulations in this part are issued to implement the Act.

§ 618.110 Definitions.

The following definitions apply solely in this part.

Act means chapter 2 of title II of the Trade Act of 1974, Public Law 93–618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended.

Administrator means the Administrator, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Washington, DC, who has responsibility for administering the TAA Program, or their designee.

Adversely affected employment means employment in a firm or appropriate subdivision, if workers of the firm or appropriate subdivision are certified as eligible to apply for the TAA Program under subpart B of this part.

Adversely affected worker or *AAW* (also referred to, in combination with an AAIW, as a trade-affected worker) means an individual, including an employer, who, because of lack of work in adversely affected employment, has been totally or partially separated from such employment.

Adversely affected incumbent worker or *AAIW* (also referred to, in combination with an AAW, as a trade-affected worker) means a worker who:

(1) Is a member of a worker group certified as eligible to apply for the TAA Program under subpart B of this part;

(2) Has not been totally or partially separated from adversely affected employment; and

(3) The Department determines, on an individual basis, is threatened with total or partial separation.

Agent State means, with respect to any trade-affected worker, any State that provides services or benefits for such trade-affected worker other than the State that is the liable State. (See also definition for *liable State* in this section.)

Applicable State law means, for any worker, the State law of the State:

(1) In which such worker is entitled to Unemployment Insurance (UI) (whether or not such worker has filed a UI claim) immediately following such worker's first separation; or

(2) If the worker is not so entitled to UI under the State law of any State immediately following such first separation, or is entitled to UI under the Railroad Unemployment Insurance Act (RRUI), the State law of the State in which such first separation occurred.

Appropriate subdivision means an establishment, facility or facilities, an organizational department, a product line, a project team, an operational unit, or part or combination thereof. The appropriate subdivision is determined on a case-by-case basis and includes all workers or a subset of workers working at, or reporting to, the location(s) identified in the petition, or subsequently identified during the course of the investigation, whose employment is dependent upon the production of the specific article or supply of the specific service identified in the petition, or identified during the course of the investigation.

Appropriate week means the week in which the AAW's first separation occurred.

Approved training or *TAA approved training* means a training program approved under subpart F of this part (§ 618.610).

Article means a tangible good or an intangible good sold or produced by a firm. The good must be the subject of the sale or production, and not an object that is produced incidentally to the sale or production. An article can be measured in individual production units or commercial production units, such as with commodities. Sale of an article is the means by which revenue is generated, accumulated, or calculated.

Average weekly hours means the average hours worked by an AAW (excluding overtime) in the employment from which the worker has been or claims to have been separated in the 52 consecutive calendar weeks (excluding weeks during which the worker was sick or on vacation) immediately preceding the worker's total separation or, for a partially separated worker, the week before the appropriate week. The average is obtained by dividing:

(1) Total hours worked (excluding overtime) in the 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation); by

(2) The number of weeks in such 52 consecutive calendar weeks (excluding weeks in such period during which the worker was sick or on vacation).

Average weekly wage means one-thirteenth of the total wages paid to an AAW in the high quarter. For purposes of this computation, the high quarter is the quarter in which the worker's total wages were highest among the first 4 of the last 5 completed calendar quarters immediately preceding the week in which total separation occurred or, in cases where partial separation is claimed, the appropriate week.

Benefit period means, with respect to an AAW:

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the worker is eligible for regular compensation, additional compensation, or extended compensation; or

(2) The equivalent to such a benefit year or ensuing period provided for under Federal UI law.

Certification or *affirmative determination* or *petition certification* means a determination issued under § 618.235(a), or an amendment under § 618.250, of eligibility to apply for the TAA Program, with respect to a specified worker group of a firm or appropriate subdivision. Excluded from this definition are ''certifications'' in secs. 223(d), 236(a)(5)(H), 239(a)(3), and 247(19) of the Act, and ''affirmative determinations'' in secs. 222(e) and 224 of the Act.

Certification date or *date of certification* means the date on which the certifying officer signs the certification. This is the date that the certification takes effect.

Certification period means the period of time during which total, partial, or threat of separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by a certification for worker groups eligible to apply for assistance under sec. 222(a) and (b) of the Act. It also means the period of time during which total or partial separations from adversely affected employment within a firm are covered by a certification for worker groups eligible to apply for assistance under sec. 222(e) of the Act. The certification period begins on the impact date and, unless stated otherwise in the certification, ends 2 years after the certification date. A certification may expire sooner than 2 years after the certification date as a result of a termination under § 618.240, an amendment under § 618.250, or if a certification is based on a determination issued by the International Trade Commission (ITC) under sec. 222(e) of the Act.

Certifying Officer means an official, including the Administrator of the Office of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, who has been delegated responsibility to make determinations and issue certifications of eligibility to apply for the TAA Program, and to perform such further duties as may be required.

Co-enrollment means enrollment in the TAA Program and at least one other program that operates as part of the one-stop delivery system, such as the dislocated worker program under title I of WIOA.

Commission or *International Trade Commission* or *ITC* means the U.S. International Trade Commission.

Commuting area means the area in which a trade-affected worker would be expected to travel to and from work on a daily basis as determined under the applicable State law.

Completion of training or *complete training* or *completed training* means that the trade-affected worker has finished all required coursework (including required externships or internships), testing, and professional licensing exams related to TAA approved training.

Component part means an input (tangible or intangible article) that is directly incorporated into the production of another article, although it need not retain its original form or characteristics.

Confidential business information means trade secrets and commercial or financial information received by the Department, or by the States on the Department's behalf, during an investigation under subpart B of this part, which the Department considers to be privileged or confidential as set forth in the Trade Secrets Act (18 U.S.C. 1905), 5 U.S.C. 552(b)(4), or 29 CFR part 70. It does not include publicly available business information, or business information with respect to which the firm or customer submitting the information had notice, at the time of submitting the information, that the information would be released by the Department or the States, or if the firm or customer subsequently consents to the release of the information.

Contributed importantly means a cause that is important but not necessarily more important than any other cause.

Cooperating State agency or *CSA* means the agency at the State level that will act as agent of the Department in receiving applications from and providing benefits and services to trade-affected workers in coordination with the State agency that administers the UI law, if applicable, and such other agency or agencies of the State as the Governor of the State may designate to cooperate with such CSA for performance accountability reporting and other purposes.

Customized training means work-based training that is:

(1) Designed to meet the special requirements of a single employer or group of employers;

(2) Conducted with a commitment by the employer or group of employers to employ a trade-affected worker upon successful completion of the training; and

(3) For which the employer pays for a significant portion (but in no case less than 50 percent) of the cost of such training.

Denial or *negative determination* or *petition denial* means a determination issued under § 618.235(b) that a group of workers is not eligible for TAA Program benefits.

Department of Labor or *Department* means the U.S. Department of Labor.

Downstream producer means a firm that performs additional, value-added production processes or services, such as final assembly, finishing, testing, packaging, or maintenance or transportation services. The value-added production processes or services must be performed directly for another firm that has a worker group certified to apply for the TAA Program under § 618.225, and the production processes or services must be carried out with respect to the article or service on which the certification under § 618.225 was based.

Eligible RTAA recipient means, for HCTC purposes (see definition of *HCTC*), an AAW eligible for RTAA and who is participating in RTAA for a month and is receiving an RTAA benefit for that month.

Eligible TAA recipient means, for HCTC purposes (see definition of *HCTC*), an AAW who receives TRA for any day of the month or who would be eligible to receive TRA but for the fact that the worker has not exhausted their UI entitlement.

Employer means any individual or type of organization, including the Federal Government, a State government, a political subdivision, or an instrumentality of one or more governmental entities, with one or more individuals performing service in employment for it within the United States.

Employment means any service performed for an employer by an officer of a corporation or by an individual for wages.

Enrolled in training means that a worker's application for training is approved by the State under subpart F of this part, and the training provider has furnished written notice to the State that the worker has been accepted in the approved training program, which is to begin within 30 calendar days of the date of such approval.

Family means the following members of an adversely affected workers's household whose principal place of abode is with the individual in a home the individual maintains or would maintain but for unemployment:

(1) Spouse;

(2) Domestic partner;

(3) Children of the adversely affected worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support. (The

term ''children'' shall include natural offspring; stepchildren; adopted children; grandchildren, legal minor wards or other dependent children who are under legal guardianship of the worker, of the worker's spouse, or of the domestic partner; and an unborn child(ren) born and moved after the worker's effective date of transfer.);

(4) Dependent parents (including step and legally adoptive parents) of the worker, of the worker's spouse, or of the worker's domestic partner; and

(5) Dependent brothers and sisters (including step and legally adoptive brothers and sisters) of the worker, of the worker's spouse, or of the worker's domestic partner, who are unmarried and under 21 years of age or who, regardless of age, are physically or mentally incapable of self-support.

Filing date means the date on which the petition and attachments to the petition form are determined to be valid by the Department's Office of Trade Adjustment Assistance, in accordance with § 618.205.

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy, or receiver under decree of any court. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially beneficially owned by substantially the same persons may be considered a single firm. Where the term ''firm'' appears in this part, it means ''firm or appropriate subdivision.'' Firm also means an agricultural firm or service sector firm or an appropriate subdivision thereof. For purposes of subpart B of this part only, firm does not include a public agency or any subdivision of a public agency, as defined in 29 U.S.C. 203(x).

First benefit period means the benefit period established after the AAW's first qualifying separation or in which such separation occurs.

Full-time training means:

(1) Attendance in training in accordance with the training provider's established full-time hours in a day (or credit hours) and days in a week; and

(2) In the last semester of training, if the remaining course(s) to complete the training approved under subpart F of this part do not meet the training provider's usual definition of full-time, States must consider the participation in training as full-time training, if no additional training or coursework will be required to complete the training program.

Group of workers means at least two workers employed or formerly employed by the same firm, or an appropriate subdivision thereof, including teleworkers and staffed workers, who file a petition for certification under subpart B of this part, or for whom a petition is filed.

Health Coverage Tax Credit or *HCTC* means the tax credit equal to a specific percentage of the costs of qualified health insurance premiums, which is administered by the Internal Revenue Service under sec. 35 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 35). When the tax credit is available, eligible TAA and RTAA recipients (see definitions of *eligible TAA recipient* and *eligible RTAA recipient*) and qualifying family members may apply for advance payment of the credit or claim the credit on their income tax return.

Impact date means the date stated in a certification of eligibility to apply for the TAA Program, on which the total or partial separations of the workers covered by the certification began or threatened to begin, but in most cases, is not more than 1 year before the petition date.

Increased imports means that imports have increased either absolutely or relative to domestic production compared to a representative base period. The representative base period will be 1 year consisting of the 4 quarters immediately preceding the date that is 12 months prior to the date of the petition.

Individual employment plan or *IEP* means a revisable document containing an ongoing strategy, jointly developed by the trade-affected worker and the State, identifying the worker's employment goals, appropriate achievement objectives, and appropriate services for the worker to achieve their employment goals, objectives, and benchmarks while in training or receiving employment and case management services.

Job finding club means a job search workshop that includes a period of 1 to 2 weeks of structured, supervised activity in which trade-affected workers attempt to obtain jobs.

Job search program or *JSP* means a job search workshop or job finding club.

Job search workshop means a short (1 to 3 days) seminar designed to provide workers with knowledge that will enable the workers to find jobs. Subjects are not limited to, but should include, labor market information, resume writing, interviewing techniques, and techniques for finding job openings.

Lack of work means that the employer does not have work for the worker to perform or does not make that work available to the worker, and includes, but is not limited to, circumstances when:

(1) Work is unavailable because the employer suspends or ceases operations or institutes a lockout; or

(2) Work is unavailable because the employer downsizes the workforce by means of attrition or layoff.

Layoff means a suspension of or separation from employment by a firm for lack of work, initiated by the employer, and expected to be for a definite or indefinite period of time.

Liable State means, with respect to a trade-affected worker making claims for TAA Program benefits, the State whose State UI law is the applicable State law.

Like or directly competitive means, for articles, that articles have characteristics that are substantially identical in inherent or intrinsic characteristics (*i.e.,* material from which the articles are made, appearance, quality) or are used for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable; and for services, services that have characteristics that are substantially identical in inherent or intrinsic characteristics (*i.e.,* processes and procedures that comprise the activity, sequence of steps or component elements required in the provision of the service or both) or are used for substantially equivalent purposes and achieve comparable results and are, therefore, commercially interchangeable.

Office of Trade Adjustment Assistance or *OTAA* means the organization within the U.S. Department of Labor, Employment and Training Administration that administers the TAA Program, or OTAA's successor organization.

One-stop delivery system means the nationwide system of one-stop career centers, known as American Job Centers, which administer and deliver workforce development, educational, and training activities, as well as supportive services to workers and job seekers, in accordance with title I of WIOA.

On-the-job training or *OJT* means work-based training, provided—under contract with an employer in the public, nonprofit, or private sector—to an AAW who is employed by the employer.

Partial separation or *partially separated* means, with respect to an AAW who has not been totally separated, that:

(1) For purposes of subpart B of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours at the

firm, or appropriate subdivision thereof during the period of investigation; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage at the firm, or appropriate subdivision thereof during the period of investigation.

(2) For this subpart and subparts C through I of this part:

(i) The worker's hours of work have been reduced to 80 percent or less of the worker's average weekly hours in adversely affected employment during the certification period; and

(ii) The worker's wages have been reduced to 80 percent or less of the worker's average weekly wage in adversely affected employment during the certification period.

Period of duty means active duty served by an AAW before completing training under subpart F of this part for a period of more than 30 days under a call or order to active duty of more than 30 days or, in the case of a member of the Army National Guard of the United States or Air National Guard of the United States, full-time National Guard duty under sec. 502(f) of title 32, U.S. Code, for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

Petition date means the date a petition form is signed by the petitioner(s). When petitioners sign on different dates, the petition date is the latest of those dates.

Prerequisite education or *prerequisite coursework* or *prerequisite training* means any coursework or training required by a training provider before advancing to further training.

Program of remedial education or *remedial education* or *remedial training* means coursework or training that is designed to enhance the employability of a trade-affected worker by upgrading basic academic knowledge through such courses as adult basic education (ABE), basic math and literacy, English language acquisition (ELA) for nonnative speakers, and high school equivalency (HSE) courses, among others.

Qualifying separation means any total or partial separation of an AAW from adversely affected employment within the certification period for the purposes of determining their eligibility to receive Basic TRA; 26-week period for enrollment in approved training; and Basic TRA eligibility period. The first qualifying separation is used to determine the weekly and maximum amounts of Basic TRA payable to an AAW.

Reemployment Trade Adjustment Assistance or *RTAA* means the TAA Program benefit available to certain AAWs 50 years of age and older who obtain qualifying reemployment.

Regional Administrator means the appropriate Regional Administrator of the U.S. Department of Labor's Employment and Training Administration.

Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

Separation date means:

(1) For a total separation:

(i) For a worker in employment status and not on employer-authorized leave, the last day worked; or

(ii) For a worker on employer-authorized leave, including leave for military service, the last day the worker would have worked had the worker not been on the employer-authorized leave.

(2) For a partial separation, the last day of the week in which the partial separation occurred.

Service means the work performed by a worker for a service firm or appropriate subdivision. The work of a service firm is measured in units of time, labor, and tasks completed. Services may include the incidental production of an article, such as a license, ticket, certificate, permit, model, drawing, or prototype. Services are intangible but may involve the use of tangible objects during the supply of the service (such as textbooks in the supply of educational services). Where the revenue of the firm, or appropriate subdivision, is generated from the sale of a service, the firm, or appropriate subdivision, is deemed to be engaged in activity related to the supply of a service.

Significant number or proportion of the workers means:

(1) The lesser of 50 workers or 5 percent of the workers within a firm, or appropriate subdivision, have been totally or partially separated, or both, or are threatened with total or partial separation; or

(2) 2 or more workers within a firm, or appropriate subdivision, with a workforce of fewer than 50 workers, have been totally or partially separated, or both, or are threatened with total or partial separation.

Staffed worker means a worker directly employed by one firm to perform work under the operational control of another firm that is the subject of a petition investigation. These workers were previously referred to as ''leased workers.'' The term excludes independent contractors.

State means the States of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and the term ''United States,'' when used in the geographical sense, includes the Commonwealth of Puerto Rico.

State agency means the agency at the State level that administers the State law.

State law means the UI law of a State under sec. 3304 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304).

Successor-in-interest means a firm, whether or not named on a certification issued under subpart B of this part, from which trade-affected workers are separated, or threatened with separation, and where most or all of the factors in paragraphs (1) thorugh (7) of this defintion are present, relative to a firm named on a determination issued under subpart B:

(1) There is continuity in business operations.

(2) There is continuity in location.

(3) There is continuity in the workforce.

(4) There is continuity in supervisory personnel.

(5) The same jobs exist under similar conditions.

(6) There is continuity in machinery, equipment, and process.

(7) There is continuity in product/service.

Suitable employment means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work that are not less than 80 percent of the worker's average weekly wage. Part-time, temporary, short-term, or threatened employment is not suitable employment.

Supplier means a firm that produces and supplies directly to another firm component parts for articles, or services, used in the production of articles or in the supply of services, as the case may be, that were the basis for a certification of eligibility under § 618.225 of a worker group employed by such other firm. There is no direct supply where an intervening customer, supplier, or another entity receives the component parts, aside from in a delivery or bailment capacity, or in the case of a service supplier, if an intervening entity performs the service.

Supportive services means services such as local transportation, child care, dependent care, and housing, provided through WIOA or other programs, that are needed to enable an individual to participate in activities authorized under the Act.

Threatened to become totally or partially separated means that there is evidence of intent to separate workers or

that imminent separations are reasonably anticipated.

Threatened to begin means, in the context of reasonably anticipated total or partial separations, the date(s) on which imminent separations will begin.

Total separation or *totally separated* means:

(1) For purposes of subpart B of this part, the layoff or severance of an AAW from a firm or appropriate subdivision thereof; or

(2) For all other purposes under this part, the layoff or severance of a worker from adversely affected employment with a firm, or appropriate subdivision thereof.

Trade Adjustment Assistance for Workers or *Trade Adjustment Assistance* or *TAA Program* means chapter 2 of title II of the Act, Public Law 93–618, 88 Stat. 1978 (19 U.S.C. 2271–2323 and 2395), as amended, which establishes the Trade Adjustment Assistance for Workers (TAA) Program. The benefits and services established under the Act, including RTAA, are collectively referred to as the Trade Adjustment Assistance Program (TAA Program) and provide assistance to workers adversely affected by foreign trade, as described in this part.

Trade-affected worker means both ''adversely affected workers'' and ''adversely affected incumbent workers.''

Trade Readjustment Allowances or *TRA* means a weekly allowance payable to an AAW who meets the requirements of subpart G of this part. There are three types of TRA: Basic, Additional, and Completion, as described in § 618.710.

Unemployment Insurance or *UI* means the unemployment compensation payable to a worker under any State law or Federal UI law, including chapter 85 of title 5 of the U.S. Code and the RRUI. UI includes:

(1) *Regular compensation* means compensation payable to a worker under any State unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and additional compensation.

(2) *Additional compensation* means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.

(3) *Extended compensation* means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to a worker under those provisions of the State law that satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 (note)) with respect to the payment of extended compensation, including one-hundred percent federally funded unemployment compensation extensions.

Value-added production processes or services means such processes or services similar to and including final assembly, finishing, testing, packaging, or maintenance or transportation services.

Wages means all compensation for employment for an employer, including commissions, bonuses, and the cash value of all compensation in a medium other than cash.

Wagner-Peyser Act means the Wagner-Peyser Act, as amended (29 U.S.C. 49 *et seq.*).

Week means a week as defined in the applicable State law.

Week of unemployment means a week of total, part-total, or partial unemployment as determined under the applicable State law or Federal UI law.

Worker group means two or more workers of the same firm, or appropriate subdivision thereof, named in a certification rendered under subpart B of this part as eligible to apply for TAA Program benefits and services, inclusive of teleworkers and staffed workers.

Workforce Innovation and Opportunity Act or *WIOA* means the Workforce Innovation and Opportunity Act (Pub. L. 113–128, as amended).

Subpart B—Petitions, Investigations, and Determinations

§ 618.200 Scope.

This subpart relates to petitions, investigations, and determinations of eligibility for a group of workers to apply for adjustment assistance under the Act. This subpart specifically applies to the initiation, conduct, and effective processing of petitions for certification of eligibility to apply for adjustment assistance. This subpart also contains general provisions with respect to filing of documents, public availability of documents, and the appeals process.

§ 618.205 Petitions.

(a) *Who may file a petition.* A group of workers must file its petition for certification of eligibility to apply for adjustment assistance simultaneously with the Department and with the Governor of the State in which such workers' firm is located, by any of the following:

(1) A group of two or more workers from the same firm, on whose behalf the petition is filed;

(2) A union, or other duly authorized representative of the group of workers;

(3) The employer(s) of the group of workers; or

(4) One-stop center operators or one-stop partners, including State workforce officials, employment security agencies, or dislocated worker unit and rapid response team members.

(b) *Form and contents.* A group of workers must file its petition for certification of eligibility to apply for adjustment assistance with the Department. Petitioners may obtain a petition form and instructions online at: *http://www.doleta.gov/tradeact,* at a one-stop center (also known as an American Job Center), or by writing to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210. A petition, which may include attachments, must provide the following information to be considered valid and for an investigation to commence:

(1) The name and contact information for each petitioner;

(2) The name of the firm employing the group of workers;

(3) The address of the location(s) where the group of workers who have been totally or partially separated or threatened with separation report to work (for a teleworker, the address of the location to which they report);

(4) The name and contact information of an official within the employer firm or an individual authorized to provide information regarding the operation of the group of workers' firm;

(5) The article produced or service supplied by the firm;

(6) The actual or approximate date on which total or partial separations are threatened to occur or did occur;

(7) The actual or estimated total number of workers who have been or may be separated;

(8) A reason why the petitioner believes that worker separations have occurred or may occur at the employer's firm due to foreign trade impacts, or a reason why a request to amend an existing and active certification should be granted; and

(9)(i) Every petition must be signed and dated by at least two members of the petitioning group, or by an official of a certified or recognized union or other duly authorized representative, or by a representative of one of the organizations listed in paragraph (a)(4) of this section.

(ii) Signing of a petition must constitute acknowledgement that the information provided on the petition form will be used for the purposes of

determining worker group eligibility and providing notice to petitioners, workers, and the general public that the petition has been filed, and whether the worker group is eligible to apply for TAA Program benefits and services. Knowingly falsifying any information on the petition form is a Federal offense (18 U.S.C. 1001) and a violation of the Act (19 U.S.C. 2316). For the petition to be valid, the petitioner(s) listed on the form must sign and date the form, attesting to the fact that they are authorized to file a petition.

(c) *Supplemental information.* Providing supplemental information, while not required, may assist the investigation. Attachments to the petition form are part of the petition.

(d) *Filing.* (1) Petitions should be filed electronically with the Office of Trade Adjustment Assistance, via *www.doleta.gov/tradeact.* Individuals requiring assistance in filing online should contact their nearest one-stop center or the State's rapid response unit.

(2) Alternatively, petitions may be filed via email to *taa.petition@dol.gov,* via fax at (202) 693–3584 or (202) 693–3585, or by mail to: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(e) *Industry notification of ITC determinations.* Upon receiving notification from the ITC that it has issued an affirmative determination of injury or threat of injury under sec. 202 or 421 of the Act, under an applicable safeguard provision enacted to implement a trade agreement to which the United States is a party, or an affirmative final determination of material injury of threat thereof in investigation under sec. 705 or 735 of the Tariff Act of 1930, the Department will notify the affected parties listed in paragraph (e)(1) of this section. To the extent practicable, the Department may also notify other duly authorized representatives of the industry to which the ITC determination applies.

(1) Parties the Department will notify under paragraph (e) of this section include:

(i) Representatives of the domestic industry affected by the determination;

(ii) Firms publicly identified by name during the proceeding related to the ITC determination; and

(iii) Unions representing workers in firms covered by the determination.

(2) The notice provided by the Department under paragraph (e) of this section will include:

(i) A summary of the ITC determination;

(ii) Information about the workers' potential eligibility for TAA Program benefits;

(iii) The benefits and services available under the TAA Program;

(iv) Information regarding the process for filing of petitions; and

(v) The availability of assistance from the State for filing petitions.

(3) The Department will also notify the Governor of each State in which one or more firms covered by an ITC determination are located and will identify those firms to the State.

(f) *Acceptance of petitions.* The Department will review a petition, including attachments, to determine if it is valid within 2 business days of receipt of the petition by the Department. The date on which the petition is determined to be valid under paragraph (b) of this section is the filing date. The Department will not initiate the investigation until it has determined that the petition is valid.

(g) *Multiple petitions for same group of workers.* If the Department receives multiple petitions regarding the same group of workers, it will base the filing date upon the first petition received.

(h) *Publication of notice in the* ***Federal Register***. The Department will publish a notice in the **Federal Register** and on the Department's website announcing the initiation of an investigation into all valid petitions filed.

(i) *Public access to petitions.* A petition, including attachments, is a record that is available, in redacted form, in accordance with the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552), Executive Order 12600, and 29 CFR part 70. The Department will post all petitions, in redacted form, to the Department's website and make them available for review at the Office of Trade Adjustment Assistance, Washington, DC.

(j) *Receipt of petition by the State.* If the State receives a petition, the State must verify that the Department has also received the petition. If the petition has not been posted to the Department's website within 10 calendar days of receipt by the State, the State must forward the petition to the Department.

§ 618.210 Investigation.

(a) *Timing.* The Department will initiate an investigation once it has deemed the petition valid in accordance with § 618.205(f).

(b) *Period of investigation.* For purposes of this subpart, the period of investigation is the time period it takes to investigate each of the criteria that are part of the Department's determination. The period of investigation varies for some eligibility criteria; § 618.225 describes the period of investigation for each criterion.

(c) *Investigative process.* To determine whether the petitioning group of workers' eligibility criteria for certification have been met, the Department may take as many of the steps in paragraphs (c)(1) through (8) of this section during the investigation as it deems necessary to identify the group of workers and to reach a determination of eligibility to apply for TAA Program benefits for the identified worker group:

(1) Verify information on the petition form by contacting the petitioner(s);

(2) Provide the petitioner(s) the opportunity to submit additional evidence in support of the petition;

(3) Obtain publicly available information about the workers' firm and industry;

(4) Request information from the workers' firm;

(5) Request information from the customers of the workers' firm;

(6) Request information from the officials of certified or recognized unions or other duly authorized representatives of the group of workers;

(7) Request information from one-stop center operators or one-stop partners; or

(8) Use other available sources of information as necessary.

(d) *Protection of confidential business information.* (1) The Department will determine whether information submitted by a firm or customer is confidential business information in accordance with FOIA, as amended (5 U.S.C. 552), Executive Order 12600, the Trade Secrets Act (18 U.S.C. 1905), and 29 CFR part 70.

(2) The Department will not disclose confidential business information without the consent of the submitting firm or customer, unless under a court order to do so or as otherwise required by law.

(e) *Termination of investigation.* (1) The Department will notify the petitioner of the termination of an investigation, publish a Notice of Termination of Investigation in the **Federal Register**, and post on the Department's website. The Department may terminate an investigation if the investigation establishes one of the following:

(i) The petition is invalid, which includes petitions identifying a nonexistent group of workers, filed under false pretenses, or perpetuating fraud;

(ii) The petitioner has withdrawn the petition in writing;

(iii) The group of workers identified in the investigation is the same as a

group of workers identified in another pending investigation;

(iv) The group of workers identified in the investigation already has been issued a denial, and the period of investigation applicable to the current investigation and the previous denial is the same; or

(v) The group of workers identified in the investigation is already covered by a certification that does not expire within 90 calendar days of the determination.

(2) If appropriate to protect the interests of the group of workers covered by a petition filed and terminated under paragraph (e)(1)(i) or (ii) of this section, the Department may use the original impact date of the terminated petition for the identical group of workers covered under a later, valid, petition covering the identical group of workers, provided that it is filed within 30 calendar days of the filing date of the first petition. Under no circumstances will the Department use the impact date of an earlier petition when that petition was terminated for being invalid under paragraph (e)(1)(i) of this section because it was filed under false pretenses or to perpetuate a fraud.

(3) Section 618.245 describes reconsideration of a termination of investigation.

(f) *Investigative record.* The investigative record of a determination will include the petition that initiated the investigation, the documents and other materials provided to the Department in connection with the determination on the petition, research conducted by the Department, and records of investigation activities (including but not limited to telephone logs and email correspondence, and any determination under § 618.225(a), (b) or (c)). The investigative record excludes information that is privileged or otherwise exempt from disclosure. Personally identifiable information and confidential business information will be protected consistent with all Federal authorities and Departmental administrative guidance.

(g) *Site visits.* The investigation may include one or more site visits to confirm information furnished by the petitioner(s) and to elicit other relevant information, where other methods to obtain or confirm information or both, are unsuccessful.

§ 618.215 Public hearings.

(a) *When held.* (1) A public hearing must be held in connection with an investigation initiated under § 618.210 whenever, but not later than 10 days after the date of publication in the **Federal Register** of the notice of receipt of the petition, such a hearing is requested in writing by:

(i) The petitioner; or

(ii) Any other person found by the Administrator to have a substantial interest in the proceedings.

(2) Such petitioner and other interested persons must be afforded an opportunity to be present, to produce evidence, and to be heard.

(3) An explanation of why the requestor is requesting the hearing must be provided to the Department.

(b) *Form of request.* A request for public hearing must be filed, in letter format, in the same manner as provided for other documents under § 618.205(d)(2). The request must contain:

(1) The name, address, and telephone number of the person, organization, or group requesting the hearing;

(2) A complete statement of the relationship of the person, organization, or group requesting the hearing to the petitioner or the petition's subject matter; and

(3) An explanation of why the person, organization, or requestor is the hearing is interested in the matter.

(c) *Time, place, and scope.* The time, place, and scope of a public hearing will be set by the presiding officers and published in the **Federal Register** a reasonable period of time before the scheduled hearing.

(d) *Presiding officer.* The Administrator, or their designee, must conduct and preside over public hearings.

(e) *Order of testimony.* Witnesses will testify in the order designated by the presiding officer. Each witness, after being duly sworn, will proceed with testimony. After testifying, the presiding officer or an agent designated by the presiding officer may question the witness. Any person who has entered an appearance in accordance with paragraph (k) of this section may direct questions to the witness, but only for the purpose of assisting the presiding officer in obtaining relevant and material facts with respect to the subject matter of the hearing.

(f) *Evidence.* Witnesses may produce evidence of a relevant and material nature to the subject matter of the hearing.

(g) *Briefs.* Parties who have entered an appearance may file briefs regarding the evidence produced at the hearing. The briefs must be filed with the presiding officer within 10 days of the completion of the hearing.

(h) *Oral argument.* The presiding officer must provide opportunity for oral argument by parties listed in paragraphs (a)(1)(i) and (ii) of this section after conclusion of the testimony in a hearing. The presiding officer will determine in each instance the time to be allowed for argument and the allocation thereof.

(i) *Authentication of evidence.* Evidence, oral or written, submitted at hearings, will, upon order of the presiding officer, be subject to verification from books, papers, and records of the parties submitting such evidence and from any other available sources.

(j) *Transcripts.* All hearings will be transcribed or recorded in compliance with the standards of the Department. Persons interested in records of the hearings may inspect them at the U.S. Department of Labor in Washington, DC.

(k) *Appearances.* Any person showing a substantial interest in the proceedings may enter an appearance at a hearing, either in person or by a duly authorized representative.

§ 618.220 Use of subpoena.

(a) The Administrator may require, by subpoena, in connection with any investigation or hearing, the attendance and testimony of witnesses and the production of evidence the issuing official deems necessary to make a determination under this subpart.

(b) The Department will issue a subpoena to secure evidence from a firm, customer, petitioner, or other person who fails to provide requested information within 20 days of the request, unless the recipient of the subpoena demonstrates to the satisfaction of the Department that the information will be provided within a reasonable time. In making this determination, the Department will consider the following factors:

(1) Submission of a portion of the required information;

(2) Prompt cooperation with inquiries about the information;

(3) Cooperation in previous responses to information requests;

(4) Evidence of effort to obtain the required information; and

(5) Other information the Department determines to be relevant.

(c) Witnesses subpoenaed under this section to appear in person must be paid the same fees and mileage as are paid for like services in the District Court of the United States within the jurisdiction of which the proceeding is taking place. The Department must pay the witness fees and mileage.

(d) Subpoenas issued under paragraph (a) of this section must be signed by the Administrator, or their designee, and must be served consistent with Rule 5(b) of the Federal Rules of Civil Procedure.

The date for compliance must be 7 calendar days following service of the subpoena, unless otherwise indicated.

(e) If the recipient of the subpoena refuses to provide the requested information, the Department may petition the appropriate District Court of the United States to seek enforcement of the subpoena.

§ 618.225 Criteria for certification of a group of workers.

(a) *Increased imports.* (1) This paragraph (a) includes criteria for certification of a group of workers based upon increased imports of:

(i) Articles like or directly competitive with the articles produced by the workers' firm;

(ii) Services like or directly competitive with the services supplied by the workers' firm;

(iii) Articles like or directly competitive with articles into which one or more component parts produced by the workers' firm are directly incorporated;

(iv) Articles like or directly competitive with articles that are produced directly using services supplied by the workers' firm; or

(v) Articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by the workers' firm.

(2) After review of the relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as impacted by increased imports if all four of the criteria in paragraphs (a)(2)(i) through (iv) of this section are met.

(i) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with such separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

(*1*) A questionnaire;

(*2*) State workforce agencies;

(*3*) Unions;

(*4*) Displaced workers;

(*5*) Public records; and

(*6*) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

(*1*) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(*2*) Review of employment activity during the 1-year period prior to the petition date; and

(*3*) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

(*1*) A Worker Adjustment and Retraining Notice (WARN) letter;

(*2*) A separation schedule;

(*3*) Information provided to the public, such as a news release or notice on the workers' firm website;

(*4*) Information provided to the worker group; or

(*5*) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2.* Sales or production, or both, of the workers' firm has decreased during the 1-year period prior to the petition date.

(A) Information regarding sales or production may be collected from:

(*1*) Questionnaires;

(*2*) Public records; and

(*3*) Other reliable sources.

(B) Analysis of sales or production data must generally consist of a comparison of sales or production data on the petition date to sales or production data on the date that is 1 year prior to the petition date.

(iii) *Criterion 3.* Imports of the article or service have increased during the 1-year period prior to the petition date.

(A) Information regarding imports may be collected from:

(*1*) Questionnaires issued to the workers' firm or customer(s);

(*2*) Public records; and

(*3*) Other reliable sources.

(B) Analysis of the workers' firm import activity must generally consist of a comparison of the workers' firm import data on the petition date to the workers' firm import data on the date that is 1 year prior to the petition date.

(C) Analysis of customer import activity must generally consist of a comparison of the aggregate of customer import data on the petition date to the aggregate of customer import data on the date that is 1 year prior to the petition date.

(iv) *Criterion 4.* Increased imports have contributed importantly to worker separations, or threat of separation, and the decline in sales or production at the workers' firm.

(A) Analysis of the impact of increased imports on worker separations and declines in sales or production at the workers' firm must generally consist of determining:

(*1*) Whether there are one or more events, or factors, that lessen or sever the causal nexus between the increase in imports and worker separations or threat of separation, and the decline in sales and production at the workers' firm;

(*2*) What percentage of the workers' firm sales or production declines was attributable to the firm's increased imports;

(*3*) What percentage of the workers' firm customer(s) sales or production declines was attributable to the firm's increased imports; and

(*4*) Whether there are other events or factors that mitigate or amplify the impact of increased imports on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(b) *Shift.* (1) This paragraph (b) includes criteria for certification of a worker group based on a shift:

(i) In production of like or directly competitive articles by the workers' firm to another country; or

(ii) In the supply of like or directly competitive services by the workers' firm to another country.

(2) After a review of relevant information necessary to make a determination, the certifying officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a shift in production or supply of service if all of the criteria in paragraphs (b)(2)(i) through (iii) of this section of are met.

(i) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(A) Information regarding separations may be obtained from:

(*1*) A questionnaire;

(*2*) State workforce agencies;

(*3*) Unions;

(*4*) Displaced workers;

(*5*) Public records; and

(*6*) Other reliable sources.

(B) Analysis of separation data must generally consist of a:

(*1*) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(*2*) Review of employment activity during the 1-year period prior to the petition date; and

(*3*) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(C) Evidence of threat of separation includes, but is not limited to:

(*1*) A WARN letter;

(*2*) A separation schedule;

(*3*) Information provided to the public, such as a news release or notice on the workers' firm website;

(*4*) Information provided to the worker group; or

(*5*) Internal firm documents, including memoranda or a firm newsletter.

(ii) *Criterion 2.* There has been a shift in the production or supply of services by the workers' firm to a foreign country.

(A) Information regarding shift activity may be collected from:

(*1*) A questionnaire;

(*2*) Public records; and

(*3*) Other reliable sources.

(B) Analysis of shift activity must generally consist of a:

(*1*) Comparison of shift data on the petition date to shift data on the date that is 1 year prior to the petition date;

(*2*) Review of shift activity during the 1-year period prior to the petition date; and

(*3*) Review of evidence provided by the workers' firm regarding shift activity scheduled to occur after the petition date.

(C) Evidence of future planned shift activity must include more than a stated intent to shift activity to a foreign country and includes, but is not limited to, a reassignment of production or service supply; a reassignment of discrete aspects or stages of production or service supply; securing a facility in a foreign country; shipping resources to a foreign country; or acquiring personnel in a foreign country.

(iii) *Criterion 3.* The shift to a foreign country has contributed importantly to worker separations or threat of separation.

(A) Analysis of impact of shift activity on worker separations must generally consist of determining:

(*1*) Whether there are one or more events or factors that sever or lessen the causal nexus between the shift activity and worker separations or threat of separation;

(*2*) What percentage of the workers' firm sales or production declines was attributable to the firm's shift activity;

(*3*) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than operations at the foreign facility or facilities; and

(*4*) Whether there are other events or factors that mitigate or amplify the impact of shift activity on the workers' firm.

(B) The impact may be determined using a quantitative or qualitative analysis.

(c) *Foreign acquisition.* This paragraph (c) includes criteria for certification of a worker group based on a foreign acquisition of like or directly competitive articles by the workers' firm from another country. After review of relevant information necessary to make a determination, the certifying officer must certify a group of workers as eligible to apply for TAA Program benefits and services as impacted by a foreign acquisition of articles or services if all of the criteria in paragraphs (c)(1) through (3) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* There has been an acquisition of articles or supply of services by the workers' firm from an entity in a foreign country.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of acquisition data must generally consist of a:

(A) Comparison of acquisition data on the petition date to acquisition data on the date that is 1 year prior to the petition date;

(B) Review of acquisition data during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding acquisition activity scheduled to occur after the petition date.

(iii) Evidence of future planned acquisitions requires more than a stated intent to procure production of an article or supply of services from an entity in a foreign country and may include, but is not limited to, entering into a contract with a licensee; reassignment of production or service supply to a contractor or licensee; and a reassignment of discrete aspects or stages of production or service supply to a contractor or licensee.

(3) *Criterion 3.* The acquisition from a foreign country has contributed importantly to worker separations or threat of separation.

(i) Analysis of impact of acquisition data on worker separations must generally consist of determining:

(A) Whether there are one or more events or factors that lessen or sever the causal nexus between the acquisition activity and worker separations or threat of separation;

(B) What percentage of the workers' firm sales or production declines was attributable to the firm's acquisition activity;

(C) Whether operations at the workers' firm domestic facility or facilities decreased at the same or at a greater rate than contractor or licensee operations in the foreign country; and

(D) Whether there are other events or factors that mitigate or amplify the impact of acquisition activity on the workers' firm.

(ii) The impact may be determined using a quantitative or qualitative analysis.

(d) *Supplier of component parts or services.* This paragraph (d) contains criteria for certification of a worker group as a supplier to a worker group. After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as a supplier to a worker group if all of the criteria in paragraphs (d)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from:

(A) A questionnaire;

(B) State workforce agencies;

(C) Unions;

(D) Displaced workers;

(E) Public records; and

(F) Other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm supplied component parts or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (d)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (d)(2) of this section was based on an article or service related to the component part produced or service supplied by the workers' firm.

(5) *Criterion 5.* The component parts supplied to the firm identified in paragraph (d)(2) of this section, represented at least 20 percent of the supplier's production or sales during the 1-year period prior to the petition date, or loss of business with the firm identified in paragraph (d)(2) of this section, during the 1-year period prior to the petition date, contributed importantly to separations or threat of separation at the workers' firm.

(e) *Downstream producer.* After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA Program benefits and services as a downstream producer if all of the criteria in paragraphs (e)(1) through (5) of this section are met.

(1) *Criterion 1.* A significant number or proportion of the workers' firm, or appropriate subdivision thereof, have been totally or partially separated, or threatened with separation, during the 1-year period prior to the petition date.

(i) Information regarding separations may be obtained from a questionnaire, State workforce agencies, unions, displaced workers, public records, and other reliable sources.

(ii) Analysis of separation data must generally consist of a:

(A) Comparison of employment on the petition date to employment on the date that is 1 year prior to the petition date;

(B) Review of employment activity during the 1-year period prior to the petition date; and

(C) Review of evidence provided by the workers' firm regarding actual and threatened separations that occur, or are scheduled to occur, after the petition date.

(iii) Evidence of threat of separation includes, but is not limited to:

(A) A WARN letter;

(B) A separation schedule;

(C) Information provided to the public, such as a news release or notice on the workers' firm website;

(D) Information provided to the worker group; or

(E) Internal firm documents, including memoranda or a firm newsletter.

(2) *Criterion 2.* The certification of the worker group employed by the firm to which the workers' firm provided value-added production processes or services has not expired by the petition date.

(3) *Criterion 3.* The workers' firm conducted business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date.

(4) *Criterion 4.* The certification identified in paragraph (e)(2) of this section was based on an article or service related to the value-added production processes or services supplied by the workers' firm.

(5) *Criterion 5.* Loss of business with the firm identified in paragraph (e)(2) of this section during the 1-year period prior to the petition date contributed importantly to separations or threat of separation at the workers' firm.

(f) *ITC determinations.* After review of relevant information necessary to make a determination, the certifying officer must certify a worker group as eligible to apply for TAA based on a determination issued by the ITC if all of the criteria in paragraphs (f)(1) through (3) of this section are met.

(1) *Criterion 1.* The ITC has publicly identified the workers' firm, by name, as a member of a domestic industry in an investigation resulting in:

(i) An affirmative determination of serious injury or threat thereof under sec. 202(b)(1) of the Act (19 U.S.C. 2252(b)(1));

(ii) An affirmative determination of market disruption or threat thereof under sec. 421(b)(1) of the Act (19 U.S.C. 2451(b)(1)); or

(iii) An affirmative final determination of material injury or threat thereof under sec. 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A)).

(2) *Criterion 2.* The petition is filed during the 1-year period beginning on the date on which:

(i) A summary of the report submitted to the President by the ITC under sec. 202(f)(1) of the Act with respect to the affirmative determination described in paragraph (f)(1)(i) of this section is published in the **Federal Register** under sec. 202(f)(3) of the Act; or

(ii) Notice of an affirmative determination described in paragraph (f)(1)(ii) or (iii) of this section is published in the **Federal Register**.

(3) *Criterion 3.* The workers have become totally or partially separated from the workers' firm within:

(i) The 1-year period described in paragraph (f)(2) of this section; or

(ii) The 1-year period preceding the 1-year period described in paragraph (f)(2) of this section.

(g) *Sales or production decline criteria.* For paragraphs (a) through (c) of this section, in assessing sales or production decline for the period 1 year prior to the petition date, the Department will use a comparison of the latest 2 full calendar year periods and will use a comparison of the year to date period (from the year the petition was filed) to the same year to date period from the prior year. This paragraph (g) does not apply to determining whether a significant number of workers have been separated or threatened with separation.

(h) *Oil and gas.* For workers employed by firms engaged in exploration or drilling for crude oil and natural gas:

(1) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas must be considered to be a firm producing oil or natural gas;

(2) Any firm, or appropriate subdivision of a firm, that engages in exploration or drilling for oil or natural gas, or otherwise produces oil or natural gas, must be considered to be producing articles directly competitive with imports of oil and with imports of natural gas; and

(3) The Department may conduct a parallel investigation to determine whether the group of workers meets the criteria for certification of worker groups under this section for the services provided by the group of workers. The Department will render a determination after all appropriate avenues are considered.

(i) *Staffed workers.* The Department considers staffed workers to be members of a worker group even if they are not specifically mentioned within the determination document issued under § 618.235. The Department will collect information from the workers' firm during the investigation to establish which leasing or staffing entity or entities the firm used under a contract. Once identified, an evaluation of operational control will occur. If a certification is rendered, the Department will notify States regarding the appropriate contact information of the known leasing or staffing entity or entities in order to expedite worker notification of their eligibility to apply individually for TAA Program benefits and services. Factors to be considered in evaluating operational control include:

(1) Whether the contract workers perform only tasks that are independent, discrete projects for the workers' firm (as opposed to performing tasks that are part of the regular business operations of the firm);

(2) Whether the workers' firm has the discretion to hire, fire, and discipline the contract workers;

(3) Whether the workers' firm has the ability to terminate the contract workers' employment with such firm through the staffing or leasing contracted firm;

(4) Whether the workers' firm exercises the authority to supervise the contract workers' daily work activities, including assigning and managing work, and determining how, where, and when the work of contract worker takes place (*e.g.,* factors such as the hours of work, the selection of work, and the manner in which the work is to be performed by each contract worker are relevant);

(5) Whether the services of the contract workers are offered on the open market;

(6) Whether the contract workers work exclusively for the workers' firm;

(7) Whether the workers' firm is responsible for establishing wage rates and the payment of salaries of the contract workers;

(8) Whether the workers' firm provides skills training to the contract workers; and

(9) Whether there are other facts indicating that the workers' firm exercises control over the contract workers.

(j) *Teleworkers.* The Department considers teleworkers (also known as remote, or home-based workers) to be members of a worker group even if they are not specifically mentioned within the determination document issued under § 618.235 when they would be a part of the worker group if they worked on-site. Teleworkers do not have to be physically based at the location of the subject firm or in the same city or same State of the location that is identified on the determination document to be members of the certified worker group.

(k) *Successor-in-interest.* The Department considers workers employed by a firm that is a successor-in-interest to be members of a worker group even if they are not mentioned specifically within the determination document issued under § 618.235.

§ 618.230 Evidence.

(a) The Department will verify information obtained during an investigation before considering such information in support of a petition.

(b) Evidence may be accepted from such sources including, but not limited to, petitioners, company officials, current and former workers of the firm, customers of the firm, trade associations, union representatives, Federal agencies, and public sources such as State agencies and academic institutions.

(c) The Department may share affidavits, testimonials, news articles, and other types of information proffered in support of a petition with appropriate parties for verification.

§ 618.235 Determinations.

Based on the findings of the investigation as set forth in § 618.230, a certifying officer will make a determination on a petition as provided under paragraph (a) or (b) of this section.

(a) *Affirmative determination or certification.* When the investigation establishes that a group of workers meets the eligibility criteria of § 618.225, the certifying officer will issue a certification of worker group eligibility to apply for TAA Program benefits and services. The certification will include the name of the firm or appropriate subdivision thereof at which the trade-affected workers covered by the certification have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j), the certification period, and the certification date.

(1) A certification covers any worker in the worker group eligible to apply for assistance under sec. 222(a) and (b) of the Act, whose last total or partial separation, or threat of a separation, from a firm or appropriate subdivision took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the petition date; and

(ii) On or before the day the certification expires, which is 2 years after the certification date, or an earlier date on which the certifying officer determines that separations from adversely affected employment may no longer be attributed to the conditions underlying the certification, as described in § 618.240, or the date identified in an amendment described in § 618.250.

(2) A certification covers any worker in the worker group eligible to apply for TAA Program benefits and services under sec. 222(e) whose last total or partial separation from a firm took place within the certification period, which is the period:

(i) Following the impact date, which is the date 1 year before the ITC publication in the **Federal Register**; and

(ii) On or before the day the certification expires, which is the date 1 year from the ITC publication in the **Federal Register**.

(3) A trade-affected worker who is a member of the worker group covered by the certification may apply to the State for benefits and services under subparts C through G of this part.

(b) *Negative determination or denial.* When the investigation establishes that the group of workers does not meet the criteria for eligibility, as described in § 618.225, the certifying officer will issue a denial. The denial will include the name of the firm or appropriate subdivision thereof at which the workers covered by the denial have been employed (which need not be limited to the unit specified in the petition), and may identify the worker group by name, as described in § 618.225(i) and (j).

(c) *Determination.* The certifying official prepares a determination identifying the article(s) produced or service(s) provided and describing the worker group covered by the certification or denial and stating the reasons for the determination (excluding information designated as confidential business information). The Department will provide a copy of the determination to the petitioner(s) and to the State(s) covered by the determination. The Department will publish in the **Federal Register**, and on the Department's website, a summary of the determination issued under paragraph (a) or (b) of this section, along with a general statement of the reasons for the determination (except for confidential business information).

(d) *Amended determination.* The Department may amend a certification

to limit or expand the eligible worker group or other elements of the certification. The Department also may, without an outside request for redetermination, reconsider a denial. An amended determination will not take effect until the previous determination becomes final, either after the period in which to request reconsideration has lapsed or after the Department makes a determination on reconsideration. Amended certifications are discussed in more detail in § 618.250.

§ 618.240 Termination of certification.

(a) *Initiation.* Whenever the Administrator of the Office of Trade Adjustment Assistance has reason to believe, with respect to any nonexpired certification, that the total or partial separations or threat of separation from a firm, or appropriate subdivision thereof, are no longer attributable to the conditions specified in sec. 222 of the Act and § 618.225, the Administrator must promptly conduct an investigation.

(1) Certifications, as described in § 618.235(a)(1)(ii), will include a standard date of termination, also called expiration date, which is 2 years from the date of certification, unless otherwise designated through an earlier termination under this section.

(2) Certifications for firms identified by the ITC, as described in § 618.225(f), will include a standard date of termination, also called expiration date, which is 1 year from the date the determination is published in the **Federal Register**.

(b) *Notice.* A notice of the initiation of an investigation to terminate a certification must be published in the **Federal Register**, and on the Department's website, and provided to the petitioner(s) of the certification under investigation, the firm official(s), and State(s) that contain the location(s) of the workers comprising the worker group covered by the certification. The State(s) must also promptly notify the workers in the worker group.

(c) *Opportunity for comment.* Within 10 calendar days after publication of the notice under paragraph (b) of this section, members of the worker group or any other person who has a substantial interest in the matter may provide evidence in writing supporting the continuation of eligibility of certification to show why the certification should not be terminated. If a hearing is requested, it will be conducted in accordance with § 618.215. If no evidence is provided by any interested party within 10 days from the date of publication to the **Federal Register** or on the Department's website, whichever is later, a determination must be issued once the investigation is complete. Evidence (except at a timely requested hearing) and hearing requests submitted outside the 10-day period will not be accepted.

(d) *Investigation of termination of a certification.* The Department will conduct a review of the record on which the certification was based, any evidence timely filed under paragraph (c) of this section, and any data submitted with the petition or provided subsequent to the filing of the petition. The period of investigation of termination of a certification will remain the same as the period of investigation for the original certification.

(e) *Determination to terminate or partially terminate a certification.* A determination to terminate a certification may cover the entire worker group specified in the certification or a portion of that group. Such termination or partial termination must apply only with respect to total or partial separations occurring after the termination date specified in the determination notice and must only take effect after the determination becomes final, either after the period in which to request reconsideration has lapsed or after a determination on reconsideration is made.

(1) Upon making a determination that the certification should be terminated for all or part of the worker group specified in the certification, the Department will issue a determination, either a Notice of Total Termination of Certification or a Notice of Partial Termination of Certification, which will contain the reasons for making such determination (redacting confidential business information) and notify the petitioner(s) of the original certification, the firm official(s), and the State(s). The Department will also publish the notice in the **Federal Register**, and on the Department's website. The State will notify the worker group of the termination or partial termination.

(2) The termination date specified in the determination notice must not be earlier than the date of publication in the **Federal Register**.

(f) *Determination of continuation of certification.* After an investigation resulting in a decision that the certification should not be terminated, the Department will notify the petitioner(s) of the original certification, firm official(s), and the State(s). The State(s) will notify the worker group of the determination of continuation of certification. The Department will publish (redacting confidential business information) the determination as a Notice of Continuation of Certification in the **Federal Register** and on the Department's website. After receiving notice by the Department, the State(s) must notify the worker group of the continuation of certification.

(g) *Reconsideration of termination or partial termination of a certification.* Any party that is eligible under § 618.225 to submit a petition may file an application for reconsideration with the Department, following the procedures described in § 618.245.

§ 618.245 Reconsideration of termination of an investigation, denial, or termination or partial termination of certification.

(a) *Application for reconsideration; contents.* (1) Any party who is eligible to file a petition under § 618.205, and any worker in the group of workers, may file a written application seeking reconsideration of a termination of an investigation under § 618.210(e); a negative determination issued under § 618.235(b); or a termination or partial termination of certification issued under § 618.240, via email: *reconsiderations.taa@dol.gov;* fax: (202) 693–3584 or (202) 693–3585; or mail: U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW, Washington, DC 20210.

(2) An application for reconsideration must contain the following information to be complete and valid:

(i) The name(s) and contact information of the applicant(s);

(ii) The name or a description of the group of workers on whose behalf the application for reconsideration is filed in the case of an application for reconsideration of a termination of an investigation or a negative determination, or the name or a description of the worker group on whose behalf the application for reconsideration of a termination or partial termination of a certification is filed;

(iii) The petition number identified on the petition or determination that is the subject of the application for reconsideration;

(iv) The reasons for believing that the termination of the investigation, negative determination, or termination or partial termination of a certification identified in paragraph (a)(1) of this section is erroneous, including any issues that the applicant asserts require further investigation;

(v) Any information that may support the application for reconsideration, including material not considered prior to the termination of the investigation, negative determination, or termination

or partial termination of a certification; and

(viii) The signature(s) of the party, or representative thereof, requesting reconsideration.

(b) *Time for filing.* An application for reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification must be filed no later than 30 calendar days after the notice of the termination of the investigation, negative determination, or termination or partial termination of a certification has been published in the **Federal Register**. If an application is filed after that time, it will be returned as untimely filed.

(c) *Return of incomplete applications for reconsideration.* The Department will review an application for reconsideration within 2 business days upon its receipt to determine if the application contains all of the necessary information required under paragraph (a)(2) of this section. The Department will not accept an incomplete application for filing, but will return it to the applicant with a brief statement explaining why it is incomplete. Should an applicant wish to refile an application for reconsideration, the refiling must occur no later than 30 calendar days after the notice of the determination has been published in the **Federal Register**, within the 30-day period identified in paragraph (b) of this section or, if the application is returned less than 5 days before the end of that period, within 5 days of receipt.

(d) *Notice of an application for reconsideration.* After receipt of a complete and timely application for reconsideration, the Department will notify the applicant and publish in the **Federal Register** and on the Department's website the notice of the application and the initiation of an investigation on reconsideration of the termination of the investigation, negative determination, or termination or partial termination of a certification.

(e) *Opportunity for comment and submission of data on reconsideration.* Within 10 calendar days after publication of a notice under paragraph (d) of this section, any party who is eligible to file a petition under § 618.205 may make written submissions to show why the determination under reconsideration should or should not be modified.

(f) *Investigation on reconsideration.* The Department will conduct a review of the record on which the termination of the investigation, negative determination, or termination or partial termination of a certification was based, any comments timely filed under paragraph (a)(2)(iv), (a)(2)(v), or (e) of this section, and any data submitted with the original petition or provided subsequent to the filing of the petition. The period of investigation under reconsideration will remain the same as the period of investigation for the original petition.

(g) *Determinations on reconsideration.* The Department will issue a final determination affirming, reversing, or modifying the termination of the investigation, negative determination, or termination or partial termination of a certification within 60 days after the date of receiving a complete and valid application for reconsideration. The Department will notify the applicant(s), the petitioner(s) of the original petition, firm official(s), and the State(s); and publish notice in the **Federal Register** of the determination on reconsideration and the reasons for it (redacting confidential business information). The State continues to be responsible for notifying trade-affected workers in a certified worker group of their eligibility to apply for TAA, in accordance with § 618.820. If 60 days pass without a determination on reconsideration, the Department will contact the applicant to ascertain whether the applicant wishes the Department to continue the reconsideration investigation and issue a determination on reconsideration or wishes the Department to terminate the reconsideration investigation, which renders the initial determination as the Department's final determination.

§ 618.250 Amendments of certifications.

(a) *Types of amendments.* A certifying officer may amend a certification, as appropriate, to include all workers of the applicable firm who were identified as adversely affected by foreign trade. Amendments must not extend the impact date more than 1 year prior to the petition date unless there is a statutory exception, as described in § 618.235(a)(1)(iii)(A). Reasons for amendments include, but are not limited to:

(1) Identifying an ownership change affecting the applicable firm;

(2) Correcting technical errors; or

(3) Clarifying the identification of the worker group.

(b) *Petition filing.* Amendments must be requested through the regular petition process described in § 618.205.

(c) *Notification of amendment.* The Department will publish the amended certification in the **Federal Register** and on the Department's website. The Department will also notify the affected States and the State must notify any additional certified trade-affected workers, as required by § 618.820.

§ 618.255 Judicial review of determinations.

(a) *General.* A worker, group of workers, certified or recognized union, or authorized representative of such worker or group may commence a civil action for review of the determination by filing a complaint with the United States Court of International Trade (USCIT) within 60 days after the date of publication of the notice of a final determination in the **Federal Register**, as provided under sec. 284 of the Act (19 U.S.C. 2395).

(b) *Final determination.* Only determinations issued under §§ 618.240(g) and 618.245 are final determinations for purposes of judicial review.

(c) *Certified record of the Department.* Upon receiving a copy of the summons and complaint from the clerk of the USCIT, the Department will file with the court a certified record meeting the requirements of the rules of the USCIT. When the certified record contains confidential business information, the Department will file a public version of the record redacting the confidential business information, and a separate version that includes the confidential business information, in accordance with the rules of the USCIT.

(d) *Further proceedings.* Upon remand by the USCIT, the Department will conduct an additional investigation and the certifying officer will make new or modified findings of fact and will modify or affirm the previous determination. Upon making this subsequent determination, the certifying officer will publish a summary of the determination and the reasons for the determination in the **Federal Register**, redacting any confidential business information from the published summary. The certifying officer also will file the determination upon remand and the record on which the determination is based with the USCIT, in accordance with the rules of USCIT.

(e) *Standard of review.* The determination and findings of fact by the certifying officer are conclusive if the USCIT determines that they are supported by substantial evidence, as provided under sec. 284 of the Act (19 U.S.C. 2395).

(f) *Individual benefits denials.* Appeals of denials of individual benefits are not determinations under sec. 222 of the Act and are not subject to review by the USCIT under sec. 284 of the Act.

(g) *Manner of filing.* Requests for judicial review must be filed in accordance with the rules of the USCIT.

§ 618.260 Study regarding certain affirmative determinations by the Commission.

(a) Upon notification from the Commission that it has begun an investigation under sec. 202 of the Act with respect to an industry, the Department must immediately begin a study of:

(1) The number of workers in the domestic industry producing the like or directly competitive article who have been or are likely to be certified as eligible for adjustment assistance, which includes, but is not limited to, analysis of:

(i) The estimated number of certified workers within the domestic industry named in the ITC affirmative determination;

(ii) Information obtained during the investigation of TAA Program determinations;

(iii) Responses from Domestic Industry Study;

(iv) Information obtained by consultation with ITC Commission industry experts; and

(v) Other pertinent workforce and trade-impact data of companies who are currently participating in the industry.

(2) The extent to which the adjustment of such workers to the import competition may be facilitated through the use of the TAA Program, other Departmental programs and resources, and programs administered by other Federal agencies.

(b) The report of the Department's study under paragraph (a) of this section must be made to the President not later than 15 days after the day on which the Commission makes its report under sec. 202(f)(1) of the Act. The Department will also publish the report in the **Federal Register** and on the Department's website.

§ 618.265 Availability of information to the public.

(a) *Information available to the public.* The Department posts all determinations on the Department's website. The Department also posts redacted versions of all petitions on the Department's website. Upon request to the Administrator of the Office of Trade Adjustment Assistance, members of the public may inspect petitions and other documents filed with the Administrator, transcripts of testimony taken and exhibits submitted at public hearings held under the provisions of this subpart, public notices concerning trade-affected worker assistance under the Act and other reports and documents issued for general distribution, in accordance with the Department's record retention schedule, FOIA, and the Privacy Act.

(b) *Information not available to the public.* Confidential business information must not be made available to the public.

Subpart C—Employment and Case Management Services

§ 618.300 Scope.

This subpart describes the employment and case management services that the State must make available to trade-affected workers, either directly through the TAA Program or through arrangements with partner programs. This subpart requires States, under the Governor-Secretary Agreement at § 618.804, to integrate the provision of benefits and services available to trade-affected workers under the TAA Program with the delivery of employment services and other assistance provided through the one-stop delivery system (established under title I of WIOA), as required by secs. 235 and 239(a), (e), and (g) of the Act. It also implements the requirements of sec. 221(a)(2)(A) of the Act for the provision of rapid response assistance and appropriate career services described in §§ 682.300 through 682.370, and 680.150 of this chapter, respectively, for workers upon receipt of a petition filed covering a group of workers.

§ 618.305 The Trade Adjustment Assistance Program as a one-stop partner.

(a) As provided by WIOA sec. 121(b)(1)(B)(vii), the TAA Program is a required one-stop partner under WIOA.

(b) The State must ensure that the TAA Program complies with WIOA's one-stop partnership requirements at WIOA sec. 121(b)(1)(A)(i) through (v). This includes, among the other requirements, paying infrastructure costs where the TAA Program is being carried out.

(c) The TAA Program must also comply with, and be a party to, the memorandum of understanding required under the regulations implementing WIOA at § 678.500 of this chapter, where the TAA Program is being carried out.

§ 618.310 Responsibilities for the delivery of employment and case management services.

(a) The State is responsible for providing information to workers about the TAA Program, as required in § 618.820;

(b) As part of the delivery of services, the State must:

(1) Conduct intake, which includes interviewing each trade-affected worker and reviewing suitable training opportunities reasonably available to each worker under subpart F of this part;

(2) Inform trade-affected workers of the employment services and allowances available under the Act and this part, including the application procedures, the filing requirements for such services, and enrollment deadlines for receiving TRA, as described in subpart G of this part;

(3) Determine whether suitable employment, as defined in § 618.110, is available, and assist in job search activities related to securing suitable employment;

(4) Accept applications for training;

(5) Provide information on which training providers offer training programs at a reasonable cost and with a reasonable expectation of employment following the completion of such training, and assist in acquiring such training;

(6) Monitor the progress and attendance of trade-affected workers in approved training programs;

(7) Develop and implement a procedure for determining whether to issue a training waiver and to review waivers to determine whether the conditions under which they were issued have changed, in compliance with subpart G of this part;

(8) Provide access to workshops and other resources related to job search strategies, resume building, interviewing, and other topics available through the TAA Program or through the one-stop delivery system; and

(9) Coordinate the administration and delivery of additional appropriate employment services, benefits, training, supportive services, and supplemental assistance for workers with partner programs for which the trade-affected worker may be eligible.

(c) The State must make available the employment and case management services in paragraphs (c)(1) through (7) of this section to trade-affected workers under a certification of eligibility to apply for TAA Program benefits and services, and that those workers are informed of the availability of:

(1) Comprehensive and specialized assessment of skill levels and service needs, including through:

(i) Diagnostic testing and use of other assessment tools; and

(ii) In-depth interviewing and evaluation to identify employment barriers and appropriate employment goals.

(2) Development of an individual employment plan (IEP) to identify employment goals and objectives, and appropriate training to achieve those goals and objectives.

(3) Information on how to apply for financial aid, including referring workers to educational opportunity centers described in sec. 402F of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070a–16), where applicable, and notifying workers that they may request that financial aid administrators at institutions of higher education (as defined in sec. 102 of HEA (20 U.S.C. 1002)) use the administrators' discretion under sec. 479A of HEA (20 U.S.C. 1087tt) to use current-year income data, rather than preceding-year income data, for determining the amount of the workers' need for Federal financial assistance under title IV of HEA (20 U.S.C. 1070 *et seq.*).

(4) Short-term prevocational services, including development of learning skills, communications skills, interviewing skills, punctuality, personal maintenance skills, and professional conduct to prepare trade-affected workers for employment or training.

(5) Individual and group career counseling, including job search and placement counseling, during the period in which the worker is receiving a trade adjustment allowance or training under this chapter, and after receiving such training for purposes of job placement and employment retention.

(6) Provision of employment statistics information, including the provision of accurate information relating to local, regional, and national labor market areas, including:

(i) Job-vacancy listings in such labor market areas;

(ii) Information on the job skills necessary to obtain the jobs identified in the job-vacancy listings described in paragraph (c)(6)(i) of this section;

(iii) Information relating to local occupations that are in demand and the earning potential of those occupations; and

(iv) Skills requirements for local occupations described in paragraph (c)(6)(iii) of this section.

(7) Information relating to the availability of supportive services, available through partner programs, including services relating to childcare, transportation, dependent care, housing assistance, and needs related payments that are necessary to enable a trade-affected worker to participate in training.

(d) To make available, with respect to the employment and case management services described in paragraph (c) of this section, means:

(1) That the State must inform the trade-affected worker of the full suite of services available; and

(2) That the State must offer and provide appropriate services to the trade-affected worker, as requested by the worker or deemed appropriate for the worker; and

(3) That the State must document each service provided to the trade-affected worker and document the reason any service listed in paragraph (c) of this section was not provided. The documentation must be included in the worker's case file, either through case notes or as a stand-alone document.

§ 618.325 Integrated service strategies and Workforce Innovation and Opportunity Act co-enrollment.

(a)(1) A State must co-enroll trade-affected workers who are eligible for WIOA's dislocated worker program. Workers may choose to decline co-enrollment in WIOA. A State cannot deny such a worker benefits or services under the TAA Program solely for declining co-enrollment in WIOA.

(2) A State must also make co-enrollment available to trade-affected workers who are eligible for other one-stop partner programs to ensure that all necessary and appropriate services, including supportive services, are available to the worker.

(b)(1) *Trade-affected worker dislocated worker eligibility.* Most trade-affected workers meet the eligibility criteria of a dislocated worker defined at WIOA sec. 3(15).

(2) *Partially separated worker and AAIW dislocated worker eligibility.* In certain circumstances, such as a general announcement of a closure, partially separated workers and AAIWs may meet the eligibility criteria as a dislocated worker under WIOA and must also be co-enrolled.

(3) *Trade-affected worker dislocated worker ineligibility.* Some trade-affected workers are ineligible for the WIOA dislocated worker program, including those that do not meet the Selective Service registration requirement, and will be exempt from the co-enrollment requirement in this section.

§ 618.330 Assessment of trade-affected workers.

(a) The assessment process forms the basis for determining which TAA Program benefits and services, including training, are most appropriate to enable trade-affected workers to successfully become reemployed.

(b) The State must schedule an initial assessment that provides sufficient time and information for the trade-affected worker to consider, request, and enroll in training or obtain a waiver of the training requirement in § 618.720(g) to protect their eligibility to receive TRA under subpart G of this part.

(c) Assessments are administered with the cooperation of the trade-affected worker and should include discussion of the worker's interests, skills, aptitudes, and abilities.

(d) The results of assessments must be documented in the case file, either through case notes or as a stand-alone document.

(e) If an assessment has already been administered by a partner program, it must be reviewed once a worker becomes a trade-affected worker to ensure it has the required components as listed in § 618.335 for an initial assessment and, if necessary, § 618.345 for a comprehensive and specialized assessment. If the assessment(s) does not contain the required components, the assessment(s) must be supplemented by the State, in conjunction with the trade-affected worker, to ensure it is fully compliant with TAA Program requirements in this part.

(f) The State must make the trade-affected worker aware of the advantages of receiving an assessment(s). However, a worker may refuse an assessment. Since portions of the assessment(s) are necessary to determine eligibility for certain TAA Program benefits, a worker's refusal to provide necessary information, either as part of the assessment or outside of the assessment process, may result in a denial of a those benefits. This is detailed further in the applicable benefit sections throughout this part.

§ 618.335 Initial assessment of trade-affected workers.

(a) A State must carry out an initial assessment for each trade-affected worker as part of the intake process described in sec. 239(g) of the Act. When applicable, a State must use the results of an assessment developed by a partner program, supplemented if necessary, as described in § 618.330(e).

(b) The results of the initial assessment will determine the best service strategy to assist the trade-affected worker in obtaining reemployment and provide insight into which benefits and services under the TAA Program and partner programs would be most beneficial to the worker. The initial assessment of the availability of suitable employment to the worker in the local labor market must take into consideration the following factors:

(1) Prevailing local labor market conditions, including the

unemployment rate, local employer skill demands and hiring prerequisites;

(2) The worker's knowledge, skills, and abilities from their education and previous employment;

(3) Transferable skills that the worker may possess that would be of interest to other local employers;

(4) Evaluation of a worker's skill levels (including literacy, numeracy, and English language proficiency), aptitudes, abilities (including skills gaps), and supportive service needs; and

(5) Any barriers to the worker's reemployment, such as:

(i) Lack of applicability of skills from the worker's present occupation to other occupations;

(ii) Skills that are in excess supply in the labor market area; or

(iii) Other barriers as outlined in WIOA sec. 3(24).

(c) Based upon the information gathered in the initial assessment, described in paragraph (a) of this section, the State may:

(1) Determine that suitable employment is available to the trade-affected worker, and if so, the State must make available employment and case management services. If the worker disagrees with the determination, the State must make available to the worker a comprehensive and specialized assessment (under § 618.345) to obtain additional information to determine whether the initial assessment was correct.

(2) Determine that no suitable employment is available to the worker and, if so, the State must make available services as described in § 618.310 (responsibilities for the delivery of employment and case management services) and a comprehensive and specialized assessment (as described in § 618.345) to develop a comprehensive service strategy for the trade-affected worker.

(d) If the State determines under paragraph (c) of this section that suitable employment is not available to a trade-affected worker, even with additional employment and case management services, the State must advise the worker to apply for training under subpart F of this part.

§ 618.345 Comprehensive and specialized assessment of trade-affected workers.

(a) The State must make available a comprehensive and specialized assessment to all trade-affected workers.

(b) The comprehensive and specialized assessment must take into account the trade-affected worker's goals and interests as they relate to employment opportunities either in the worker's commuting area or, where there is no reasonable expectation of securing employment in their commuting area and the worker is interested in relocation, the employment opportunities and demand in the area to which they propose to relocate.

(c) The comprehensive and specialized assessment must expand upon the initial assessment regarding the trade-affected worker's interests, skills, aptitudes, and abilities. This may include use of diagnostic testing tools and instruments and in-depth interviewing and evaluation to identify barriers to employment and appropriate employment goals. The in-depth interviewing of trade-affected workers must include discussion of training opportunities reasonably available to each trade-affected worker, as described in subpart F of this part; reviewing the opportunities with each trade-affected worker; and informing each trade-affected worker of the requirements for participating in training, including the enrollment deadlines required for TRA eligibility.

(d) The State may use information from the comprehensive and specialized assessment to determine whether the trade-affected worker has met the six criteria for approval of training listed in subpart F of this part.

§ 618.350 Individual employment plans for trade-affected workers.

(a) A State must:

(1) Make available an IEP; and

(2) Document an IEP for any trade-affected worker seeking training under subpart F of this part or a job search allowance under subpart D of this part, before the worker receives those benefits and services.

(b) An IEP must use the results of the initial and, if available, comprehensive and specialized assessments to assist in documenting a strategy to provide the trade-affected worker with the services needed to obtain employment, including the items listed in paragraph (c) of this section.

(c) An IEP must document:

(1) The trade-affected worker's employment goal, including the targeted occupation and industry;

(2) The type of training proposed, if any;

(3) Any services that will be needed by the worker to obtain suitable employment, including career services, supportive services provided through partner programs, and post-training case management services; and

(4) If applicable, any supplemental assistance (subsistence or transportation payments) required for participation in training and the basis for their calculation.

(d) If an IEP has been previously developed with a trade-affected worker by a partner program, it must be reviewed once the worker becomes TAA Program-eligible to ensure it has the components required by paragraph (c) of this section. If the IEP does not contain the components, the IEP must be supplemented by the State in conjunction with the worker to ensure it is fully compliant with the TAA Program requirements in this part.

(e) The State must monitor the progress of the trade-affected worker in meeting the worker's responsibilities as listed in the IEP, including attendance and achievement in approved training programs.

(f)(1) The State must modify the IEP as necessary to facilitate a successful performance outcome for the trade-affected worker.

(2) The modification must be done with the worker's input.

(3) At a minimum, the IEP must be modified when there is a change in the training program, receipt of supplemental assistance, or both.

(g) The State must make the trade-affected worker aware of the advantages of receiving an IEP. However, a worker may refuse to complete an IEP. Since portions of the IEP are necessary to determine eligibility for job search allowances under subpart D of this part and training under subpart F of this part, a worker's refusal to provide necessary information, either as part of the IEP or outside of the IEP process, may result in a denial of a those benefits and services. This is detailed further in subparts D and F of this part.

§ 618.355 Knowledge, skills, and abilities of staff performing assessments.

(a) Staff performing either the initial or comprehensive and specialized assessment must possess the following knowledge and abilities:

(1) Knowledge of the local labor market;

(2) Knowledge of local employer and occupation skill demands and hiring prerequisites, such as educational requirements and professional certifications;

(3) The ability to identify transferable skills that a trade-affected worker may possess that would be of interest to other local employers outside of the worker's present occupational area;

(4) The ability to evaluate quickly a worker's ability to conduct a self-directed job search; and

(5) The ability to identify barriers to a worker's employment that could be overcome with training and case management services.

(b) The staff performing these initial and comprehensive and specialized assessments may be from any partner program.

(c) Funds under sec. 235A(1) of the Act may be used to improve and maintain the knowledge and abilities of staff conducting assessments for trade-affected workers.

§ 618.360 Employment and case management services for trade-affected workers in training.

The State must make employment and case management services available, including placement and other appropriate employment and case management services (including referrals to supportive services and follow-up services available through partner programs), to trade-affected workers during training, and upon completion of training, and for AAWs on a waiver from training.

Subpart D—Job Search and Relocation Allowances

§ 618.400 Scope.

This subpart sets forth the conditions under which an AAW may apply for and receive a job search allowance to help the worker secure suitable employment outside the commuting area but within the United States. This subpart also sets forth the conditions under which an AAW may apply for and receive a relocation allowance to help the worker relocate to suitable employment secured outside the commuting area but within the United States.

§ 618.405 General.

(a) A State must grant a job search allowance to an AAW to help the worker secure suitable employment within the United States if the AAW meets the requirements in this subpart.

(b) A State must grant a relocation allowance to an AAW to help the worker and the worker's family relocate within the United States if the AAW meets the requirements in this subpart. A State may grant a relocation allowance to a worker only once under a certification. A State may grant a relocation allowance to only one member of a family for the same relocation, even if there are multiple AAWs in the same family. If more than one member of a family applies for a relocation allowance for the same relocation, then the State must pay the allowance to the AAW who files first, if that AAW is otherwise eligible.

§ 618.410 Applying for a job search allowance.

(a) *Forms.* To receive a job search allowance, an AAW must apply to the State, using the State's process.

(b) *Submittal.* An AAW who has a total or partial separation may apply to the State for a job search allowance after the Department has issued a certification covering the worker. The worker must apply for a job search allowance before beginning a job search to be funded by such an allowance, and the State must not approve the job search allowance until the State has determined that the worker is covered by a certification.

§ 618.415 Eligibility for a job search allowance.

(a) *Conditions.* To be eligible for a job search allowance an AAW must:

(1) File an application before either:

(i) The later of the 365th day after either the date of the certification under which they are covered, or the 365th day after their last total separation; or

(ii) The 182nd day after the date of concluding approved training;

(2) Be an AAW totally separated from the job covered under the certification when beginning the job search;

(3) Receive a determination by the State that the AAW cannot reasonably expect to secure suitable employment in the commuting area, can reasonably expect to obtain either suitable employment or employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the suitable employment requirements in the area of the job search;

(4) Receive a determination by the State that the worker cannot reasonably expect to secure suitable employment by alternatives to being physically present in the area of the job search, such as by searching and interviewing for employment by means of the internet and other technology;

(5) Not previously have received a relocation allowance under the same certification; and

(6) Complete a State-approved job search within 30 calendar days after the worker leaves the commuting area to begin the job search.

(b) *Completion of job search.* (1) An AAW has completed a job search when the worker either:

(i) Obtains a bona fide offer of employment; or

(ii) Has, with State verification, as provided in § 618.420(a)(2), contacted each employer the worker planned to contact, or to whom the State or other one-stop partner referred the worker as part of the job search.

(2) The job search is complete when one of the actions in paragraph (b)(1) of this section occurs, whichever comes first. For purposes of paragraph (b)(1)(i) of this section, ''bona fide'' means the offer of suitable employment is made in good faith by a prospective employer.

§ 618.420 Findings required.

(a) *Findings by liable State.* Before a liable State may approve final payment of a job search allowance, the liable State must:

(1) Find that the AAW meets the eligibility requirements for a job search allowance specified in § 618.415(a)(1) through (6); and

(2) Verify that the worker contacted each employer the State certified or to whom the State or one-stop center referred the worker as part of the job search and must find that the worker completed the job search, as described in § 618.415(b) within the time limits stated in § 618.415(a)(6).

(b) *Assistance by agent State.* (1) When an AAW files an application for a job search allowance to conduct a job search in an agent State, the agent State in which the worker conducts the job search is responsible for assisting the worker in conducting the job search, for assisting the liable State by furnishing any information required for the liable State's determination of the claim, and for paying the job search allowance.

(2) The agent State must cooperate fully with the liable State in carrying out its activities and functions with regard to such applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

§ 618.425 Amount of a job search allowance.

(a) *Computation.* The job search allowance is 90 percent of the total costs of an AAW's travel (as defined in paragraph (a)(1) of this section) and lodging and meals (as defined in paragraph (a)(2) of this section), up to the limit in paragraph (b) of this section:

(1) *Travel.* The worker's allowable travel expenses may not exceed 90 percent of the prevailing cost per mile by privately owned vehicle under 41 CFR chapters 300 through 304, the Federal Travel Regulation (FTR), found at *https://www.gsa.gov/,* for round trip travel by the usual route from the worker's home to the job search area, though other forms of transportation may be utilized.

(2) *Lodging and meals.* The worker's allowable lodging and meals costs cannot exceed the lesser of:

(i) The actual cost for lodging and meals while engaged in the job search; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at *https://www.gsa.gov/,* for the worker's job search area.

(b) *Limit.* The AAW's total job search allowance under a certification may not exceed $1,250, no matter how many job searches they undertake. If the worker is entitled to be paid or reimbursed by another source for any of these travel, lodging, and meals expenses, the State must reduce the job search allowance by the amount of the reimbursement.

(c) *Choice of mode of transportation.* With respect to the limits established in paragraph (a)(1) of this section, an AAW may elect to use a different mode of transportation than the one for which the State calculated the applicable reimbursement amount. However, the State must limit the reimbursement to the worker to the amount calculated under paragraph (a)(1) of this section.

§ 618.430 Determination and payment of a job search allowance.

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW's eligibility for a job search allowance. Sections 618.820 (determinations and notice) and 618.828 (appeals and hearings) apply to these determinations. States must include copies of such applications and all determinations by the State in the AAW's case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment promptly after the worker has completed a job search and complied with paragraph (d) of this section, provided that funds are available for job search allowances.

(c) *Advances.* Once the State determines that the AAW is eligible for a job search allowance, it may advance the worker up to 60 percent of the estimated amount of the job search allowance subject to the limit in § 618.425(b), but not exceeding $750, within 5 days before the commencement of a job search. The State must deduct the advance from any payment under paragraph (b) of this section.

(d) *Worker evidence.* Once the AAW has completed a job search, they must certify to the State as to the employer contacts made and must provide documentation of expenses in accordance with FTR and Uniform Guidance at 2 CFR part 200, which may include receipts for all lodging, purchased transportation, or other expenses. The State must make an adjustment if the amount advanced is less or more than the amount to which the worker is eligible under this section.

§ 618.435 Job search program participation.

(a) *Requirements.* An AAW who participates in an approved job search program (JSP), may receive reimbursement for necessary expenses of subsistence and transportation incurred for the worker's participation in the approved JSP, regardless of the worker's approval for, or receipt of, a job search allowance under §§ 618.420 and 618.430.

(b) *Approved JSP.* A State may approve a JSP if:

(1) The JSP is provided through WIOA, the public employment service, or any other Federal- or State-funded program, and meets the definition provided in § 618.110; or

(2) The JSP is sponsored by the firm from which the AAW has been separated.

(c) *JSP allowances.* Subsistence and transportation costs, whether inside or outside the AAW's commuting area, must be approved for workers participating in JSPs in accordance with § 618.640(a) and within available State funding levels.

§ 618.440 Applying for a relocation allowance.

(a) *Forms.* To receive a relocation allowance, an AAW must apply to the State using the State's process.

(b) *Submittal.* An AAW who has a total or partial separation may apply for a relocation allowance after the Department has issued a certification covering the worker. The worker must apply for a relocation allowance and the State must approve the worker for a relocation allowance before the relocation begins. The State must make a timely determination on a relocation application submitted to allow the worker to promptly begin the relocation.

§ 618.445 Eligibility for a relocation allowance.

(a) *Conditions.* To be eligible for a relocation allowance, the AAW must:

(1) File an application before either:

(i) The later of the 425th day after the date of the certification under which the worker is covered, or the 425th day after the date of the worker's last total separation; or

(ii) The 182nd day after the date the worker concluded training;

(2) Be an AAW totally separated from adversely affected employment when the relocation begins;

(3) Not have already received a relocation allowance under the same certification;

(4) Relocate within the United States but outside the worker's commuting area;

(5) Receive a determination by the State that the worker has no reasonable expectation of securing suitable employment in the commuting area, and has obtained either suitable employment or employment that pays a wage of at least the 75th percentile of national wages, as determined by the National Occupational Employment Wage Estimates, and otherwise meets the suitable employment requirements, or a bona fide offer of such employment, in the area of intended relocation;

(6) Begin the relocation as promptly as possible after the date of certification but no later than:

(i) 182 days after the worker filed the application for a relocation allowance; or

(ii) 182 days after the conclusion of an approved training program, if the worker entered a training program that received supplemental assistance approved under § 618.640(c) (subsistence payments) and (d) (transportation payments), for training outside the worker's commuting area; and

(7) Complete the relocation, as described in § 618.460(f), within a reasonable time as determined in accordance with FTR with the State giving consideration to, among other factors, whether:

(i) Suitable housing is available in the area of relocation;

(ii) The worker can dispose of the worker's residence;

(iii) The worker or a family member is ill; and

(iv) A member of the family is attending school, and when the family can best transfer the member to a school in the area of relocation.

(b) *Job search allowances.* The State may not approve a relocation allowance and a job search allowance for an AAW at the same time. However, if the worker has received a job search allowance, they may receive a relocation allowance at a later time or receive a relocation allowance as a result of a successful job search for which the worker received a job search allowance.

§ 618.450 Findings required.

(a) *Findings by liable State.* Before the liable State may approve final payment of a relocation allowance, the liable State must make the following findings:

(1) That the AAW meets the eligibility requirements for a relocation allowance specified in § 618.445(a)(1) through (7)

and is not also simultaneously receiving a job search allowance as specified in § 618.445(b);

(2) That the worker submitted the application for a relocation allowance within the time limits specified in § 618.440(c);

(3) That the worker began and completed the relocation within the time limitations specified in § 618.445(a)(6) and (7); and

(4) That the worker obtained suitable employment, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 618.445(a)(5). The liable State must verify (directly or through the agent State) the suitable employment, or the bona fide offer, with the employer.

(b) *Assistance by agent State.* (1) When an AAW relocates to an agent State, the agent State is responsible for:

(i) Assisting the worker in relocating to the State, completing an application for a relocation allowance with the liable State, and paying the relocation allowance; and

(ii) Assisting the liable State by furnishing any information required for the liable State's determination on the claim.

(2) The agent State must cooperate with the liable State in carrying out its activities and functions with regard to relocation applications. When requested by the liable State, the agent State must verify with the employer and report to the liable State whether the worker has obtained suitable employment, or a bona fide offer of suitable employment.

§ 618.455 Determining the amount of a relocation allowance.

The AAW's relocation allowance includes the information in paragraphs (a) thorugh (c) of this section, as applicable:

(a) *Reimbursement*—(1) *Travel.* (i) The State may reimburse the AAW for up to 90 percent of the prevailing cost per mile by privately owned vehicle under the FTR, found at *https://www.gsa.gov/,* for travel from their old home to their new home.

(ii) Separate travel of a family member or members who, for good cause and with the approval of the State, must travel separately to their new home, may also be reimbursed. For purposes of this paragraph (a)(1)(ii), good cause includes, but is not limited to, reasons such as a family member's health, schooling, job, or economic circumstances.

(2) *Lodging and meals.* The State may reimburse the worker for 90 percent of lodging and meal expenses for the worker and their family while they are in transit, but such costs may not exceed the lesser of:

(i) The actual lodging and meals cost to the worker and their family while they are traveling; or

(ii) 50 percent of the prevailing per diem allowance under the FTR, found at *https://www.gsa.gov/,* for the relocation area for those days while the worker and their family are traveling.

(3) *Movement of household goods.* (i) The State may reimburse the worker for 90 percent of the allowable costs of moving the workers and family's household goods and personal effects in accordance with the FTR (41 CFR chapter 302). This includes 90 percent of the costs of moving by the most economical commercial carrier the State can reasonably expect the worker to use, moving by rental truck or trailer (for rental, mileage, and fuel), or moving a house trailer or mobile home. It also includes 90 percent of the costs of temporary storage of household goods for up to 60 days. In approving the move of a house trailer or mobile home, the State must follow the specific requirements of the FTR, found at *https://www.gsa.gov.*

(ii) For a commercial carrier move of household goods or house trailer or mobile home, the worker must obtain an estimate of the moving cost and provide this to the liable State. The estimate may include the cost of insuring such goods and effects for their actual value or $40,000 as delineated in the FTR, whichever is less, against loss or damage in transit.

(iii) If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer. No such arrangement releases a carrier from liability otherwise provided by law or contract for loss or damage to the worker's goods and effects. Any contract for moving and insuring an AAW's household goods must provide that the United States must not be or become liable to either party for personal injury or property loss damage under any circumstances.

(iv) The maximum net weight of the household goods relocated from the worker's old home to the relocation area may not exceed that set by the FTR.

(4) *Lump sum.* As part of the relocation allowance, the worker will receive a lump sum equivalent to three times their average weekly wage, not to exceed $1,250.

(b) *Reduction.* If the AAW is eligible to receive or has received moving expenses from any other source for the same relocation, the State must deduct the amount received from the amount of the relocation allowance as determined in paragraphs (a)(1) through (3) of this section.

(c) *Limitation.* In no case may the State pay a travel allowance for the AAW or a family member more than once for a single relocation.

§ 618.460 Determinations and payment of a relocation allowance.

(a) *Determinations.* The State must promptly make and record determinations necessary to assure an AAW's eligibility for a relocation allowance. Sections 618.820 (determinations and notice) and 618.828 (appeals and hearings) apply to these determinations. The State must include copies of such applications and all determinations by the State in the AAW's case file.

(b) *Payment.* If the AAW makes a timely application, is covered under a certification, and is otherwise eligible, the State must make payment as promptly as possible.

(c) *Travel allowances*—(1) *Payment.* The State must pay the allowances computed under § 618.455 10 days in advance of, or at the time of, the AAW's scheduled departure to begin relocation. The State must make the payment for a family member approved for separate travel 10 days in advance of, or at the time of that family member's scheduled departure.

(2) *Worker evidence.* After an AAW completes the relocation, they must certify to the State the expenses associated with the relocation, in accordance with the FTR and Uniform Guidance in 2 CFR part 200. This may include receipts for all lodging, purchased transportation, or other expenses. If an advance the worker received was more or less than the actual allowance, the State must make an appropriate adjustment and pay the balance entitled, if any, or the worker must repay any excess received, if any.

(d) *Movement of household goods.* The State must pay the amount equal to 90 percent of the estimate of the costs of moving the AAW's household goods by the most economical commercial carrier the State can reasonably expect the worker to use (as described in § 618.455(a)(3) (determining the amount of a relocation allowance) as follows:

(1) *Commercial carrier.* If a commercial carrier moves the worker's household goods and personal effects, the State must provide the worker with an advance equal to 90 percent of the estimated cost of the move, including any other charges that the State has

approved, such as insurance. The State must advance the funds to the carrier and insurer and deliver payment to the worker 10 days in advance of, or at the time of, the scheduled shipment.

(i) On completion of the move, as determined under paragraph (f) of this section, the worker must promptly submit to the State a copy of the carrier's bill of lading, including a receipt showing payment of moving costs.

(ii) If the amount the worker received as an advance is greater than 90 percent of the actual approved moving costs, they must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must reimburse the worker for the difference.

(iii) If more economical, the State may make direct arrangements for moving and insuring a worker's household goods and personal effects with a carrier and insurer selected by the worker and may make payment of 90 percent of moving and insurance costs directly to the carrier and insurer subject to the condition of § 618.455(a)(3)(iii).

(2) *Private truck and trailer, rental truck or trailer, or house trailer move*—(i) *Private vehicle with trailer.* If the move is by private vehicle and trailer, the State must advance 90 percent of the estimated cost for the use of the private vehicle within 10 days in advance of the scheduled move.

(ii) *Truck and trailer rental.* If the move is by rental truck or rental trailer, the State must advance 90 percent of the estimated rental cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental company.

(iii) *House trailer.* If a house trailer or mobile home is moved by commercial carrier, the State must advance 90 percent of the approved estimated cost to the worker within 10 days in advance of the scheduled move. The State may make payment to either the worker or the carrier.

(iv) *Itemized receipt.* Upon completion of the move, the worker must promptly submit an itemized receipt to the State for payment of the rental charges and fuel costs. If the amount the worker received as an advance is greater than 90 percent of the actual moving costs, they must reimburse the State for the difference. If the advance the worker received is less than 90 percent of the actual moving costs approved by the State, the State must pay the worker for the difference.

(3) *Temporary storage.* If temporary storage, not to exceed 60 days, of household goods and personal effects is necessary for the relocation, then the State must advance 90 percent of the approved estimated cost within 10 days in advance of the scheduled move. The State may make payment to either the worker or the rental agency.

(e) *Lump sum allowance.* The State must pay the lump sum allowance provided in § 618.455(a)(4) when arrangements for the relocation are finalized, but not more than 10 days before the earlier of the AAW's anticipated departure from their old home, or the anticipated date of shipment of the worker's household goods and personal effects.

(f) *Relocation completed.* An AAW completes a relocation when the worker and family, if any, along with household goods and personal effects are delivered to the new residence in the area of relocation or to temporary storage. If the worker moves no household goods and personal effects, then a worker completes relocation when the worker and family, if any, arrive in the area of relocation and establish a residence in the new area. When a family member is approved for separate travel, the later arrival of such family member does not alter the date on which the State must consider the relocation completed.

Subpart E—Reemployment Trade Adjustment Assistance

§ 618.500 Scope.

This subpart provides the rules for RTAA. RTAA, authorized under sec. 246 of the Act, provides 50 percent of the difference between the wages received by the AAW at the time of separation from adversely affected employment and the wages received by the worker from reemployment for workers aged 50 and older who meet the eligibility criteria described in this subpart. This subpart identifies the eligibility criteria and the benefits available to AAWs who are eligible for RTAA.

§ 618.505 Individual eligibility.

(a) *Eligibility criteria.* An AAW from a worker group certified under § 618.225 may elect to receive RTAA benefits if the AAW:

(1) Is at least 50 years of age;

(2) Earns not more than $50,000 in reemployment wages each calendar year during the eligibility period, excluding overtime pay, as further defined in § 618.520(a);

(3) Earns less than the AAW's annualized wages at separation, as further defined in § 618.520(a);

(4)(i) Is employed on a full-time basis as defined by the law of the State in which the worker is employed and is not enrolled in any training program approved under subpart F of this part; or

(ii) Is employed at least 20 hours per week and is enrolled in a TAA approved training program; and

(5) Is not employed at the firm, as further defined in paragraph (b) of this section, from which the worker was separated.

(b) *Eligibility-relevant definitions.* For purposes of RTAA, the following definitions apply:

(1) *Firm.* The State must determine on a case-by-case basis what constitutes the ''firm'' for purposes of determining RTAA eligibility based on the certification. If the Department issues the certification under subpart B of this part for a worker group in an appropriate subdivision of a firm, an AAW in that group is not eligible for RTAA upon a return to employment within that subdivision, but may be eligible for RTAA upon a return to employment at another subdivision of the firm. If, however, the Department issues the certification for a worker group composed of all workers from the firm rather than from a subdivision, then the worker is not eligible for RTAA based on a return to employment in any subdivision of that firm.

(2) *Successor-in-interest.* The State must determine if the firm now employing the AAW is the same firm as the one from which the AAW was separated.

(i) In making its determination, the State should first review the certification under which the worker was covered, look for any amendments to the certification, and compare the name and address of the firm in the certification to the name and address of the firm in which the worker has found reemployment. If they are the same, this is, in most cases, dispositive: the firms are the same and the worker is not eligible for RTAA.

(ii) If, despite the information gathered under paragraph (b)(2)(i) of this section, it nonetheless remains unclear whether the firms are the same, the State may need to obtain further information about the firm reemploying the worker, from the employer and otherwise, to make that determination. To do so, the State should determine whether the firm at which the worker found reemployment is a ''successor-in-interest'' to the firm from which the worker was separated. If the reemploying firm merged with, acquired, or purchased the assets of the firm from which the worker was separated, then the reemploying firm is a successor-in-interest.

(iii) If the reemploying firm does not meet the criteria in paragraph (b)(2)(ii) of this section, or if that information is unavailable, then the State should consider the factors identified in paragraphs (b)(3)(i) through (vii) of this section to determine whether the reemploying firm is a successor-in-interest. If the State determines that the worker returned to employment with a successor-in-interest to the firm from which the worker was separated, then the worker is not eligible for RTAA. The State must make the determination based on the individual application of the worker. A firm, together with any predecessor or successor-in-interest, or together with any affiliated firm controlled or substantially owned by substantially the same persons, is considered a single firm. If the State determines that the reemployment is with a successor-in-interest the State also must seek to identify any additional members of the worker group and notify them of their potential eligibility under the TAA Program, as provided in § 618.816(e).

(3) *Successor-in-interest factors.* A State may consider a firm a successor-in-interest to another firm, if a majority of the following factors are present:

(i) There is continuity in business operations.

(ii) There is continuity in location.

(iii) There is continuity in the workforce.

(iv) There is continuity in supervisory personnel.

(v) The same jobs exist under similar conditions.

(vi) There is continuity in machinery, equipment, and process.

(vii) There is continuity in product/service.

(c) *Full-time employment.* For purposes of RTAA, full-time employment is defined per State law in which the reemployment occurs.

(1) If there is no State law addressing the definition of full-time employment referenced under paragraph (a)(4)(i) of this section, the State must issue a definition of full-time employment for RTAA purposes.

(2) The State must verify reemployment and do so in accordance with State policies.

(3) Where an AAW seeks to establish RTAA eligibility based upon more than one job, the State must combine employment hours in order to determine whether the worker has the number of hours needed to qualify for RTAA.

(4) If the AAW is employed in more than one State, the State must determine full-time employment for the entire duration of the AAW's RTAA eligibility under a single certification under the law of the State in which the AAW has the lowest threshold of hours required to meet the definition of full-time employment.

(d) *Relevance of UI eligibility.* UI eligibility is not a requirement for RTAA eligibility.

(e) *Eligible employment.* (1) Employment for purposes of paragraph (a)(4) of this section must be covered employment under State law; however, employment may not include activity that is unlawful under Federal, State, or local law.

(2) Work involving wages plus commission or piece work may be considered qualifying employment for the purpose of establishing RTAA eligibility, if it otherwise meets the criteria in paragraph (e)(1) of this section.

(3) For purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section, employment may include one or more jobs unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the AAW is employed provides otherwise.

(4) A State must count hours in which an AAW is on employer-authorized leave as hours of work for purposes of meeting the requirements of paragraphs (a)(4)(i) and (ii) of this section unless, in the case of paragraph (a)(4)(i) of this section, the law of the State in which the worker is employed provides otherwise.

§ 618.510 Eligibility period for payments of Reemployment Trade Adjustment Assistance and application deadline.

(a) *Adversely affected worker who has not received TRA.* (1) In the case of an AAW who has not received TRA, the worker may receive benefits as described in § 618.520(a) for a period not to exceed 104 weeks beginning on the earlier of:

(i) The date on which the worker exhausts all rights to UI based on the separation of the worker from the adversely affected employment that is the basis of the certification; or

(ii) The date on which the worker first begins qualifying reemployment as described in § 618.505(e).

(2) Where a worker has more than one separation from adversely affected employment, the relevant separation for determining the date on which the ''worker exhausts all rights to UI'' referenced in paragraph (a)(1)(i) of this section is the worker's last separation from adversely affected employment that qualifies the worker as an AAW. The Department uses the last separation because that separation is the one that triggers the worker's application for RTAA. Accordingly, the State must determine the worker's last separation for lack of work from adversely affected employment before the RTAA application. This principle applies only to the determination of the eligibility period and does not apply to the calculation of RTAA payments, where wages at separation are defined as the annualized hourly rate at the time of the most recent separation, as explained in § 618.520(a).

(b) *Adversely affected worker who has received TRA.* In the case of an AAW who has received TRA, the worker may also receive RTAA benefits based on the same certification for a period of 104 weeks beginning on the date on which the worker first begins qualifying reemployment, reduced by the total number of weeks for which the worker received such TRA.

(c) *Applicable dates.* To make the RTAA determination, the State will need to know the applicable dates for the AAW: The date of reemployment and either the date the worker exhausted all rights to UI, or the dates the worker began and ended receipt of TRA before the date of reemployment. These dates must occur within the 104-week eligibility period identified in the Act.

(d) *Age of AAW when obtaining RTAA-qualifying employment.* An AAW may obtain employment before turning 50 years old and receive RTAA benefits after turning 50 years old, if the employment is determined to be RTAA-qualifying reemployment, as provided at § 618.505(e), and the RTAA eligibility period established after obtaining such employment has not expired when the individual turned 50 years old.

(e) *Exception to filing deadline and eligibility periods.* The filing deadline and eligibility periods in paragraphs (a) and (b) of this section do not apply where:

(1) A negative determination on a petition filed under subpart B of this part has been appealed to the USCIT;

(2) A certification of the worker group covered by that petition is later made; and

(3) The delay in the certification is not attributable to the petitioner or the AAW.

(f) *Reasonable accommodation of filing deadline and eligibility periods.* In the event the filing deadline and eligibility periods in paragraphs (a) and (b) of this section do not apply because the certification meets the conditions in paragraph (e) of this section, the filing deadline and eligibility periods for RTAA will be extended by the State for the period necessary to make RTAA reasonably available to AAWs.

§ 618.515 Continuing eligibility and timing of payments.

(a) *Continuing eligibility for RTAA.* (1) Changing jobs during reemployment does not disqualify an otherwise eligible AAW from receiving subsequent RTAA payments for the remainder of the 104-week (2-year) eligibility period if the new reemployment meets the requirements of § 618.505.

(2) An AAW already receiving RTAA payments who has a period of unemployment will not be eligible to receive RTAA for that period. Upon reemployment, the AAW must notify the State. If the new reemployment meets the requirements of § 618.505 and the worker meets all other eligibility requirements in this part, the AAW will be eligible to receive RTAA in accordance with the requirements of this section for the remaining portion of the 104-week (2-year) eligibility period.

(3) If during a calendar year during the 2-year eligibility period an AAW's cumulative wages exceed $50,000, the AAW will no longer be eligible to receive additional RTAA payments within that calendar year. The AAW will be eligible for RTAA benefits in the next calendar year and RTAA payments will resume until wages exceed $50,000 or until the $10,000 benefit limit is reached.

(b) *Timing of RTAA payments.* The State must make RTAA payments on a regular basis, either weekly, biweekly, or monthly, for no more than a 104-week (2-year) period for an AAW under any one certification, beginning no earlier than the first day of reemployment that satisfies the requirements of § 618.505. An AAW may receive retroactive payments, in a lump sum, for payments for which the AAW was eligible, but for which the AAW had not yet applied.

(c) *Periodic verification of employment and reemployment wages.* No less than once a month, the State must review whether an AAW receiving RTAA payments continues to meet the eligibility requirements of § 618.505 and determine whether changes have occurred in the AAW's reemployment wages, as described in § 618.520(a).

(d) *Change in reemployment wages.* The State must recompute the appropriate amount of the RTAA payments if, during its review under paragraph (c) of this section, it determines that an AAW's reemployment wages have changed.

(1) If reemployment wages exceed $50,000 in a calendar year during the eligibility period, then the State must immediately issue a determination that the AAW is ineligible for further RTAA payments, notify the AAW of this determination, and cease such RTAA payments.

(2) If reemployment wages change but do not exceed $50,000 in a calendar year during the eligibility period then the RTAA payment must be recomputed every time such a change in reemployment wages occurs. The State must then continue periodic verification in accordance with paragraph (c) of this section, or recommence periodic verification if RTAA payments resume in the second calendar year after such scenario as described in paragraph (a)(3) of this section occurs.

§ 618.520 Benefits available to eligible adversely affected workers.

(a) *Payment.* A RTAA-eligible AAW may receive a maximum of $10,000 over a period of not more than 104 weeks (2 years). If the AAW received TRA, each week of TRA received reduces the total weeks of RTAA available by 1 week and reduces the total RTAA payment amount available in proportion to the reduction in the number of total weeks.

(1) *Total amount of benefits.* RTAA supplements a worker's wages for up to 104 weeks (2 years) (reduced by the number of weeks of TRA received) or $10,000 (reduced in proportion to the reduction in the number of total weeks of TRA received), whichever occurs first, by an amount equal to the annualized wage differential as computed under paragraph (a)(2) of this section for an AAW employed full-time or paragraph (a)(3) of this section for an AAW employed less than full-time.

(2) *Annualized wage differential for initial eligibility of an AAW employed full-time.* This amount is equal to 50 percent of: The AAW's annualized separation wages (as computed under paragraph (a)(2)(i) of this section) minus the amount of the AAW's annualized reemployment wages (as computed under paragraph (a)(2)(ii) of this section).

(i) Annualized separation wages are the product of the AAW's hourly rate during the last full week of the AAW's regular schedule in adversely affected employment, multiplied by the number of hours the AAW worked during the last full week of such employment, multiplied by 52. The computation of annualized wages at separation excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay. [(hourly rate × hours worked) × 52]

(ii) Annualized reemployment wages are the product of the AAW's hourly rate during the first full week of reemployment, multiplied by the number of hours the AAW worked during the first full week of such reemployment, multiplied by 52 [(hourly rate × hours worked) × 52]. If the AAW's wages from reemployment change during the eligibility period, then the State must recompute the AAW's annualized wages from reemployment at the new hourly wage and must likewise recompute the appropriate RTAA payment as required by § 618.515(d). The computation of annualized wages from reemployment excludes overtime, employer-paid health insurance premiums, and employer pension contributions, as well as bonuses, severance payments, buyouts, and similar payments not reflective of the AAW's weekly pay.

(3) *Annualized wage differential for initial eligibility of an AAW employed less than full-time.* This amount, for an AAW employed at least 20 hours per week and enrolled in TAA approved training, is the annualized wages as computed under paragraph (a)(2) of this section multiplied by the ratio of the AAW's number of weekly hours of reemployment to the AAW's number of weekly hours of employment at the time of separation, but in no case more than 50 percent.

(4) *Adjustment to total amount of RTAA benefits for AAWs who received TRA.* A State must adjust of the maximum RTAA benefit for an RTAA-eligible AAW who has received TRA. The RTAA-eligible AAW may receive up to the adjusted RTAA benefit as described in this section within the eligibility period as provided in § 618.510(b). RTAA eligibility is terminated once the AAW reaches either the number of weeks permitted pursuant to § 618.510 or the adjusted RTAA benefit. The adjusted RTAA benefit is calculated by subtracting the number of TRA paid weeks from the 104-week RTAA eligibility period to determine the percentage of reduced weeks that payments may be made. The maximum payable benefit of $10,000 is then reduced by the same percentage. Once the reduction in RTAA payable weeks and the reduction in the RTAA total payable are reduced by the same percentage, they become the new maximum number of payable weeks and maximum payable benefit.

(b) *Training and related services.* Recipients of RTAA are eligible to receive training approved under subpart F of this part and employment and case management services under subpart C of this part.

(c) *Job search and relocation allowances.* Recipients of RTAA are eligible to receive job search and

relocation allowances under subpart D of this part, subject to the eligibility requirements and rules of subpart D.

(d) *HCTC.* Recipients of RTAA are eligible to apply for or claim the HCTC, if available.

(e) *TRA.* Once an AAW has received a payment under RTAA, they are no longer eligible for TRA under the same petition. Receipt of TRA prior to RTAA will result in a reduction of RTAA benefits as described at paragraph (a)(4) of this section.

§ 618.525 Determinations, redeterminations, and appeals.

(a) *Determinations, redeterminations, and appeals.* States must apply the requirements of §§ 618.825 (covering determinations and notice) and 618.835 (covering hearings and appeals), respectively, to all determinations, redeterminations, and appeals under this subpart.

(1) Before issuing a determination or redetermination, the State must verify and document the AAW's age, reemployment, and wages in determining whether the worker has met eligibility requirements of § 618.505(a).

(2) A determination of eligibility issued to an AAW must include a notice that the benefit amount will be regularly recomputed (as required by § 618.515(d)) and will change if the eligible AAW's reemployment wages change.

(3) An AAW denied individual eligibility based on a first reemployment may file a new application for a subsequent reemployment.

(4) A State may approve an RTAA payment retroactively if an AAW becomes reemployed before the Department issues a certification under subpart B of this part, provided that the AAW otherwise meets the eligibility requirements of § 618.505(a).

(b) *Recordkeeping requirements.* The recordkeeping and disclosure of information requirements of § 618.852 apply to the State's administration of RTAA.

§ 618.530 Reductions of Reemployment Trade Adjustment Assistance payments; priority of payments.

(a) *Ordered child support payments.* State laws regarding deductions of payments from UI, TRA, and RTAA must comply with the Social Security Act (SSA). SSA sec. 303(e)(1) defines child support obligations as only including obligations which are being enforced pursuant to a plan described in sec. 454 of SSA which has been approved by the Secretary of Health and Human Services under part D of title IV of SSA. SSA does not otherwise permit deductions for alimony or for child support.

(b) *Priority of UI payments.* RTAA does not fit into priority of payments under UI because RTAA is related to employment, not unemployment. UI and RTAA are two separate programs that operate independently of one another.

Subpart F—Training Services

§ 618.600 Scope.

This subpart sets forth the conditions and procedures under which a trade-affected worker may apply for and receive training to help secure reemployment. Training provided under this subpart must, at a reasonable cost and as quickly as possible, assist a trade-affected worker in obtaining the necessary skills to have a reasonable expectation of reemployment. All else being equal, States should prefer training that replaces 100 percent or more of a trade-affected worker's wages in adversely affected employment or that qualifies as suitable employment.

§ 618.605 General procedures.

(a) *Assessments.* The State must ensure and document that every trade-affected worker has an initial assessment and that a comprehensive and specialized assessment is made available, as described in subpart C of this part. If a worker refused to take an assessment, the information necessary to determine eligibility for training must be documented. If a trade-affected worker has an IEP, the assessment results must support the training program set out in the worker's IEP, as described in subpart C of this part, before an application for training is approved. As with assessments, if a worker refused to develop an IEP, the information necessary to determine eligibility for training must be documented.

(b) *Applications.* Applications for training, including requests for TAA Program-funded transportation and subsistence payments, must be made to the State in accordance with any policies and procedures established by the State.

(c) *Determinations.* Decisions on selection for, approval of, or referral of a trade-affected worker to training, including whether to provide TAA Program-funded transportation and subsistence payments, under this subpart, or a decision with respect to any specific training or nonselection, nonapproval, or nonreferral for any reason is a determination to which §§ 618.820 (determinations and notice), 618.824 (liable and agent State responsibilities), and 618.828 (appeals and hearings) apply.

(d) *Training opportunities.* (1) The State must explore, identify, and secure training opportunities to ensure trade-affected workers return to employment as soon as possible. States must use all necessary and reasonable means to find alternatives when local training resources cannot adequately train trade-affected workers for reemployment. Training resources may be inadequate when they cannot train workers quickly, or at a reasonable cost, or equip workers with skills that meet the demands of the job market.

(2) When available training is inadequate, TAA Program funds may be used to create customized, group training opportunities in response to a particular dislocation event. Funds may be used for trainings that provide intensive remedial education classes, English language training, or contextualized occupational training, which combines academic and occupational training. These group trainings must adhere to the principles described in § 618.600.

(3) States are required to coordinate with other public and private agencies, in cooperation with local workforce development boards (LWDBs) established under WIOA, to ensure a wide-range of training opportunities are available to trade-affected workers in demand occupations.

(e) *Timing of application and approval of training.* A trade-affected worker may apply for training and a State may approve training at any time after the certification date on which their worker group is certified under subpart B of this part, without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

§ 618.610 Criteria for approval of training.

The State must consult the trade-affected worker's assessment results and IEP, if available, as described respectively under §§ 618.345 and 618.350, before approving an application for training. Training must be approved for a trade-affected worker if the State determines that all of the criteria in paragraphs (a) through (f) of this section are met:

(a) *Criterion 1.* There is no suitable employment available for the trade-affected worker.

(1) There is no suitable employment available for a trade-affected worker in either the commuting area or another area outside the commuting area to which the worker intends to relocate, and there is no reasonable prospect of

such suitable employment becoming available for the worker in the foreseeable future.

(2) If a training program, or an application for training, is denied under paragraph (a)(1) of this section, the State must document the availability of suitable employment through traditional and real-time labor market information including, but not limited to, projections data, job postings, and job vacancy surveys.

(b) *Criterion 2.* The trade-affected worker would benefit from appropriate training.

(1) The worker would benefit from appropriate training when training, skills training, or remedial education would increase the likelihood of obtaining employment. Appropriate training should improve the worker's chances of obtaining employment at higher wages than in the absence of training or place them on a career pathway to do so.

(2) The worker must have the knowledge, skills, and abilities to undertake, make satisfactory progress in, and complete the training program.

(c) *Criterion 3.* There is a reasonable expectation of employment following completion of such training. Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(1) ''A reasonable expectation of employment'' does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training program. When initially approving such training, there must be a projection, based on labor market information, of employment opportunities expected to exist at the time of completion of the training program.

(2) The State must measure expected job market conditions using pertinent labor market data, including but not limited to job order activity, short-term projections data, job vacancy surveys, business visitation programs, and local and regional strategic plans. This labor market information should be documented in the trade-affected worker's case file. The State should also work with the LWDBs and their one-stop partners, especially business team members, to understand current labor market conditions and opportunities for work-based learning.

(3) When a worker desires to relocate within the United States, but outside the worker's present commuting area, upon completion of training, the State must document the labor market information, described in paragraph (c)(2) of this section, for the area of the planned relocation.

(4) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in an area to which they desire to relocate. A limited demand for such an occupation does not preclude the approval of training in an occupation where the State has determined that there is a reasonable expectation that the worker can secure employment in that occupation. States must verify with businesses in the commuting area or in the area of intended relocation that demand exists for an individual with such training. These efforts must be documented in the trade-affected workers case file. Before approving training in occupations with limited demand, the State must consider the number of individuals currently enrolled in training that are likely to meet that demand before enrolling additional workers in training for that occupation.

(5) A State may approve a training program in an occupation if it finds that there is a reasonable expectation that the training will lead to self-employment in the occupation for which the worker requests training and that such self-employment will provide the worker with wages or earnings at or near their wages in adversely affected employment.

(6) Training programs that consist solely of OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with sec. 236(c)(1)(B)(i) of the Act.

(d) *Criterion 4.* Training is reasonably available to the trade-affected worker. In determining whether training is reasonably available, States must first consider training opportunities available within the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the training program must be available at a reasonable cost as prescribed in paragraph (f) of this section.

(e) *Criterion 5.* The trade-affected worker is qualified to undertake and complete such training. States must ensure the following:

(1) The worker's knowledge, skills, abilities, educational background, work experience, and financial resources are adequate to undertake and complete the specific training program being considered.

(2) Any initial assessment, comprehensive and specialized assessment, and IEP developed under subpart C of this part must be consulted to support the trade-affected worker's ability to undertake and complete the training program.

(3) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d). In making this determination, the State must consider:

(i) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed training program;

(ii) Other sources of income support available to the worker, including severance, earnings of other family members, and other family resources;

(iii) Other fixed financial obligations and expenses of the worker and family;

(iv) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance including, but not limited to, nongovernmental scholarships, awards, or grants; and

(v) Whether or not the worker is employed while attending training.

(4) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the training program that exceeds the duration of UI and TRA payments.

(5) If a worker has insufficient financial resources to complete the worker's proposed training program that exceeds the duration of UI and TRA payments, then the State must not approve that training program and must instead consider other training opportunities available to the worker.

(f) *Criterion 6.* Such training is suitable for the trade-affected worker and available at a reasonable cost.

(1) *Suitable for the worker.* The training program being considered must address the criteria set out in paragraphs (e)(1) and (2) of this section and be determined by the State to be appropriate given the worker's knowledge, skills and abilities,

background, and experience relative to the worker's employment goal, and criteria set out in paragraph (c) of this section.

(2) *Available at a reasonable cost.* (i) Costs of a training program may include, but are not limited to, tuition and related expenses (*e.g.,* books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the approved training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(A) The State must ensure and document that the training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(B) Related expenses must be necessary for the worker to complete the training program. Other options should be explored before purchasing equipment or related materials.

(ii) Available at a reasonable cost means that training must not be approved at one provider when, all costs being considered, training better or substantially similar in quality, content, and results can be obtained from another provider at a lower total cost within a similar time frame. Training must not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(iii) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (f)(2)(ii) of this section applies.

(iv) Approval of training under paragraph (f) of this section (Criterion 6) is also subject to the provisions of § 618.650.

§ 618.615 Limitations on training approval.

(a) *One training program per certification.* (1) Except as provided under paragraph (d)(4) of this section, no trade-affected worker may receive more than one approved training program under a single certification.

(2) A training program may be amended, as needed, in compliance with § 618.665.

(3) A training program may consist of multiple forms of training, including any or all of the types of training identified in § 618.620, subject to any restrictions or eligibility requirements that may exist.

(b) *Full-time or part-time training.* A State may approve a training program on a full-time or part-time basis. A trade-affected worker's approved training program may consist of either part-time or full-time training, or a combination of both. A worker may switch from part-time to full-time training or from full-time to part-time training during the period of their participation in the program. The training program must be amended each time this occurs, in accordance with § 618.665.

(1) *Full-time.* Full-time training means that the training is in accordance with the training provider's established full-time hours in a day (or credit hours) and days in a week. If a worker in full-time training has obtained employment that is not suitable employment, then the worker may choose to continue with such employment while completing the approved training program, provided the worker is willing and able to accommodate a full-time training schedule under the training provider's standard for full-time training.

(2) *Part-time.* (i) A State may approve part-time training. Part time training is any training program that is not full time in accordance with the established standards of the training provider. The maximum duration for approved training provided in paragraph (d)(3)(i) of this section also applies to part-time training.

(ii) A worker enrolled in part-time training is not eligible for TRA under subpart G of this part, including a worker who ceases full-time training to engage in part-time training. The training approval requirements found in this section also apply to part-time training.

(iii) A worker may participate in part-time training while employed in either part-time or full-time employment.

(iv) The State must clearly inform the worker, before the worker chooses part-time training, that TRA is not available to workers in approved part-time training and that the worker may lose eligibility for the HCTC, if available, while engaged in part-time training.

(v) As provided in § 618.780(b)(1)(i), a worker may not be determined to be ineligible or disqualified for UI, because the worker is enrolled in training approved under § 618.610, including part-time training.

(vi) As further described at § 618.780(b)(1)(ii), State or Federal UI statutes relating to the able, available, or active work search requirements as well as refusal to accept work will not disqualify a worker for UI or other program benefits, during any week of training approved under § 618.610, including part-time training.

(c) *Previous approval of training under other law.* When a TAA Program petition has been filed by or on behalf of a group of workers but a determination of group eligibility has not been made, training may be approved for a worker under another State or Federal law or other authority. Training approved for a worker under another State or Federal law or other authority is not training approved under § 618.610. After eligibility has been determined, any such training may be approved under § 618.610 (criteria for approval of training), if it meets all of the requirements and limitations of § 618.610 and the other provisions of this subpart. Such approval must not be retroactive for any of the purposes of this part, including payment of the costs of the training and payment of TRA to the trade-affected worker participating in the training, except in the case of a redetermination or decision reversing a training denial as addressed in § 618.828(d), in which case the approval must be retroactive to the date of that denial. Systems must be in place to accommodate a change in funding seamlessly, as appropriate, after TAA Program training program approval is obtained. The cost of training must shift to the TAA Program at the next logical break in training—such as the end of a semester—for workers who become eligible for the TAA Program and whose training is approved under the TAA Program. Training approved under other programs may be amended by the TAA Program to allow a worker additional training in order to meet additional retraining needs identified in the worker's IEP.

(d) *Length of training.* The State, in determining whether to approve a training program, must determine the appropriateness of the length of training, as follows:

(1) *Time necessary to achieve desired skill level.* The training must be of suitable duration to achieve the desired skill level in the shortest possible time, and not in excess of, the limits

established in paragraph (d)(3) of this section.

(2) *Factors.* Factors that may impact the length of training include, but are not limited to, the trade-affected worker's employment status (full- or part-time) under § 618.630 (training of reemployed workers not in suitable employment), the need for supportive services from partner programs, and breaks in training due to class schedules and availability.

(3) *Duration.* (i) Except as otherwise provided for OJT, apprenticeship, and the exception provided in paragraph (d)(4) of this section, the maximum duration for approvable training under the TAA Program is 130 weeks.

(ii) Only weeks spent in actual training are counted. Scheduled breaks in training, as provided in § 618.760, are not counted.

(iii) If a training program satisfies the duration requirement of paragraph (d)(3)(i) of this section but will extend beyond the period during which TRA is available, the State must determine, under § 618.610(e)(3) (criteria for approval of training), whether the worker has sufficient personal resources (*i.e.,* funds for their living expenses) to support themselves while completing the training, while not requiring the worker to obtain such funds as a condition of training approval. The worker must attest to the State that they have sufficient resources to sustain themselves while in training.

(4) *Exception for certain workers who perform a period of duty in the Uniformed Services.* A member of one of the reserve components of the U.S. Armed Forces who serves a period of duty will have the period for training, under paragraph (a)(3) of this section, suspended upon being called up to duty, provided the requirements specified in paragraphs (a)(4)(i) through (iii) of this section are met. Any such reserve component member may either resume training upon discharge from active service for the training period that remained at the time the reservist left the training program to report for active duty, or be allowed to repeat portions of the training if doing so is necessary for completion of the approved training program or, where appropriate, begin a new approved training program. Where the reservist repeats a training program or begins a new training program, the reservist will be entitled to a new 130-week period to complete approved training. To be eligible to resume, repeat, or begin a new approved training program, the reservist must meet the following requirements:

(i) Before completing training under this subpart, the worker has given prior oral or written notice of the active duty service to the State, unless providing such notice is precluded by military necessity or is otherwise impossible or unreasonable.

(ii) The returning service member must apply to the State for training within 90 days following release from active duty service.

(iii) For purposes of the exception in this paragraph (d)(4), period of duty means:

(A) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(B) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

(e) *Training outside the United States.* A trade-affected worker must not be approved for training under this subpart for any training that is conducted totally or partially at a location outside the United States or if the worker is physically located outside the United States while participating in training. For distance training, this means both the provider and participant must be located within the United States.

§ 618.620 Selection of training program.

(a) *Standards and procedures for selection of training.* The State must document the standards and procedures used to select training providers and training(s) in which the training program under this subpart will be approved.

(1) In determining the types of training to be approved and provided under the standards, the State should consult with partner agencies, including State partner agencies (*e.g.,* State apprenticeship agencies or Federal Offices of Apprenticeship located in the States), WIOA one-stop partners, local employers, appropriate labor organizations, local educational organizations, the LWDB, State and local apprenticeship programs, local advisory councils established under the Strengthening Career and Technical Education for the 21st Century Act (Pub. L. 115–224 (2018), as codified at 20 U.S.C. 2301 *et seq.*), and postsecondary institutions.

(2)(i) States may choose an eligible training provider (ETP) established under WIOA sec. 122 without establishing additional standards or procedures under the TAA Program.

(ii) As provided in sec. 236 of the Act, States must not limit training approved under this section to only programs on the ETP list under title I of WIOA.

(b) *Training types.* Eligible trade-affected workers must be provided training using either one, or a combination of, the following methods:

(1) Work-based training, such as apprenticeships, OJT, or customized training, may be approved for AAWs. Customized training with the worker's current employer may only be approved for AAIWs if the training is for a position other than their threatened position. See § 618.655(c)(2). AAIWs must not be approved for OJTs. See § 618.655(c)(1). The State must inform the worker of the potential negative effects of work-based training on TRA and the HCTC, if available; or

(2) Institutional training, including training at public area career and technical education schools, as well as community colleges, may be approved alone or in combination with work-based training. This also includes distance learning, including online training, where a worker may complete all or part of an educational or vocational program in a geographical location apart from the institution hosting the training program, and where the final certificate or degree conferred is equivalent in standard of achievement and content to the same program completed on campus or at another institutional training location.

(i) A provider of the distance learning must be based in the United States for training provided to be approved. In addition, the worker must be physically within the United States when participating in distance learning to remain eligible for benefits under the Act.

(ii) Distance learning is subject to all training approval criteria described in this subpart.

(iii) The State must establish and monitor the milestones of a distance-learning program based on the worker's IEP, as described in subpart C of this part, if available.

(iv) A worker who does not meet the requirements or milestones of a distance-learning program may be determined to have ceased participation in training, as described in § 618.780(b)(3)(ii).

(3) Higher education includes any training or coursework at an accredited institution, as described in sec. 102 of the Higher Education Act of 1965, as amended (20 U.S.C. 1002), including training or coursework for the purpose

of obtaining a degree or certification, or for completing a degree or certification that the worker had begun previously at an accredited institution of higher education. Higher education may be approved alone or in combination with work-based training. The distance learning requirements in paragraph (b)(2) of this section also apply to this paragraph (b)(3).

(c) *Other training.* In addition to the training programs discussed in paragraph (b) of this section, training programs that may be approved under § 618.610 (criteria for approval of training) include, but are not limited to:

(1)(i) Any program of remedial education, including ABE courses and other remedial education courses, ELA courses, and HSE preparation courses.

(ii) Remedial education may occur before, or while participating in, the requested training program;

(2) Career and technical education;

(3) Any training program approvable under § 618.610 for which all, or any portion, of the costs of training the trade-affected worker are paid:

(i) Under any other Federal or State program other than the TAA Program; or

(ii) From any source other than this part;

(4) Any training program provided by a State pursuant to title I of WIOA or any training program approved by an LWDB established under sec. 102 of WIOA;

(5) Any program of prerequisite education or coursework required by a training provider before advancing to further training; or

(6) Any other training program approved by the State that complies with this subpart.

(d) *Advanced degrees.* Training programs that will lead to an advanced degree may be approved; however, the time limits described at § 618.615(a)(3) must be met. States may not restrict access to advanced degrees where the other criteria of this subpart are met. All training programs must be evaluated on their individual merit.

§ 618.625 Payment restrictions for training programs.

(a) *Funding of training programs.* The costs of a training program approved under the Act may be paid:

(1) Solely from TAA Program funds;

(2) Solely from other public or private funds; or

(3) Partly from TAA Program funds and partly from other public or private funds.

(b) *No duplication of costs allowed.* (1) Any use of TAA Program funds to duplicate the payment of training costs by another source is prohibited.

(2) When the payment of the costs of training has already been made under any other Federal law, or the costs are reimbursable under any other Federal law and a portion of the costs has already been paid under other such Federal law, payment of such training costs may not be made from TAA Program funds.

(3) When the direct costs of a training program approvable under § 618.610 (criteria for approval of training) are payable from TAA Program funds and are also wholly or partially payable from any other source, the State must establish procedures to ensure TAA Program funds will not duplicate funds available from the other source(s). This preclusion of duplication does not prohibit and should not discourage sharing of costs under prearrangements authorized under paragraph (c)(2) of this section.

(c) *Cost sharing permitted.* (1) TAA Program funds are the primary source of Federal assistance to trade-affected workers, as identified in § 618.804(h)(4). If the costs of training a trade-affected worker can be paid under the TAA Program, no other payment for such costs may be made under any other provision of Federal law.

(2) States may share training costs with authorities administering other non-Federal, State, and private funding sources. Sharing training costs with other Federal sources may only occur if TAA Program funds are not available to cover the total cost of training, as described in paragraph (d)(2)(ii) of this section.

(3) Sharing the future costs of training is authorized where prior costs were paid from another source, but this paragraph (c)(3) does not authorize reimbursement from TAA Program funds of any training costs that were accrued before the date the training program was approved under the TAA Program.

(4) When a mix of TAA Program funds and other funds are used for paying the costs of a training program approved under this subpart, the State must enter into a prearrangement with any entity providing the other source of funds. Any such prearrangement must contain specific commitments from the other authorities to pay the costs they agree to assume and must comply with the nonduplication provisions contained in this part.

(i) Agreements may be entered into on a case-by-case basis to address specific training situations of workers or they may be part of an overall statewide strategy to effectively use and maximize available resources from the TAA Program, workforce development, and other programs.

(ii) Where training costs are shared between the TAA Program and any other funding source, the State must enter into a prearrangement with the other funding source to agree upon the proportion of TAA Program funds and other funds to be used to pay the costs of a training program. A prearrangement must be a specific, binding agreement with the other source(s) to pay the costs they agree to assume, and must be entered into before any TAA Program funds are obligated. If, after TAA Program funds are already committed to a training program, other funds become available to pay for that training, the State may decide to share the costs of the remainder of training program or the State may continue funding the training program in full using TAA Program funds. If the State decides to share the costs, it must enter into a prearrangement with respect to the newly available funds. If the State makes a change to how the training program will be funded going forward, the existing training program must be amended in accordance with § 618.665.

(iii) Before approving any training program under this subpart, which may involve the sharing of training costs under the authority of paragraph (a)(3) of this section, the State must require the worker to enter into a written agreement with the State, under which TAA Program funds will not be applied for or used to pay any portion of the costs of the training the worker has reason to believe will be paid by any other source.

(5)(i) A State may not take into account Federal student financial assistance, including Pell Grants, or any funds provided under any other provision of Federal law that are used for purposes other than the direct payment of training costs, even though they may have the effect of indirectly paying all or a portion of the training costs.

(ii) States must ensure that upon the approval of a training program under this subpart, payments of Federal student financial assistance cease to be applied to the training participant's tuition or other training-related costs covered by TAA Program funds.

(iii) If payments of Federal student financial assistance or other training allowances from other Federal funding sources were made to the training provider instead of the worker and were applied towards the worker's approved training costs, the State must deduct the amount of those other payments from the amount of TAA Program funds payable to the training provider in order

to prevent duplication in the payment of training costs.

(iv) A worker may use Federal student financial assistance for other expenses, as allowable under applicable rules for such financial assistance.

(6) If the worker's trade-affected firm agrees to fund all or a portion of the worker's training costs, the State must, if the training is otherwise approvable, enter into a prearrangement with the firm to assume any unfunded training costs on the worker's behalf.

(d) *No training fees or costs to be paid by trade-affected worker from TAA Program funds.* (1) A training program must not be approved if the trade-affected worker is required to reimburse any portion of the costs of such training program from TAA Program funds, or from wages paid under such training program.

(2)(i) A training program must not be approved if the trade-affected worker is required to pay any of the costs of the training program from funds belonging to the worker, including funds from relatives or friends, or from personal or educational loans that will require repayment.

(ii) As required by § 618.940, if the Department determines that the amount of funds necessary to provide Training and Other Activities (TaOA) will exceed the annual cap under § 618.900 in a fiscal year, the Department will promptly inform the States. If a State estimates that it will exceed all available TAA Program training funds (including TaOA funds remaining from current or prior fiscal years) then the State must seek funding from other sources (other than from trade-affected workers), including WIOA national dislocated worker grants under part 687 of this chapter to cover the costs of training approved under § 618.610. To the extent that a State is unable to fund training costs from those other sources, the agency may approve training where the worker pays those unfunded costs. Where the worker chooses to pay those unfunded costs under this paragraph (d)(2)(ii), the State is not liable for paying those costs and must document this prearrangement in the worker's case file. Where the worker chooses not to pay the unfunded costs, the State must waive the training requirement in § 618.720(g) on the basis that training is not available, in order to preserve any remaining Basic TRA eligibility under § 618.735(b)(3) (waiver of training requirement for Basic TRA).

§ 618.630 Training of reemployed trade-affected workers not in suitable employment.

(a) An AAW who obtains new employment that is not suitable employment and who has been approved for a training program may elect to terminate the employment, reduce the hours worked in the employment, or continue in full- or part-time employment. Such a worker is not subject to ineligibility or disqualification for UI or TRA as a result of such termination or reduction in employment. A worker who continues such full- or part-time employment while a participant in training is considered to be in training under § 618.780(b) (disqualifications). If the worker continues in full- or part-time employment that is not suitable employment while a participant in an approved training program, the State must inform the worker in writing that such employment may have negative effects on UI and TRA benefit amounts and duration due to income earned from the employment (and also because a worker participating in part-time training is not eligible for TRA), which could also lead to the loss of the HCTC, if available. The State must apply the earnings disregard provisions in subpart G of this part, as appropriate.

(b) An AAW who has been totally separated as described in paragraph (a) of this section may also be eligible for job search and relocation allowances under subpart D of this part.

§ 618.635 Work-based training.

(a) *OJT*—(1) *Description.* OJT is work-based training provided under contract with an employer in the public, nonprofit, or private sector to an AAW who is employed by the employer. OJT may be approved if the worker meets the requirements under §§ 618.610, 618.615, and 618.665. The State must determine that the OJT in question:

(i) Can reasonably be expected to lead to suitable employment with the employer offering the OJT;

(ii) Is compatible with the skills of the worker;

(iii) Includes a curriculum through which the worker will gain the knowledge or skills to become proficient in the job for which the worker is being trained; and

(iv) Can be measured by standards or targets that indicate the worker is gaining such knowledge or skills.

(2) *Related education.* Related skills training provided as part of the OJT contract and sponsored by the employer may be provided in conjunction with the OJT. Such training may be provided at the employment site, or at educational institutions, or other locations. TAA Program funds can be used to pay the OJT participant's expenses associated with the educational or instructional component (*e.g.,* classroom and distance learning, tools, uniforms, equipment, and books) for an AAW's participation in an OJT program.

(3) *Duration.* The OJT contract with the employer must specify the duration of the OJT. The duration of the OJT must be appropriate to the occupational goal for which the AAW is being trained, taking into consideration the skills requirements of the job for which the AAW is being trained, the academic and occupational skill level of the AAW, and the work experience of the AAW, as documented in the worker's IEP, if available. The duration of the training must be long enough for the worker to become sufficiently proficient in the occupation for which the training is being provided to enable the worker to perform as well as workers in comparable positions within the firm. The OJT:

(i) Must not exceed the specific vocational preparation required for the occupation, as listed on O*NET (*www.onetonline.org*); and

(ii) Must not exceed 104 weeks in any case.

(4) *Exclusion of certain employers.* The State may not enter into a contract for OJT with an employer that exhibits a pattern of failing to provide workers receiving OJT from the employer with:

(i) Continued long-term employment as regular employees; and

(ii) Wages, benefits, and working conditions that are equivalent to the wages, benefits and working conditions provided to regular employees who have worked a similar period of time and are doing the same type of work as workers receiving the OJT from the employer.

(5) *Reimbursement.* (i) Pursuant to the OJT contract, the employer is provided reimbursement of not more than 50 percent of the wage rate of the OJT participant, for the costs of providing the training and additional supervision related to the training.

(ii) The reimbursement for OJT must be limited to the duration of approved training as specified in the OJT contract.

(6) *Approval of the costs of OJT.* OJT costs for an AAW may be approved by a State only if a determination is made that:

(i) No currently employed individual is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the AAW;

(ii) Such training does not impair existing contracts for services or collective bargaining agreements;

(iii) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(iv) No other individual is on layoff from the same or any substantially equivalent job for which the AAW is being trained;

(v) The employer has not terminated the employment of any regular employee or otherwise reduced the workforce of the employer with the intention of filling the vacancy by hiring the AAW;

(vi) The job for which the AAW is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(vii) The training is not for the same occupation from which the AAW was separated with respect to which the AAW's worker group is covered under a certification rendered under subpart B of this part;

(viii) The employer has not received payment under the TAA Program or under any other Federal law for any other OJT provided by such employer that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(ix) The employer has not taken, at any time, any action that violated the terms of this section with respect to any other OJT provided by the employer for which the State has made a payment under the TAA Program.

(7) *Payment of the costs of OJT.* The costs of OJT that are paid from TAA Program funds must be paid in monthly installments.

(8) *TRA eligibility during OJT.* Under § 618.780(c), an AAW may not be paid TRA for any week during which the worker is in OJT and, therefore, may be ineligible for the HCTC, if available.

(9) *RTAA eligibility during OJT.* Participants enrolled in OJT may be eligible for RTAA. All the requirements at subpart E of this part must be met.

(10) *Use of WIOA funds for OJT.* TAA Program funds may be leveraged with WIOA funds to provide a reimbursement rate equal to that allowable under WIOA. See WIOA sec. 134(c)(3)(H) (29 U.S.C. 3174(b)(3)(H)).

(11) *No OJT for AAIWs.* The State must not approve OJT for AAIWs.

(b) *Customized training.* (1) Customized training is designed to meet the special requirements of a single employer or a group of employers. The training may be conducted by a training provider, a single employer, or group of employers.

(2) Customized training must be conducted with a commitment by the employer or group of employers to employ an AAW upon successful completion of the training. For purposes of customized training, a commitment by the employer(s) to employ a worker upon successful completion of the training, as required by sec. 236(f)(2) of the Act, means that the employer(s) must enter into an agreement with the State that describes the conditions that must be met for successful completion of the training and the expectation of employment after the training is completed.

(3) The employer must pay at least 50 percent for the cost of the training.

(4) For AAIWs, approval is limited to customized training for other than their current position in adversely affected employment. See § 618.655(c)(2).

(c) *Apprenticeship.* Apprenticeship includes registered apprenticeships under the Act of August 16, 1937 (commonly known as the National Apprenticeship Act; 50 Stat. 664, chapter 663; 29 U.S.C. 50 *et seq.*), as well as other training programs that include a paid work-based learning component and required educational or instructional component that results in the issuance of a recognized postsecondary credential, which includes an industry-recognized credential.

(1) *Duration.* Apprenticeships are not subject to the 104-week statutory duration of OJT training limit. The length of the paid work-based learning component must not exceed 130 weeks. However, the length of the educational or instructional training component of the apprenticeship may exceed 130 weeks and continue through the scheduled completion of that specific apprenticeship training.

(2) *Eligible apprenticeship expenses.* TAA Program funds can be used to pay for:

(i) The expenses associated with the educational or instructional component (*e.g.,* classroom and distance learning, tools, uniforms, equipment, and books) for the apprentice; and

(ii) The sponsor may be reimbursed not more than 50 percent of the apprentice's regular wage rate for the cost of providing the training and additional supervision related to the work-based learning component provided by the sponsor.

(3) *Exclusion of certain sponsors.* The State may not enter into a contract for apprenticeship with an employer and/or apprenticeship sponsor that exhibits a pattern of failing to provide apprentices with successful attainment of an industry-recognized credential or the apprenticeship completion certificate in the case of registered apprenticeship, as issued by the U.S. Department of Labor or State apprenticeship agency.

(4) *Approval of the costs of apprenticeship*—(i) *Registered apprenticeships under the National Apprenticeship Act.* Costs for an apprenticeship program may be approved by a State only if the requirements of the National Apprenticeship Act, 29 CFR parts 29 and 30, and Departmental administrative guidance are met.

(ii) *Other apprenticeships.* Costs for an apprenticeship program may be approved by a State only if a determination is made that:

(A) No currently employed worker is displaced (including a partial displacement, such as a reduction in the hours of nonovertime work, wages, or employment benefits) by the apprentice;

(B) Such training does not impair existing contracts for services or collective bargaining agreements;

(C) In the case of training that would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(D) No other worker is on layoff from the same or any substantially equivalent job for which the apprentice is being trained;

(E) The sponsor has not terminated the employment of any regular employee or otherwise reduced the workforce of the sponsor with the intention of filling the vacancy so created by hiring the apprentice;

(F) The job for which the apprentice is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed workers;

(G) The training is not for the same occupation as the apprentice's adversely affected employment;

(H) The sponsor has not received payment under the TAA Program or under any other Federal law for any other apprenticeship provided by such sponsor that failed to meet the requirements of this section or the requirements of the other Federal laws governing employment practices; and

(I) The sponsor has not taken, at any time, any action that violated the terms of this section with respect to any other apprenticeship provided by the sponsor for which the State has made a payment under the TAA Program.

(5) *TRA and HCTC eligibility during apprenticeships.* Workers enrolled in an

apprenticeship program, in most cases, will not be able to access TRA income support due to their income earned through wages, but the State must still make individual determinations on TRA benefits. This could also impact HCTC eligibility, if HCTC is available. States must advise workers considering this training option of these issues.

(6) *RTAA eligibility during apprenticeships.* AAWs age 50 or older enrolled in an apprenticeship program may be eligible for RTAA under subpart E of this part.

(7) *Meaning of apprenticeship sponsor.* For purposes of paragraph (c) of this section, a sponsor means any person, association, committee, or organization operating an apprenticeship program and in whose name the program is (or is to be) registered or approved.

(8) *State contract with apprenticeship sponsor.* The State must enter into a contract with the sponsor that provides the terms and conditions of the apprenticeship.

§ 618.640 Supplemental assistance.

(a) *General.* Supplemental assistance in the form of subsistence and transportation payments must be provided to a trade-affected worker whose training program has been approved under § 618.610 (Criteria for approval of training), to defray reasonable subsistence and transportation expenses while the worker attends training at a facility outside the worker's commuting area. The need for such subsistence and transportation payments must be documented on the worker's IEP, if available, or in the worker's case file. Subsistence and transportation payments may also be documented on a training approval form, or other such form as the State chooses, to ensure that the supplemental assistance is documented in the worker's case file.

(b) *Applications for supplemental assistance.* A trade-affected worker must submit an application for subsistence or transportation payments in accordance with subpart H of this part and processes established by the State. A determination on an application submitted under this section is subject to §§ 618.820 (determinations and notice) and 618.828 (appeals and hearings).

(c) *Subsistence payments*—(1) *General.* Subsistence payments must be made for the reasonable costs of meals and incidental expenses, and of separate maintenance, which means maintaining temporary living quarters, when the training facility is located outside the trade-affected worker's commuting area.

(2) *Requirements for subsistence payments.* (i) A worker must be reimbursed for subsistence only for the period when they are not receiving or authorized to receive reimbursement or separate payments for such costs from any other source.

(ii) Subsistence payments must not be made for any day such worker receives a daily commuting transportation payment from TAA Program funds or from any other source, except as specified in paragraph (e) of this section.

(iii) Subsistence payments must not be made for any day of unexcused absence from the training program, as certified by the training provider.

(3) *Amount of subsistence payments.* The State may make a subsistence payment to a trade-affected worker only for the lesser of:

(i) The worker's actual per diem expenses for subsistence; or

(ii) 50 percent of the prevailing per diem allowance rate authorized under the FTR (see 41 CFR chapters 300 through 304) for the location of the training facility.

(4) *Timing of subsistence payments.* The State must make subsistence payments upon a worker's completion of a week of training, but may advance a subsistence payment for a week if the State determines that such advance is necessary to enable the worker to participate in the approved training.

(d) *Transportation payments.* A trade-affected worker must be reimbursed for transportation expenses when commuting to and from a training facility located outside the worker's commuting area. Transportation expenses, funded by the TAA Program, are payable only for the actual days traveled. Mileage eligible for reimbursement is, round-trip, from the first mile outside the boundary of the worker's commuting area to the location of the training facility.

(1) Transportation payments must not be paid when:

(i) Transportation is arranged and paid for by the State for one or more workers;

(ii) Such payments are being provided under any other law; or

(iii) The worker is authorized to be paid or reimbursed for such expenses from any other source.

(2) The daily transportation payment may not exceed the amount of a daily subsistence payment that would be payable under paragraph (c)(3) of this section if the worker resided temporarily in the area of the training.

(3) In addition, while other forms of transportation may be used, transportation payments to a worker may not exceed the cost per mile at the prevailing personal vehicle mileage rate authorized under the FTR. See *http://www.gsa.gov.*

(4) A worker must receive transportation payments promptly after completion of a week of approved training, but at a minimum on a monthly basis. These payments also may be made in advance in order to facilitate the worker's attendance at the training.

(e) *When payment can be made for both subsistence and transportation.* A trade-affected worker receiving subsistence payments may also receive transportation payments only:

(1) At the beginning of the training that the worker is attending outside their commuting area and at the end of the training for travel back to the worker's commuting area; or

(2) When the worker fails, for justifiable cause, as described in § 618.780(b)(3)(iii), to complete the training outside their commuting area, and must return home before the scheduled end of the training.

(f) *Adjustments to subsistence and transportation payment advances.* If the State advances subsistence or transportation funds, the State must adjust subsequent subsistence and transportation payments to take into account the amount of the advance that is more or less than the amount that the trade-affected worker is entitled to receive under paragraphs (c) and (d) of this section.

(g) *Worker evidence.* The trade-affected worker must provide receipts for all lodging, purchased transportation expenses, and meals.

§ 618.645 Voluntary withdrawal from a training program.

(a)(1) The State must advise a trade-affected worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart H of this part, result in an overpayment.

(2) The State must advise a worker who chooses to withdraw from a TAA approved training program that the withdrawal may, subject to the requirements in subpart G of this part, result in loss of eligibility for TRA.

(b) A trade-affected worker who qualifies for an exception for service in the Uniformed Services, under the criteria set out in § 618.615(d)(4), may voluntarily withdraw from a training program.

(c) A trade-affected worker who ceases participation in training for justifiable cause, as described in § 618.780(b)(3)(iii) (disqualifications),

may resume the approved training program.

(d) The trade-affected worker's eligibility for job search and relocation allowances will not be affected by the decision to withdraw from training. To be eligible for these allowances, the worker must meet all eligibility requirements for these benefits as set forth in §§ 618.410 (job search allowances) and 618.440 (relocation allowances).

(e) If the trade-affected worker obtains suitable employment before training is completed yet remains in their training program:

(1) The State must continue funding the approved training program if:

(i) The State determines that training completion serves the long-term employment goals of the worker; and

(ii) Training benchmarks, described at § 618.660, continue to be satisfactorily met.

(2) The State must consider whether to amend the worker's training program; and

(3) The State must discuss with the worker whether the training program continues to serve a useful purpose.

§ 618.650 State standards and procedures for establishing reasonable cost of training.

(a) A State is not prohibited from setting a statewide limit or limits for local workforce development areas on the amount of training costs considered reasonable and appropriate for training programs. Any limit(s) must reasonably take into account the costs of training available in the local workforce development areas throughout the State and the expenditure must be prudent under the standards of the Office of Management and Budget's (OMB's) Uniform Guidance (2 CFR 200.404) and its attendant interpretive administrative guidance. Additionally, States must comply with the standards for reasonableness in § 618.610(f)(2), including those permitting States to allow training other than the least-cost option if the extra cost is justified by better trade-affected worker outcomes or a faster return to the workforce. If the State chooses to implement a statewide limit, it must arrive at a reasonable limit based upon training costs throughout the State, recognizing that costs may vary significantly between urban areas and rural areas. The State must also develop and implement a method to exceed the limit(s), which must require the local area to secure State approval, as described in paragraph (b) of this section, before training is approved.

(b) The State must develop transparent standards and procedures that provide for prompt consideration of any request for approval of training costs that exceed the established training cost limit(s) set by the State under paragraph (a) of this section. The review standards developed by the State under this paragraph (b) must allow for approval of costs that exceed the applicable training cost limit when a training program that exceeds the cost limit(s) will provide the most reasonable way of returning a particular trade-affected worker to employment at higher wages—or on a career pathway to do so—than in the absence of training.

(c) The State must propose an alternative training program consistent with the reasonable cost criteria, as described at § 618.610, when a training program is not approvable under the established limits and does not meet the requirements in paragraph (b) of this section.

(d) The State must review any limits established under paragraph (a) of this section on an annual basis to determine whether they are still appropriate, and change or end such limits when they no longer reasonably reflect the average cost of training available in the local workforce development areas throughout the State.

(e) Whenever a State establishes, changes, or ends State-established limits on training costs payable under paragraph (a) of this section, the State must provide written notice and full documentation supporting its action to the Department for review.

(f) States are not required to establish a limit on training costs.

§ 618.655 Training for adversely affected incumbent workers.

(a) *AAIW training.* Pursuant to secs. 236(a)(1) and 247(18) of the Act, a State may approve training for an AAIW, or training for a worker before separation occurs. An AAIW may apply for training and a State may approve training at any time after the date on which they are determined to be individually threatened with layoff without regard to whether such worker has applied for or exhausted all rights to any UI to which the worker is entitled.

(b) *Threat of layoff.* A State may determine that a worker has been individually threatened with total or partial separation when the worker has received a notice of termination or layoff from employment. Other documentation of a threat of total or partial separation from the firm or other reliable source may be accepted.

(c) *Approval of training.* Except as specified in this section, the provisions of this subpart extend to AAIWs. The following exceptions to the training approval requirements apply to AAIWs:

(1) The State may not approve OJT under § 618.635(a) for AAIWs.

(2) Customized training for AAIWs under § 618.635(b) may be approved only if the training is for a position other than the AAIW's adversely affected position.

(d) *Disqualification and restrictions.* (1) The State must periodically verify that the threat of total or partial separation continues to exist for the AAIW for the duration of the approved training. This may be accomplished by verifying with the AAIW's employer that the threat of separation still exists before funding each subsequent portion of the training.

(2) Funding of a training program must cease upon the removal of the threat. The AAIW must cease the training upon the conclusion of the most recently funded portion, semester or quarter for which expenses have already been accrued. No additional funding will be available while the threat of separation is removed. Funding may resume for the original training program that had been previously approved upon a determination by the State that the threat of separation has been reestablished, or upon total or partial separation from adversely affected employment, if the requirements under § 618.610 are still met. The AAIW's approved training program must be amended, as appropriate, in compliance with § 618.665.

(3) The one training program per certification rule, as described under § 618.615, is applicable to AAIWs. Thus, a training program begun prior to separation and while under a threat of layoff constitutes the one allowed training program available to that AAIW.

(4) The duration of training limitations, at § 618.615(d)(3) are applicable to AAIWs.

(5) An AAIW will not be eligible for a new training program when total or partial separation occurs; however, the existing training may be amended under the provisions of § 618.665.

(6) The State must not consider the AAIW's threatened employment to be suitable employment under § 618.610(a).

(e) *Separation from threatened employment.* (1) Upon a total or partial separation from threatened employment, an AAIW becomes an AAW under the following conditions:

(i) The separation must occur prior to the expiration of the certification period under which they were determined to be threatened; and

(ii) The total or partial separation must be for lack of work.

(2) When an AAIW becomes an AAW under the conditions in paragraph (e)(1) of this section:

(i) The State must amend the worker's approved training program, as described in § 618.665; and

(ii) The State must determine what other benefits under the TAA Program the worker may now be eligible for, including TRA. Any time spent in training as an AAIW applies to the duration limits contained in § 618.615.

§ 618.660 Training benchmarks.

(a) *Requirement for training benchmarks.* A State must establish and document training benchmarks, as provided in paragraph (f) of this section, for individual AAWs so that they can meet Completion TRA eligibility requirements, described at § 618.765. The benchmarks must be established when the worker enrolls in an approved training program, so that the State can monitor the worker's progress toward completing the approved training duration limits established at § 618.615.

(b) *Scope of requirement.* Training benchmarks must be established for all but short-term training programs.

(c) *Measurement against training benchmark.* To review the AAW's progress against the benchmarks, States may request that the training provider provide documentation of the worker's satisfactory progress, including instructor attestations, progress reports, etc. The case manager may attest to the worker's progress after consultation with the vendor and the worker.

(d) *Must be included in IEP.* The training benchmarks must be described in the AAW's IEP, if available, or otherwise documented in the worker's case file.

(e) *Benchmark qualities.* Benchmarks must be flexible enough to allow for some variability, and both practical and measurable enough to allow administration across a broad spectrum of training scenarios.

(f) *Review of benchmarks.* The State must evaluate and document satisfactory progress against the benchmarks in paragraphs (f)(1) and (2) of this section at intervals of not more than 60 days, beginning with the start of the approved training program:

(1) The AAW is maintaining satisfactory academic standing (*e.g.,* not on probation or determined to be ''at risk'' by the instructor or training provider); and

(2) The AAW is on schedule to complete training within the timeframe identified in the approved training program.

(g) *Actions following failure to meet a benchmark.* (1) Upon failure to meet a benchmark, the State must provide a warning to the AAW that their eligibility for Completion TRA is in jeopardy. The warning may be provided verbally, in writing, or both, and must be documented in the worker's case file. In consultation with the worker, the State may amend a worker's training program as described in § 618.665.

(2) If a worker who has previously failed to meet a benchmark under paragraph (g)(1) of this section fails to meet a benchmark during a subsequent review under paragraph (f) of this section, the State must notify the worker of their ineligibility for Completion TRA. The worker may elect to continue in the approved training but will not receive any Completion TRA payments; or the training program must be amended, according to § 618.665, and Completion TRA may resume.

§ 618.665 Amending approved training.

(a) *Conditions for amending approved training.* The State must, with the cooperation of the trade-affected worker, amend a worker's approved training program under the following conditions:

(1) The State determines that one or more of these conditions are present:

(i) A course or courses designed to satisfy unforeseen needs of the worker, such as remedial education or new employer skills requirements, are necessary;

(ii) A course or courses added to the training program will enhance and complement the worker's original training program, such as preparatory courses to obtain an industry-recognized credential, certification, or license that will improve the worker's chance of being hired;

(iii) Additional assistance such as tutoring or the use of translators would benefit the worker, keep the worker qualified for the training in which they are enrolled, and be sufficient for the worker to complete the training program;

(iv) Approval of a longer-term training program that will improve the likelihood of employment upon the completion of such training;

(v) The originally approved training program cannot be successfully completed by the worker;

(vi) The originally approved training program is determined to be of inferior quality;

(vii) Training in another occupation will lead to a greater likelihood of training completion or a better employment outcome, as a result of a change in labor market conditions or the worker's experience in the originally approved training program, or other similar factor;

(viii) The worker is moving from full-time training to part-time training or from part-time training to full-time training;

(ix) An AAIW has been separated from adversely affected employment and has transitioned to become an AAW, or an AAIW is continuing training after a threat of separation was first removed, then resumed; or

(x) An additional source of funding becomes available for which a prearrangement is required under § 618.625(c)(4).

(2) The combination of time spent in the originally approved training program and the time it will take to complete the amended training program will not exceed the duration of training limit for the type of training included in the training program, as provided at § 618.615(d)(3).

(3) Amending the approved training program occurs before a worker finishes the originally approved training program and prior to the originally scheduled date of completion.

(b) *Criteria for amending a training program.* The State must determine that the following criteria are met before amending a training program:

(1) *Criterion 1: A reasonable expectation of employment following completion of such training continues to exist.* Given the labor market conditions expected to exist at the time of the completion of the training program, a reasonable expectation, fairly and objectively considered, exists that the trade-affected worker is likely to find employment, using the skills and education acquired while in training, upon completion of approved training. The labor market conditions considered must be limited to those in the worker's commuting area, or in the area where the worker intends to relocate.

(i) ''A reasonable expectation of employment'' does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training.

(ii) The State must review the expected job market conditions using pertinent labor market data in the worker's case file to ensure it continues to apply to the amended training program and the worker's occupational goal as identified on the worker's IEP, if available, and in the worker's case file.

(iii) When a worker desires to relocate within the United States but outside the worker's present commuting area upon completion of training, the State must ensure the labor market information (described in § 618.610(c)(2)) supports the determination that a reasonable

expectation of employment continues to exist within the area of the planned relocation. The labor market information must be in the area of planned relocation.

(iv) A reasonable expectation of employment may exist in a limited demand occupation for a single, trained worker in the worker's commuting area or in the area to which they desire to relocate. The State must determine that there continues to be a reasonable expectation that the worker can secure employment in the limited demand occupation.

(v) A State may approve an amended training program in an occupation if it finds that there is a reasonable expectation that the additional training will lead to self-employment in the occupation for which the worker requests training, and that such self-employment will provide the worker with wages or earnings at or near their wages in adversely affected employment.

(vi) Amended training programs that consist of solely OJT or contain an OJT component are not approvable if they are not expected to lead to suitable employment, with the employer providing the OJT, in compliance with sec. 236(c)(1)(B)(i) of the Act.

(2) *Criterion 2: Training continues to be reasonably available to the worker.* In determining whether training continues to be reasonably available to the worker, the State must first consider training opportunities available in the worker's commuting area. States may approve training outside the commuting area if none is available at the time in the worker's commuting area. Whether the training is in or outside the commuting area, the amended training program must be available at a reasonable cost as prescribed in paragraph (b)(4) of this section.

(3) *Criterion 3: The worker continues to be qualified to undertake and complete such amended training.* States must ensure the following:

(i) The worker's knowledge, skills, and abilities, educational background, work experience, and financial resources remain sufficient to undertake and complete the specific amendment to the training program being considered.

(ii) The initial assessment or comprehensive and specialized assessment, and IEP, if available, developed under subpart C of this part are to be consulted in order to support the trade-affected worker's ability to undertake and complete the proposed amended training program.

(iii) Where the worker's remaining available weeks of UI and TRA payments will not equal or exceed the duration of the amended training program, that the worker will have sufficient financial resources to support completion of the training program within the time limits noted in § 618.615(d) (limitations on approval of training). In making this determination, the State must consider:

(A) The worker's remaining weeks of UI and TRA payments in relation to the duration of the proposed amended training program;

(B) Other sources of income support available to the worker including severance, earnings of other family members, and other family resources;

(C) Other fixed financial obligations and expenses of the worker and family;

(D) The availability of Federal student financial assistance or any State-funded student financial assistance or any private funding designated for student financial assistance, including, but not limited to, nongovernmental scholarships, awards, or grants; and

(E) Whether or not the worker is employed while attending training.

(iv) The State must document whether or not the trade-affected worker has sufficient financial resources to complete the amended training program that exceeds the duration of UI and TRA payments.

(v) If a worker has insufficient financial resources to complete the proposed amended training program that exceeds the duration of UI and TRA payments, then the State must not approve that amended training and must instead consider resuming the originally approved training program or other training opportunities available to the worker.

(4) *Criterion 4: Such amended training continues to be suitable for the worker and available at a reasonable cost*—(i) *Suitable for the worker.* The amended training being considered must address the criteria set out in paragraph (b)(3) of this section (Criterion 3), this paragraph (b)(4), and be determined by the State to be appropriate given the worker's knowledge, skills, and abilities, background, and experience relative to the worker's employment goal, and criteria set out in paragraph (b)(1) of this section (Criterion 1).

(ii) *Available at a reasonable cost.* (A) Costs of an amended training program may include, but are not limited to, tuition and related expenses (*e.g.,* books, tools, computers and other electronic devices, internet access, uniforms and other training-related clothing such as goggles and work boots, laboratory fees, and other academic fees required as part of the amended training program) as well as supplemental assistance (subsistence expenses and transportation expenses as described in § 618.640(c) and (d)). States must pay the costs of initial licensing and certification tests and fees where a license or certification is required for employment.

(*1*) The State must ensure and document that the amended training program costs are reasonable by researching costs for similar training programs, whether it is classroom or work-based training.

(*2*) Related expenses must be necessary for the worker to complete the amended training program. Other options should be explored before purchasing equipment or related materials.

(B) Available at a reasonable cost means that amended training must not be approved at one provider when, all costs being considered, training better or substantially similar in quality, content and results can be obtained from another provider at a lower total cost within a similar time frame. Amended training must not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. The State may approve a higher cost training if that training is reasonably expected to result in a higher likelihood of employment, employment retention, or greater earnings, or to return the worker to employment in a significantly shorter duration.

(C) Training at facilities outside the worker's commuting area requiring transportation or subsistence payments that add substantially to the total cost of the amended training program may not be approved if other appropriate training is available in the commuting area at a lower cost, unless the exception described in paragraph (b)(4)(ii)(B) of this section applies.

(D) Approval of amended training under paragraph (b)(4) of this section (Criterion 4) is also subject to the provisions of § 618.650.

Subpart G—Trade Readjustment Allowances

§ 618.700 Scope.

This subpart explains the requirements for eligibility, amounts, and duration of Basic TRA, Additional TRA, and Completion TRA, all of which are income support in the form of cash payments for an AAW.

§ 618.705 Definitions.

(a) For purposes of TRA, an AAW is ''participating in approved training'' if:

(1) The worker is either attending and taking part in all scheduled classes,

required activities, and required events in a given week, or the training provider has excused the worker's absence or failure to take part in accordance with its written policies.

(2) In the case of distance learning, the worker is either meeting all the requirements of the training provider in a given week in accordance with its rules, regulations, and standards, or the training provider has excused the worker's failure to meet those requirements in accordance with its written policies.

(b) For purposes of TRA, the term ''training allowance'' means any assistance or payment, excluding Federal student financial assistance, that can be used for the same purpose as funds for the costs of training covered by the TAA Program, and that is given or paid directly to the AAW.

(c) For purposes of TRA, the term ''adversely affected employment'' includes employment at a successor-in-interest, and such wages reported to the State or received by an AAW from a successor-in-interest are included as wages under § 618.720(c).

§ 618.710 Categories of Trade Readjustment Allowances.

(a) *Basic TRA.* Basic TRA is payable to an AAW who meets the requirements of § 618.720. Basic TRA is payable for weeks of unemployment after the worker meets the criteria for exhaustion of UI under § 618.720(e) and, consistent with § 618.725, for weeks of unemployment during which the worker either is enrolled in, is participating in, or has completed approved training, or has received a waiver of the training requirement under § 618.735.

(b) *Additional TRA.* Additional TRA is payable to an AAW who meets the requirements of § 618.760. Additional TRA is payable only for weeks of unemployment during which the worker is participating in approved training and only after the worker has exhausted all rights to Basic TRA.

(c) *Completion TRA.* Completion TRA is payable to an AAW who meets the requirements of § 618.765. Completion TRA is payable only for weeks of unemployment during which the worker is participating in approved training. Completion TRA is payable only after the worker has exhausted all rights to Basic and Additional TRA.

§ 618.715 Applications for Trade Readjustment Allowances and payment.

(a) *Timing of applications.* (1) An initial application for TRA must be filed after publication of the certification of the appropriate worker group.

(2) An application for TRA must be filed within the time limit applicable to claims for regular compensation under the applicable State law.

(b) *Applicable procedures.* Applications must be filed in accordance with this subpart and on forms furnished to AAWs by the State. The State's procedures for filing applications for TRA, and for reporting, must be consistent with this part and the Department's ''Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services,'' Employment Security Manual, part V, secs. 5000 through 5004 (appendix A to this part), except that such procedures may allow for the filing and processing of applications by paper, telephone, the internet, or other similar methods as provided for in paragraph (e)(2) of this section.

(c) *Treatment of determinations.* Determinations on TRA applications are determinations to which §§ 618.820 (determinations and notice), 618.824 (liable and agent State responsibilities), and 618.828 (appeals and hearings) apply. Copies of such applications for TRA and all determinations by the State on such applications must be included in the AAW's case file.

(d) *Payment of TRA.* (1) A State must not make any payment of TRA until a certification is issued and the State determines that the AAW is a member of a worker group covered under the specified certification.

(2) An AAW, if they otherwise meet the eligibility requirements of this subpart, including exhaustion of UI, may be entitled to TRA for any week of unemployment that begins on or after the date of the applicable certification.

(3) An AAW may receive only one form of TRA (Basic, Additional, or Completion) for any given week.

(e) *Taking of applications.* (1) An application is required for each TRA benefit type available to the AAW. The State must take an initial application for each type of TRA (Basic, Additional, and Completion).

(2) Applications may be filed and processed by any means allowed for UI claims in the State.

§ 618.720 Qualifying requirements for Basic Trade Readjustment Allowances.

To qualify for Basic TRA for a week of unemployment, an AAW must meet each of the requirements in paragraphs (a) through (g) of this section:

(a) *Certification.* The AAW must be a member of a worker group certified under subpart B of this part.

(b) *Separation.* The AAW must have experienced a qualifying separation during the certification period of the certification in paragraph (a) of this section.

(c) *Wages and employment.* The AAW must meet the following wage and other requirements:

(1) In the 52-week period (*i.e.,* 52 consecutive calendar weeks) ending with the week of the AAW's total or partial separation from adversely affected employment during the certification period, the worker must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or, where there is more than one subdivision, the appropriate subdivision of that firm. Evidence that the worker meets the requirement in this paragraph (c)(1) must be obtained as provided in § 618.740. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(2) The categories of weeks in paragraphs (c)(2)(i) through (iv) of this section also must be treated as weeks of employment at wages of $30 or more (for purposes of paragraph (c)(1) of this section), regardless of whether the AAW actually receives any wages during such weeks:

(i) All weeks, up to a maximum of 7 weeks, during which the AAW is on employer-authorized leave for vacation, sickness, injury, maternity, or inactive duty or active duty military service for training;

(ii) All weeks, up to a maximum of 7 weeks, during which the AAW had adversely affected employment interrupted to serve as a full-time representative of a labor organization in the firm or subdivision referenced in paragraph (c)(1) of this section;

(iii) All weeks, up to a maximum of 26 weeks, during which the AAW has a disability compensable under a workers' compensation law or plan of a State or the United States; and

(iv) All weeks, up to a maximum of 26 weeks, during which the AAW is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States, if such active duty is ''Federal service'' as defined in 5 U.S.C. 8521(a)(1), but not more than 7 weeks, in the case of weeks described in paragraph (c)(2)(i) or (ii) of this section that occur during the active duty. States may waive provisions of this paragraph (c)(2)(iv) consistent with § 618.884.

(d) *Entitlement to UI.* The AAW must have been entitled to (or would have been entitled to if the worker had applied therefor) UI for a week within the first benefit period.

(e) *Exhaustion of UI.* The AAW must meet the following requirements:

(1) The AAW must have exhausted all rights to any UI, except additional compensation that is funded by a State and not reimbursed from any Federal funds to which such worker was entitled (or would have been entitled had such worker applied therefor), and not have any unexpired waiting period applicable to the worker for any such UI. Thus, except as provided by paragraph (e)(2) of this section, whenever an AAW becomes entitled (or would become entitled if the worker applied therefor) to any type of UI, except additional compensation funded by a State and not reimbursed from any Federal funds, after the start of the AAW's receipt of TRA, the payment of TRA must be suspended until such worker exhausts entitlement to such UI. After the AAW exhausts that entitlement, payments of TRA to which the worker is still entitled may resume.

(2) The AAW may elect to receive TRA instead of UI during any week with respect to which the worker:

(i) Is entitled and is able to receive UI as a result of a new benefit year based on employment in which the worker engaged after establishing TRA eligibility following a total separation from adversely affected employment. The entitlement must be after the first UI benefit period. It must also be based in whole or in part upon part-time or short-term employment in which the worker engaged after the worker's most recent total separation from adversely affected employment that established such first UI benefit period. This new employment may include the same adversely affected employment; and

(ii) Is otherwise entitled to TRA, except that the AAW need not have exhausted all rights to UI in the new benefit year.

(3) For AAWs meeting the requirements in paragraph (e)(2) of this section, the State must provide the AAW a summary of their potential UI benefits and potential TRA benefits in writing and document the AAW's choice in the case file.

(4) State law applies to the status of the UI claim based upon the second benefit year. For States where a claim establishes a benefit year, no subsequent claim may be established in a later quarter during that benefit year, and any available entitlement remains, consistent with State law, once TRA is exhausted.

(5) The AAW must have no unexpired waiting period applicable to such worker for any UI.

(f) *Extended Benefits (EB) work test.* The AAW must be able to work and be available for work, as defined in the applicable State law for UI claimants, under the EB work test for each week by the means described in this paragraph (f), unless an exception in paragraph (f)(2) of this section applies.

(1) *Criteria.* The EB work test requirement must be met by:

(i) Registering for work with the State, in accordance with the applicable provisions of State law that apply to EB claimants and that are consistent with part 615 of this chapter;

(ii) Actively engaging in seeking work;

(iii) Furnishing the State with tangible evidence of work search efforts each week; and

(iv) Accepting any offer of suitable work, including those referred by the State.

(2) *Exceptions.* The able and available requirement and the EB work test requirement in this paragraph (f) do not apply for purposes of TRA eligibility:

(i) When the AAW is enrolled in or participating in approved training;

(ii) During a break in training that does not exceed 30 days as counted in accordance with § 618.775(b); or

(iii) With respect to claims for TRA for those weeks of unemployment beginning before the filing of an initial claim for TRA, or for any week that begins before the AAW is notified of coverage by a certification and is fully informed of the EB work test requirements. Before such notification and advice, the worker must not be subject to the EB work test requirements for TRA eligibility purposes, nor to any State timely filing requirement, but must be required to be unemployed and able to work and available for work under State law with respect to any such week except as provided in paragraphs (f)(2)(i) and (ii) of this section for AAWs enrolled in or participating in approved training.

(3) *Suitable work.* (i) For purposes of this subpart, suitable work means, with respect to a worker, whichever of the following laws is applicable:

(A) Suitable work as defined in the applicable State law for claimants for regular compensation; or

(B) Suitable work as defined in applicable State law provisions consistent with sec. 202(a)(3) of EUCA.

(ii) Regardless of which of the laws in paragraph (f)(3)(i)(A) or (B) of this section apply, suitable work does not in any case include self-employment or employment as an independent contractor.

(g) *Participation in approved training.* (1) As a condition for receiving Basic TRA, except as provided for in § 618.730, the AAW, after a total or partial separation from the adversely affected employment within the certification period, and by the applicable deadlines in § 618.725 must:

(i) Be enrolled in training, as defined in subpart A of this part;

(ii) Be participating in approved training (as defined in § 618.705); or

(iii) Have a waiver granted under § 618.735 in effect.

(2) An AAW who has not met the requirements in paragraph (g)(1) of this section may, if otherwise eligible, receive Basic TRA before expiration of the applicable training enrollment deadline in § 618.725. Once the training enrollment deadline is reached, the training requirements in paragraph (g)(1) of this section must be met. Basic TRA payments must cease beginning the first week for which the requirements in paragraph (g)(1) of this section were required but not met.

(3) The requirements in paragraph (g)(1) of this section do not apply to an AAW with respect to claims for Basic TRA for weeks of unemployment beginning before the filing of an initial claim for TRA after publication of the certification of the appropriate worker group as provided in § 618.715(a), nor for any week that begins before the AAW is notified that they are covered by a certification and is fully informed of the requirements of this section.

(4) An AAW who meets the participation in approved training requirement in paragraph (g)(1) of this section by the applicable deadlines in § 618.725 may continue to receive Basic TRA after the AAW has completed training, even if such participation in training was on a part-time basis, provided that the worker meets all other eligibility requirements for Basic TRA.

§ 618.725 Training enrollment deadlines.

(a) *Training enrollment deadlines.* As a condition for receiving Basic TRA, an AAW must meet the participation in approved training requirement in § 618.720(g)(1) no later than the latest of:

(1) The last day of the 26th week after the AAW's most recent qualifying separation;

(2) The last day of the 26th week after the week in which the certification was issued; or

(3) 45 days after the later of the dates specified in paragraph (a)(1) or (2) of this section, if there are extenuating circumstances that justify an extension of the enrollment period. Extenuating circumstances that justify the 45-day extension are circumstances that would constitute good cause, as established by § 618.730; that is, circumstances under which the AAW acted diligently yet was unable to enroll because of exigent circumstances.

(4) In the case of an AAW who fails to enroll by the date required by paragraph (a)(1), (2), or (3) of this section due to a failure by the State to provide the AAW with timely information regarding the applicable training enrollment deadline, the AAW must be enrolled in training or obtain a waiver by the Monday of the first week occurring 60 consecutive calendar days following the date the worker was properly notified; or

(5) The Monday of the first week occurring 30 consecutive calendar days (or, if the State is closed that last day because that day falls on a weekend or holiday or for any other reason, the next business day) following the day of termination, whether by revocation or expiration or revocation of a waiver under § 618.735.

(b) *Exceptions*—(1) *Extended training enrollment deadline for delayed approval of application for TRA.* (i) The training enrollment deadlines of paragraph (a) of this section do not apply where:

(A) A State's negative determination on an initial application for TRA under § 618.715 has been reversed through redetermination or appeal;

(B) The AAW is unable to meet the training enrollment deadline because of the delay in obtaining the reversal of the negative determination; and

(C) The delay in obtaining the reversal is not attributable to the AAW.

(ii) Where the conditions of paragraph (b)(1)(i) of this section are met, the AAW will have until the last day of the 26th week following the date on which the negative determination was reversed to enroll in training or have a training waiver in effect.

(2) *Extended training enrollment deadline for period of duty in military service.* If an AAW who is a member of a reserve component of the Armed Forces and has served a period of duty during the AAW's Basic TRA eligibility period but before enrolling in training, the AAW's training enrollment deadline will be the last day of the 26th week following the last day of the AAW's period of duty.

(3) *Good cause.* The training enrollment deadline may be extended for good cause as provided for in § 618.730.

§ 618.730 Good cause.

(a) States must waive the time limitations with respect to an application for TRA, enrollment in training, or receipt of a training waiver in this subpart if the AAW shows good cause.

(b) Good cause exists if the AAW acted diligently yet was unable to complete in a timely manner the relevant task at issue described in paragraph (a) of this section because of exigent circumstances.

(c) The State must determine good cause on a worker-by-worker basis.

§ 618.735 Waiver of training requirement for Basic Trade Readjustment Allowances.

(a) *Waiver for Basic TRA.* A State may issue a waiver of the requirement in § 618.720(g) that an AAW be enrolled in or participating in approved training as a condition of Basic TRA eligibility upon a finding that training for such worker is not feasible or appropriate for one or more reasons identified in paragraph (b) of this section. The waiver must contain the information required in paragraph (c) of this section. No waiver of the training requirement is permitted for Additional TRA or Completion TRA eligibility. Waivers must be issued no later than the latest of the applicable deadlines described in § 618.725.

(b) *Bases for a waiver.* The State, in order to issue a written waiver to an AAW, must conclude after assessing the worker that training is not feasible or appropriate for one or more of the reasons in paragraphs (b)(1) through (3) of this section, which must be cited on the waiver:

(1) *Health.* The worker is unable to participate in training due to the health of the worker. A waiver granted for this reason does not exempt the worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(2) *Enrollment unavailable.* The first available enrollment date for approved training is within 60 consecutive calendar days after the date on which a waiver determination is made or, if later, there are extenuating circumstances, as determined under the criteria in § 618.725(a)(3), that apply to the delay in enrollment in training.

(3) *Training not available.* Approved training is not reasonably available to the worker from governmental agencies or private sources (which may include area vocational education schools, as defined in sec. 3 of the Strengthening Career and Technical Education for the 21st Century Act (20 U.S.C. 2302), and employers), or suitable training is not available at a reasonable cost, or no training funds are available.

(c) *Contents of a waiver.* (1) A waiver issued under this section may not take effect unless it contains, at a minimum, the following information:

(i) The AAW's name and a unique identifying designation used by the State;

(ii) The name and location of the worker group and the petition number under which the AAW's group was certified;

(iii) A statement of the reasons why training is not feasible or appropriate for the AAW, citing to one or more reasons identified in paragraph (b) of this section;

(iv) The effective date and expiration date of the waiver;

(v) A statement that the waiver must be revoked immediately upon a determination that the basis or bases for the waiver no longer apply; and

(vi) The signature of an official of the State authorized to grant the waiver, and the signature of the AAW or other evidence of the worker's acknowledgement of receipt of the waiver.

(2) Waivers and the required signatures may be issued and maintained electronically.

(d) *Request for a waiver.* States may analyze whether an AAW may qualify for a waiver as part of the AAW's initial assessment, as described in subpart C of this part. An AAW may also request a waiver from the State before the applicable deadline in § 618.725.

(e) *Denial of a waiver.* In any case in which a determination is made to deny a waiver under this section, the AAW to whom the denial pertains must be furnished with a notice of the denial of waiver. The notice of denial of waiver must contain, at minimum, the information in paragraphs (c)(1)(i), (ii), and (vi) of this section; the specific reason(s) for the denial; the date of the denial; and notice of the AAW's appeal rights.

(f) *Duration of a waiver.* (1) A waiver issued under this section may be for a period not to exceed 6 months, or the AAW's period of Basic TRA entitlement, whichever ends first;

(2) Notwithstanding the 6-month limitation in paragraph (f)(1) of this section, a State may extend an AAW's waiver beyond 6 months if:

(i) Training continues not to be feasible or appropriate for such worker for one or more of the reasons described in paragraph (b) of this section; and

(ii) Such worker has not yet exhausted their Basic TRA entitlement.

(3) Waivers must be reviewed 3 months after the date on which the State issues the waiver to determine if one or more of the bases in paragraph (b) of this section continue to apply, and every 30 consecutive calendar days thereafter.

(g) *Revocation of a waiver.* The State must revoke a waiver issued under this section if the waiver criteria are no longer met. The State must notify the AAW of the revocation. The notice of revocation must be appealable and must contain the same information as a denial of waiver issued under paragraph (e) of this section.

(h) *Submission of waivers and notices.* The State must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, and must submit to the Department, only upon specific request, a record or copy of any or all waivers issued under this section together with a statement of reasons for each such waiver, and a record or copy of any or all notices of revocation of waiver issued under this section together with a statement of reasons for each such revocation. The statements of reason required under paragraphs (c)(1)(iii) and (e) of this section, as applicable, fulfill the requirement for a statement of reasons under this paragraph (h). Electronic records and copies are acceptable.

§ 618.740 Evidence of qualification for Basic, Additional, and Completion Trade Readjustment Allowances.

(a) *State action.* When an AAW applies for Basic, Additional, or Completion TRA, the State having jurisdiction under § 618.820 (determinations of eligibility) must obtain information necessary to establish:

(1) Whether the AAW meets the qualifying requirements in § 618.720 for Basic TRA, in § 618.760 for Additional TRA, or in § 618.765 for Completion TRA; and

(2) For a partially separated AAW, the average weekly hours and average weekly wage in adversely affected employment.

(b) *Insufficient data.* If information specified in paragraph (a) of this section is not available from State records or from any employer, the State must require the AAW to submit a signed statement setting forth such information as may be required for the State to make the determinations required by paragraph (a) of this section.

(c) *Verification.* A statement made under paragraph (b) of this section must be certified by the AAW to be true to the best of the worker's knowledge and belief and must be supported by evidence including W–2 forms, paycheck stubs, union records, income tax returns, or statements of fellow workers, and must, whenever possible, be verified by the employer.

(d) *Determinations.* The State must make the necessary determinations on the basis of information obtained under this section, except that if, after reviewing information obtained under paragraphs (b) and (c) of this section against other available data, including agency records, it concludes that such information is not reasonably accurate, it must make the determination on the basis of the best available information.

(e) *Timing.* The State must follow the established method used for processing regular UI claims. If an employer does not respond within the timeframe established for UI claims, then the State must act on the best available information.

§ 618.745 Weekly amounts of Basic, Additional, and Completion Trade Readjustment Allowances.

(a) *TRA amount.* The amount of Basic, Additional, or Completion TRA payable for a week of unemployment (including a week of approved training) is an amount equal to the most recent weekly benefit amount of UI (including dependents' allowances) payable to the AAW for a week of total unemployment preceding the worker's first exhaustion of UI following the worker's first qualifying separation, except that:

(1) Where a State calculates a base period amount of UI and calculates dependents' allowances on a weekly supplemental basis, TRA weekly benefit amounts must be calculated in the same manner and under the same terms and conditions as apply to claimants for UI except that the base amount must not change.

(2) For partially separated workers, the weekly amount of TRA must be calculated as determined under the applicable State law.

(b) *Workers who are undergoing training.* Any AAW in approved training who is thereby entitled for any week to TRA and a training allowance (as defined in § 618.705) under any other Federal law for the training of workers, will be paid for each week in which they are undergoing approved training, TRA in the amount (computed for each week) equal to the amount computed under paragraph (a) of this section or, if greater, the amount of any weekly allowance for such training to which the AAW would be entitled under any other Federal law for the training of workers, if the AAW applied for such allowance. TRA must be paid in lieu of any payment for training made directly to the AAW to which the AAW is entitled under such other Federal law.

(c) *Reductions to the TRA weekly amount.* The weekly amount of TRA payable under this section will be reduced (but not below zero) by:

(1) Income that is deductible from UI under the disqualifying income provisions of the applicable State law or Federal UI law, except that in the case of an AAW who is participating in approved training, such income must not include earnings from work for such week that are equal to or less than the most recent weekly benefit amount of the UI payable to the worker for a week of total unemployment preceding the worker's first exhaustion of UI (as determined for purposes of sec. 231(a)(3)(B) of the Act).

(2) If the amount of a training allowance as defined in § 618.705 (including a training allowance referred to in paragraph (b) of this section) under any Federal law that the AAW receives for such week is less than the amount of TRA otherwise payable to the AAW for a week, the AAW must, when applying for TRA for the week, be paid TRA in an amount not to exceed the difference between the AAW's regular weekly TRA amount, as determined under § 618.745(a) (regular allowance), and the amount of the training allowance paid to the AAW for the week.

(3) Except as provided in paragraph (c)(4) of this section, if a training allowance under any Federal law other than the Act, is paid to an AAW for any week of unemployment with respect to which the AAW would be entitled (determined without regard to any disqualification under paragraph (b) of this section) to TRA, if they applied for TRA, each such week must be deducted from the total number of weeks of TRA otherwise payable to the AAW when the worker applies for and is determined to be entitled to TRA. If such training allowance paid directly to the worker for any week of unemployment is less than the amount of TRA to which the AAW would be entitled if the worker had applied for it, the AAW must receive (when the worker applies for and is determined to be entitled to TRA) TRA for such week equal to such difference.

(4) If the training allowance (as defined in § 618.705) referred to in paragraphs (c)(2) and (3) of this section is Federal student financial assistance, then the amount of TRA will not be reduced. In the case of an AAW to whom the Federal student financial assistance is available, the State will rely on prearrangements for the sharing of training costs under § 618.625(c)(2) (payment restrictions for training programs) in order to harmonize the provision of Federal student financial assistance with the worker's TRA.

(5) Any amount that would be deductible from UI for days of absence from training under the provisions of the applicable State law that applies to AAWs in approved training.

§ 618.750 Maximum amount of Basic Trade Readjustment Allowances.

(a) *General rule.* Except as provided in paragraph (b) of this section, the maximum amount of Basic TRA payable to an AAW is the product of 52 multiplied by the TRA weekly amount for a week of total unemployment, calculated under § 618.745(a) (weekly amounts of TRA), reduced by the total sum of UI (except State-funded additional compensation) that the AAW was entitled or would have been entitled to had the worker applied in such worker's first benefit period.

(b) *Exceptions.* The maximum amount of TRA determined under paragraph (a) of this section does not include:

(1) The amount of dependents' allowances paid as a supplement to the base weekly amount determined under § 618.745; or

(2) The amount of the difference between the AAW's weekly increased allowances determined under § 618.745(b) and such worker's weekly amount determined under § 618.745(a).

§ 618.755 Eligibility period for Basic Trade Readjustment Allowances.

(a) Except as provided in paragraphs (b) and (c) of this section, an AAW is ineligible to receive Basic TRA for any week of unemployment beginning after the close of the 104-week period beginning with the first week following the week in which the AAW's most recent qualifying separation occurred or after certification, whichever is later.

(b) A State may not count any period during which a judicial or administrative appeal is pending with respect to a denial of a petition filed under subpart B of this part for the purpose of calculating the period of separation described in paragraph (a) of this section. The separation will be deemed as having occurred on the certification date and the Basic TRA eligibility period will begin on the week that follows the certification date.

§ 618.760 Qualifying requirements for, and timing and duration of, Additional Trade Readjustment Allowances.

(a) *Qualifying requirements for Additional TRA.* An AAW is eligible to receive Additional TRA for any week only if:

(1) The worker meets all qualifying requirements for receipt of Basic TRA in § 618.720;

(2) The worker subsequently exhausted Basic TRA; and

(3) Except as provided in § 618.775 for a break in training, the AAW is participating in approved training.

(b) *Timing and duration of Additional TRA.* Additional TRA is payable for up to 65 weeks during the 78 consecutive calendar week period that:

(1) Immediately follows the last week of entitlement to Basic TRA otherwise payable to the AAW;

(2) Begins with the first week of approved training, if such training begins after the last week described in paragraph (b)(1) of this section; or

(3) Begins with the first week in which such training is approved under subpart F of this part, if such training is approved after the training already has commenced (although Additional TRA or training costs may not be paid for any week before the week in which the TAA approved training was approved).

§ 618.765 Qualifying requirements for, and timing and duration of, Completion Trade Readjustment Allowances.

(a) *Qualifying requirements for Completion TRA.* An AAW is eligible to receive Completion TRA if such worker meets all qualifying requirements for receipt of Basic TRA in § 618.720 and Additional TRA in § 618.760, and if the eligibility criteria in paragraphs (a)(1) through (3) of this section are met for that week. The requirements in this paragraph (a) are applied at the time the State approves payment for a week of Completion TRA. The eligibility criteria are:

(1) Payment of Completion TRA is necessary for an AAW to complete the approved training described in paragraph (a)(2) of this section.

(2) The AAW is participating in approved training each week that leads to the completion of a degree or industry-recognized credential and the worker's training program will extend for a period longer than the periods during which Basic and Additional TRA are payable under §§ 618.755 (eligibility period for Basic TRA) and 618.760 (qualifying requirements for, timing and duration of, Additional TRA), and the requested weeks are necessary for the worker to complete training.

(3) The worker—

(i) Has substantially met the performance benchmarks in § 618.660 (training benchmarks) established as part of the approved training under subpart F of this part;

(ii) Is expected to continue to make progress toward the completion of the approved training; and

(iii) Will complete the approved training during the period of eligibility described in paragraph (c) of this section.

(4) If, during the period in which an AAW is eligible to receive Completion TRA, the worker ceases to meet any of the eligibility criteria in paragraphs (a)(1) through (3) of this section, no further Completion TRA is payable to such worker.

(b) *Weeks payable.* A total of up to 13 weeks of payments are allowable during the period of eligibility described in paragraph (c) of this section.

(c) *Eligibility period.* Completion TRA may be payable during the period of 20-week consecutive calendar period that begins with the first week in which an AAW files a claim for Completion TRA and seeks compensation for such week, regardless of when the first payment is received. The eligibility period may be extended if justifiable cause exists, in accordance with § 618.770(a).

(d) *Start date of Completion TRA.* The State must have a process to take applications for Completion TRA. States must not automatically establish the 20-week period for Completion TRA as the week following either expiration of the eligibility period for Additional TRA, or the exhaustion of Additional TRA; filing a claim after either of those first weeks is permitted. Since training that leads to a degree or industry-recognized credential must be completed during the eligibility period described in paragraph (c) of this section, the first week of Completion TRA claimed should be carefully considered in coordination with case management while the AAW's training program is being developed.

§ 618.770 Special rule for justifiable cause.

(a) The eligibility period during which Basic, Additional, and Completion TRA are payable to an AAW may be extended for justifiable cause, which has the same meaning as good cause in § 618.730.

(b) While the eligibility period for Basic, Additional, and Completion TRA may be extended for justifiable cause as determined by the State, the maximum benefit amount and number of weeks this benefit may be received must not change.

§ 618.775 Payment of Trade Readjustment Allowances during breaks in training.

(a) Basic and Additional TRA are payable to an otherwise eligible AAW during breaks in training (periods within or between courses, terms (quarters or semesters), and academic years) that do not exceed 30 days (counted in accordance with paragraph (b) of this section), only if:

(1) The AAW participated in approved training of this part immediately before the beginning of the break in training;

(2) The break in training was provided in the established schedule of the training provider; and

(3) The AAW resumes participation in the approved training immediately after the break ends.

(b) For the purpose of determining whether a break in training is within the 30-day maximum allowed under this section, all calendar days beginning with the first day of the training break and ending with the last day of the break, as provided in the published schedule of the training provider, must be counted. However, any Saturday, Sunday, or official State or national holiday occurring during the scheduled break in training is excluded from the 30-day count if training normally would not be scheduled in the training program during those days if there was no break.

(c) For Completion TRA, breaks in training are permissible during the 20-week eligibility period. However, payment for breaks in training are not allowed.

§ 618.780 Disqualifications.

(a) *General rule.* Except as stated in paragraph (b)(1) or (c) of this section and in § 618.832(b)(2) (concerning disqualification due to fraud), an AAW may not be paid TRA for any week of unemployment such worker is or would be disqualified from receiving UI under the disqualification provisions of the applicable State law, including the provisions of the applicable State law that apply to EB claimants and are consistent with EUCA.

(b) *Disqualification of trainees*—(1) *State law inapplicable.* A State law may not be applied to disqualify an AAW from receiving UI or TRA because:

(i) Such worker is enrolled in or participating in an approved training program;

(ii) Such worker refuses work to which the State referred such worker because such work either would require discontinuation of approved training or interfere with successful participation in TAA approved training, except that this paragraph (b)(1)(ii) does not apply to an AAW who is ineligible under paragraph (b)(2) of this section;

(iii) Such worker quits work that was not suitable employment and it was reasonable and necessary to quit in order to begin or continue approved training. This includes temporary employment the worker may have engaged in during a break in training;

(iv) Such worker continues full-time or part-time employment while participating in approved training; or

(v) Such worker leaves OJT within the first 30 days because the OJT is not meeting requirements of sec. 236(c)(1)(B) of the Act.

(2) *Disqualifications.* An AAW who, without justifiable cause (as described in paragraph (b)(3)(iii) of this section), fails to begin participation (as described in paragraph (b)(3)(i) of this section) in approved training, or ceases participation (as described in paragraph (b)(3)(ii) of this section) in such training, or for whom a waiver is revoked under § 618.735(f) (waiver of training requirement for Basic TRA), may not receive Basic TRA for any week in which such failure, cessation, or revocation occurred. The disqualification will continue for any succeeding week thereafter until the week in which such worker begins or resumes participation in an approved training program. A worker who has justifiable cause (as described in paragraph (b)(3)(iii) of this section) for such failure to begin, or for ceasing, participation in training may receive Basic TRA for any week in which such failure or cessation occurred if the worker otherwise meets the requirements of this subpart. Such failure, cessation, or revocation normally does not change the eligibility periods defined in §§ 618.755, 618.760(b), and 618.765(b) and (c).

(3) *Disqualification conditions.* For determining the disqualification of trainees for all TAA approved training, the following provisions apply:

(i) *Failed to begin participation.* A worker will be determined to have failed to begin participation in an approved training program when the worker fails to attend one or more scheduled training classes and other training activities in the first week of the approved training program, without justifiable cause.

(ii) *Ceased participation.* A worker will be determined to have ceased participation in an approved training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training provider in any week of the approved training program, without justifiable cause.

(iii) *Justifiable cause.* For purposes of this section, justifiable cause has the same meaning as good cause under § 618.730, except that good cause for absence also includes an absence excused under a training provider's written policy.

(c) *Disqualification while in OJT.* An AAW may not be paid any TRA for any week during which such worker is engaged in OJT, in accordance with § 618.635.

(d) *Disqualification while in part-time training.* An AAW may not be paid any TRA for any week in which the worker is participating in approved training that is part-time. Part-time training is any approved training that does not meet the definition of ''full-time training'' as defined in § 618.110.

Subpart H—Administration by Applicable State Agencies

§ 618.800 Scope.

This subpart covers the general administrative requirements a State must follow in providing the benefits and services available under the TAA Program. The requirements in this subpart include: The provision rapid response and appropriate career services to groups of workers for whom a petition is filed, delivering TAA Program benefits and services to trade-affected workers, assisting in the filing of petitions for those likely to be eligible for benefits under this part, conducting outreach to groups of workers covered under a petition for TAA filed under subpart B of this part, and notifying UI claimants of the TAA Program.

§ 618.804 Agreements with the Secretary of Labor.

(a) *Authority.* A State or CSA must, before performing any function or exercising any jurisdiction under the Act and this part, execute an Agreement meeting the requirements of the Act with the Secretary.

(b) *Execution.* (1) An Agreement under paragraph (a) of this section must be signed and dated on behalf of the State or the CSA by an authorized official whose authority is certified by the State Attorney General or counsel for the CSA, unless the Agreement is signed by the Governor or the chief elected official of the State. In the event that a State does not execute an Agreement under paragraph (a) of this section, then sec. 3302(c)(3) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3302 (c)(3)) (loss of unemployment tax credits under sec. 3302(a) and (b)), applies.

(2) A State or CSA must execute an amended Agreement with the Secretary, upon the request of the Secretary, in response to legislative or regulatory changes to the TAA Program.

(3) The Secretary will execute an agreement on behalf of the United States.

(c) *Public access to Agreements.* The CSA must make available for inspection and copying, an accurate copy of its Agreement under this section to any individual or organization that requests it. The CSA may furnish copies of the Agreement upon payment of the same charges, if any, as apply to the

furnishing of copies of other records of the CSA.

(d) *Agent of the United States.* A State that has executed an Agreement under this section is an agent of the United States for purposes of receiving applications for and providing payments on the basis provided in this part and must carry out fully the purposes of the Act and this part.

(e) *Breach.* If the Secretary determines that the State or CSA has not fulfilled its commitments under its Agreement stated in this section, the Secretary may terminate the Agreement. The Secretary must provide the State or CSA reasonable notice and an opportunity for a hearing before the Secretary makes a finding that the State has not fulfilled its commitments under its Agreement. In the event that the Secretary determines the State or CSA has not fulfilled its commitments under its Agreement, sec. 3302(c)(3) of the Internal Revenue Code of 1986, as amended (regarding loss of unemployment tax credits under sec. 3302(a) and (b)), applies.

(f) *Review of State and CSA compliance.* The Department is responsible for monitoring and reviewing State and CSA compliance with the Agreement entered into under the Act and this section.

(g) *Merit staffing.* States must comply with the staffing flexibility provisions contained in § 618.890.

(h) *Contents.* Each Agreement under this section must contain provisions including, but not limited to, the following:

(1) Provisions consistent with the requirements of sec. 239 of the Act (19 U.S.C. 2311);

(2) Authorization for the State to issue waivers under § 618.725 (waiver of the training requirement for Basic TRA) and the requirement that the State submit, upon request, to the Department a copy of each such waiver and, if not already contained within each waiver, a statement of the reasons for such waiver;

(3) The requirement that the State supply data to the Department on national TAA Program performance goals identified in applicable regulations, the Department's written directives, or any other written means used to communicate such goals; and

(4) Provisions establishing TAA Program funds as the primary source of Federal assistance to trade-affected workers. This means that following certification of a petition under subpart B of this part, the costs for providing services to a worker group should shift from WIOA and other programs to the TAA Program.

(i) *Administration absent State Agreement.* (1) In any State in which no Agreement under this section is in effect, the Secretary will administer the Act and this part through appropriate arrangements made by the Department.

(2) The Secretary will administer TAA in accordance with this part and the provisions of the applicable State law, except to the extent that such State law is inconsistent with this part, sec. 303 of SSA (42 U.S.C. 503), or sec. 3304(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. 3304(a)).

(3) The Secretary will provide for a fair hearing for any individual whose application for TAA is denied. A final determination as to eligibility for TAA will be subject to review as provided in 42 U.S.C. 405(g), as required by sec. 240(b) of the Act.

(4)(i) The Department will issue administrative guidance providing additional detail on the operation of the TAA Program within that State.

(ii) Prior to providing administrative guidance, the Department will consult with the Governor, other State agencies, neighboring States, and other organizations to determine how best to ensure access to the TAA Program within that State. Options to administer the program that the Department may consider include, but are not limited to:

(A) Executing an agreement with another State to operate the TAA Program;

(B) Executing an agreement with a qualified organization within the State that adheres to all TAA Program requirements in this part to operate the TAA Program; and

(C) Directly administering the TAA Program.

(j) *Program coordination.* State agencies providing employment and case management services under subpart C of this part and training under subpart F of this part must, in accordance with their Agreements under this section, coordinate such services and payments with programs and services provided by WIOA and with the State agency administering the State law. Any agency of the State jointly administering such provisions under this Agreement must be considered to be a CSA for purposes of this part.

§ 618.808 State rulemaking.

(a) A State may establish laws, regulations, procedures, or policies, not inconsistent with the Act or this part, or administrative guidance issued by the Department.

(b) The State must submit the exact text of such proposed law, regulation, procedure, or policy, certified as accurate by a responsible official, employee, or counsel of the State, to the Department.

(c) No law, regulation, procedure, or policy proposed under paragraph (a) of this section may become effective unless and until approved by the Department. The Department may grant approval on a temporary basis, not to exceed 90 days, in cases of administrative necessity.

(d) The Department may withdraw approval at any time with reasonable notice of no less than 30 days to a State.

(e) If public notice and opportunity for hearing would be required under State law for adoption of a similar law, regulation, procedure, or policy involving UI or other State or Federal law, the State must provide such public notice and opportunity for hearing.

§ 618.812 Subpoenas.

(a) A State may require by subpoena the attendance of witnesses and production of evidence necessary for use in the determination of an individual's eligibility for TAA Program services and benefits or to obtain information needed to assist the Department in the petition determination process.

(b) This power includes the ability of the State to subpoena an employer for information necessary to determine whether a certification covers a worker, including the name, address, and Social Security number of the worker.

(c) The State may enforce compliance with subpoenas as provided under State law and, if a State court declines to enforce a subpoena issued under this section, or the State does not attempt a subpoena under State law, the State must petition for an order requiring compliance with such subpoena to the District Court of the United States with jurisdiction over the proceeding.

§ 618.816 Trade Adjustment Assistance Program benefit information and provision of services to workers.

(a) *Providing information to workers.* State agencies must provide information to each worker who applies for UI about the benefit allowances, training, and other services available under this part, and about the application procedures, and the appropriate filing dates, for such allowances, training, and other services.

(b) *Rapid response and appropriate career services.* States must ensure that rapid response assistance and appropriate career services, as described in sec. 134 of WIOA, are made available to members of a group of workers for whom a petition under subpart B of this part has been filed.

(c) *Providing reemployment services.* (1) For trade-affected workers covered by a certification, States must:

(i) Make available employment and case management services described in subpart C of this part, including testing, counseling, assessment, and placement services; and

(ii) Provide referrals to, assistance in securing of, and approvals of training under subpart F of this part.

(2) If funds provided to carry out this part are insufficient to make such services available, States must arrange to make such services available through other Federal programs.

(d) *Petition filing assistance.* (1) States must facilitate the early filing of petitions for a group of workers that the State considers are likely to be eligible for TAA Program benefits.

(2) For purposes of paragraph (d)(1) of this section, ''likely to be eligible'' means the State has a reasonable belief that a certification will be issued for the group of workers based on observations made by State staff; existence of certifications within the same industry, sector, or supply chain; or information or statements from the firm, union, workers, media coverage, or other reports.

(3) States must provide assistance to enable individuals and other entities eligible to file to prepare petitions or applications for program benefits.

(4) Petitions must be filed under paragraph (d)(1) of this section even if the firm, a union, elected officials, or members of the group of workers oppose the filing.

(e) *Providing information after issuance of a certification.* (1) States must inform the State's board on vocational and technical education (also called the eligible agency, as defined in 20 U.S.C. 2302(12)) or the equivalent agency in the State and other public or private agencies, institutions, and employers, as appropriate, of each certification issued under subpart B of this part and of projections, if available, of the needs for training under subpart F of this part as a result of such certification.

(2) Upon receipt of a certification issued under subpart B of this part by the Department, the State must provide a written notice through the mail, of the benefits available under this part to each worker known to be covered by the certification when the worker becomes partially or totally separated or as soon as possible after the certification is issued if the worker is already partially or totally separated from adversely affected employment. The State must also provide notice to all workers threatened with separation who may be AAIWs. These notices must contain the following information:

(i) The worker group(s) covered by the TAA certification and the article(s) produced or services rendered as specified in the copy of the certification furnished to the State;

(ii) The name and the address or location of workers' firm;

(iii) The impact, certification, and expiration dates in the certification document.

(iv) A summary of benefits and services available to the workers;

(v) An explanation of how, when, and where the workers may apply for TAA Program benefits and services;

(vi) The training enrollment deadlines (set forth in § 618.720(c)) for TRA qualification;

(vii) Whom to contact to get additional information on the certification; and

(viii) A Babel notice (a short notice in multiple languages informing the reader that the communication contains vital information and explaining how to access language services to have the contents of the communication provided in other languages).

(3) In order to identify these workers, the State must obtain from the firm, or another reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the agency received the certification, and of all workers who are thereafter partially or totally separated or threatened with separation within the certification period. Provision of this information may be compelled under the subpoena provisions at § 618.812.

(4) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the State must publish a notice of the certification in a newspaper of general circulation in areas in which such workers reside. The published notice must include the same information identified in paragraphs (e)(2)(i) through (viii) of this section.

(5) Upon receipt of a copy of a certification issued by the Department, the State must perform outreach to, intake of, and orientation for trade-affected workers covered by the certification with respect to assistance and benefits available under this part.

(6) In addition to the mailed written notice under paragraph (e)(2) of this section, States must also give notice to each worker by at least one method of modern electronic communication reasonably calculated to reach each worker. For example, States may give notice via email to a worker with a known email address, or by text to a worker with a known mobile phone number.

(7) States may also use other modern methods of communication, such as websites and social media, to reach members of certified worker groups.

(f) *Specific benefit assistance to workers.* States must:

(1) Advise each trade-affected worker, as soon as practicable after the worker is separated from adversely affected employment or, if later, after a certification is issued, or upon notice of their threatened status, of the benefits and services available under this part, including the qualifying requirements, procedures, and deadlines for applying for such benefits and services.

(2) Perform an intake interview for each trade-affected worker (unless the worker declines the interview) as soon as practicable after the worker is separated from adversely affected employment, after a certification is issued, or upon notice of their threatened status. The interview must be scheduled in time for the worker to meet the training enrollment deadline set forth in proposed § 618.725(a). During the interview, States must provide information about all of the benefits available under this part.

§ 618.820 Determinations of eligibility; notices to individuals.

(a) *Determinations on initial applications.* The State whose State law is the applicable State law must, upon the filing of an initial application by an individual, promptly determine the individual's eligibility for TAA Program benefits under this part and may accept for such purposes information and findings supplied by another State.

(b) *Determinations on subsequent applications.* The State must, upon the filing of an application for payment of TRA, RTAA, subsistence and transportation, job search allowance, or relocation allowance, promptly determine whether the individual is eligible for such payment and, if eligible, the amount of such payment.

(c) *Redeterminations.* The provisions for redeterminations under the applicable State law applies to determinations of eligibility for any benefit under this part.

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 618.820, a State must apply the regulations in this part. As to matters committed by this part to be decided under the applicable State law, a CSA, a hearing officer, or a State court must apply the applicable State law and regulations thereunder, including the

procedural requirements of the applicable State law or regulations, except that no provision of State law or State regulations on good cause for waiver of any time limit, or for late filing of any claim, will apply to any time limitation referred to or specified in this part, unless such State law or regulation is made applicable by a specific provision of this part. However, States must follow the good cause provision at § 618.730.

(e) *Notices to individuals.* The State must notify individuals in writing of any determination or redetermination of eligibility to TAA Program benefits. Each determination or redetermination must inform the individual of the reason for the determination or redetermination and of the right to reconsideration or appeal in the same manner as determinations of entitlement to UI are subject to redetermination or appeal under the applicable State law.

(f) *Promptness.* States must make full payment of TAA Program benefits when due with the greatest promptness that is administratively feasible.

(g) *Procedure.* Except where otherwise required by the Act or this part, the procedures for making and furnishing determinations, the promptness standards, and written notices of determinations to individuals, must be consistent with the Department's ''Standard for Claim Determinations—Separation Information,'' Employment Security Manual, part V, secs. 6010 through 6015 (appendix B of this part).

(h) *Successor-in-interest.* (1) States are authorized to determine whether a firm is a successor-in-interest to a firm named as the employer of a worker group on a determination issued under subpart B of this part.

(2) The factors to be used to determine whether or not there is a successor-in-interest are established in § 618.110.

(3) If, after reviewing the successor-in-interest factors, the State believes that a denial of benefits is warranted, the State must file a new petition requesting an amendment to the certification under § 618.250.

§ 618.824 Liable State and agent State responsibilities.

(a) *Liable State.* The liable State, as defined in § 618.110, is responsible for:

(1) Making all determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, including job search and relocation allowances under subpart D of this part; RTAA under subpart E of this part; training under subpart F of this part; subsistence and transportation payments under subpart F of this part; Basic, Additional, and Completion TRA under subpart G of this part; and waivers and revocations of waivers under subpart G of this part;

(2) Providing workers with general program information and assistance under § 618.816;

(3)(i) Providing rapid response assistance and appropriate career services, as described under sec. 134 of WIOA, to the group of workers in the State covered by the petition upon receiving notice of any such workers for whom a petition is filed.

(ii) This includes making career services authorized under other Federal laws available to the workers covered by the petition to the extent authorized under such laws.

(iii) In certain situations, based on the residency of the group of workers, it may be appropriate for agent States to also be involved in the provision of these services, but in all instances the liable State must be ultimately responsible for ensuring the provision of these services;

(4) Providing information and assistance to trade-affected workers under § 618.816(c) (reemployment services), (e) (information after a certification is issued), and (f) (specific benefit assistance to workers) upon receiving a certification issued by the Department with respect to affected workers at a firm or appropriate subdivision in the State;

(5) Providing a list of eligible TAA recipients and eligible RTAA recipients, for HCTC purposes, to the Internal Revenue Service if HCTC is available; and

(6) Assisting in other activities and functions required by the Governor-Secretary Agreement at § 618.804, including assisting the Department in the review of petitions by verifying such information and providing such other assistance as the Department may request.

(b) *Agent State.* The agent State, as defined in § 618.110, is responsible for:

(1) Providing interstate claimants with general program information and assistance under § 618.816(a) and petition filing assistance under § 618.816(d);

(2) Cooperating fully with and assisting the liable State in carrying out its responsibilities, activities, and functions, including the provision of rapid response and appropriate career services, as needed;

(3) Cooperating with the liable State in taking applications and claims for TAA Program benefits under this part;

(4) Providing employment and case management services, as described in subpart C of this part, to trade-affected workers covered by a certification issued by the Department under this part;

(5) Cooperating with the liable State by providing information that the liable State needs for it to issue determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part, as described in paragraph (a)(1) of this section;

(6) Securing, and paying the cost of, any approved training under subpart F of this part, and payment of subsistence and transportation under subpart F of this part, according to determinations issued by the liable State;

(7) Paying costs under subpart D of this part for job search and relocation allowances; and

(8) Assisting in other activities and functions required by the Agreement under § 618.804, including assisting in the review of petitions by verifying information and providing such other assistance as the Department may request.

(c) *Responsibilities under this section.* In most instances, the liable State and agent State will be the same State and is responsible for all of the activities and functions described in paragraphs (a) and (b) of this section.

§ 618.828 Appeals and hearings.

(a) *Applicable State law.* Except as provided in paragraph (b) of this section, a determination or redetermination under this part (other than a determination on the eligibility of a group of workers under subpart B of this part, which is subject to review by the USCIT) is subject to review in the same manner and to the same extent as determinations and redeterminations under the applicable State law, and only in that manner and to that extent. Proceedings for review of a determination or redetermination may be consolidated or joined with proceedings for review of other determinations or redeterminations under the applicable State law where convenient or necessary. The right of appeal and opportunity for fair hearing for these proceedings must be consistent with sec. 303(a)(1) and (3) of SSA (42 U.S.C. 503(a)(1) and (3)).

(b) *Allegations of discrimination.* Complaints alleging that a determination or redetermination under this part violates applicable Federal nondiscrimination laws administered by the U.S. Department of Labor must be handled in accordance with the procedures of 29 CFR parts 31, 32, 35, 36, and 38, as applicable, and as provided in § 618.894 (nondiscrimination and equal opportunity requirements).

(c) *Appeals promptness.* Appeals under paragraph (a) of this section must be decided with a degree of promptness meeting the Department's ''Standard for Appeals Promptness—Unemployment Compensation'' (20 CFR part 650). Any provisions of the applicable State law for advancement or priority of UI cases on judicial calendars, or other provisions intended to provide for prompt payment of UI when due, must apply equally to proceedings involving eligibility for TAA Program benefits and services under this part.

(d) *Retroactivity.* In the case of a redetermination or decision reversing a training denial, the redetermination or decision must be given effect retroactively to the date of issuance of the determination that was subsequently reversed. However, no costs of training may be paid unless such costs actually were incurred for training in which the individual participated. In addition, if a TRA application was filed and denied as a result of the training denial, TRA may only be paid with respect to any week during which the individual was actually participating in the training.

§ 618.832 Overpayments; penalties for fraud.

(a) *Determinations and repayment.* (1) If a State, the Department, or a court of competent jurisdiction determines that any person has received any payment under this part to which the person was not entitled, including a payment referred to in paragraph (b) of this section, such person is required to repay such amount to the State or the Department, as appropriate, except that the State or the Department must waive such repayment if such State or the Department determines that:

(i) The payment was made without fault on the part of such person; and

(ii) Requiring such repayment would cause a financial hardship for the person (or their household, if applicable).

(2) States must provide persons determined to have received TAA overpayments a reasonable opportunity to demonstrate their eligibility for waiver under the criteria in paragraphs (a)(1)(i) and (ii) of this section.

(3) A financial hardship exists if recovery of the overpayment would result in the person's (or their household's) loss of or inability to pay for ordinary and necessary living expenses. This determination must take into account the income and resources (including liquid financial resources) reasonably available to the person (and their household).

(4) Fault exists for purposes of paragraph (a)(1)(i) of this section if any of the following criteria are met:

(i) Whether a material statement or representation was made by the person or individual in connection with the application for TAA that resulted in the overpayment, and whether the person knew or should have known that the statement or representation was inaccurate;

(ii) Whether the person failed or caused another to fail to disclose a material fact in connection with an application for TAA that resulted in the overpayment, and whether the person knew or should have known that the fact was material;

(iii) Whether the person knew or should have known that the person or individual was not entitled to the TAA payment;

(iv) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the person or of which the person or individual had knowledge, and that was erroneous or inaccurate or otherwise wrong; or

(v) Whether there has been a determination of fraud under paragraph (b) of this section.

(b) *False representation or nondisclosure of material fact.* In addition to any other penalty provided by law, a person will be permanently ineligible for any further payments under this part if a State, the Department, or a court of competent jurisdiction determines that:

(1) Such person:

(i) Knowingly made, or caused another to make, a false statement or representation of a material fact; or

(ii) Knowingly failed, or caused another to fail, to disclose a material fact; and

(2) As a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this part to which the person was not entitled.

(c) *Notice of determination, fair hearing, and finality.* Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a)(1) of this section by the State or the Department, as appropriate, has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person concerned, and the determination has become final.

(d) *Training, job search and relocation allowances, and RTAA.* (1) If a trade-affected worker fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under this part to such person or individual properly and necessarily expended in attempting to complete such training, job search, or relocation is not an overpayment.

(2) If a trade-affected worker fails, without good cause, to complete training, a job search, or a relocation, then the portion of a payment for the noncompleted component of a benefit is an overpayment. Costs for the completed portions of the training program, job search, or relocation are not an overpayment.

(3) For purposes of this paragraph (d), good cause exists if the worker acted diligently yet was unable to complete training, a job search, or relocation because of exigent circumstances. The State must determine good cause on a worker-by-worker basis.

(4) An overpayment established under this paragraph (d) must be recovered or waived as provided in this section.

(5) For RTAA, an individual meets the ''earns not more than $50,000 each year in wages from reemployment'' requirement in sec. 246 of the Act for a given month if the monthly determination of annualized wages is accurate and complete at the time it is made. Payments derived from the annualized wage projection based on complete and accurate information at the time are valid payments that the individual was entitled to and are not overpayments.

(e) *Overpayment recovery of TAA Program funds by offset.* Unless an overpayment is otherwise recovered or is waived, the State—

(1) Must, subject to the limitation in paragraph (e)(3) of this section, recover the overpayment by deduction from any sums payable to such person under:

(i) This part;

(ii) Any Federal UI law administered by the State; or

(iii) Any other Federal law administered by the State that provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(2) Must recover the overpayment from UI payable to such person under the applicable State law.

(3) Must not allow any single deduction under this paragraph (e) to exceed 50 percent of the amount otherwise payable to the person; except that if the applicable State law provides for an overpayment recovery deduction that is less than 50 percent of the amount otherwise payable, such recovery must be equal to that lesser percentage.

(f) *Fraud detection and prevention.* State procedures for the detection and

prevention of fraudulent overpayments of TAA benefits must be, at a minimum, the same as the procedures adopted by the State with respect to State unemployment compensation, and consistent with the Department's ''Standard for Fraud and Overpayment Detection,'' Employment Security Manual, part V, secs. 7510 through 7515 (appendix C to this part).

(g) *Person.* For purposes of this section and § 618.836 (recovery of debts due the United States or others by TAA offset), a person includes, in addition to a trade-affected worker or other individual, any employer or other entity or organization as well as the officers and officials thereof, including any training provider as well as the officers and officials thereof, who may bear individual responsibility for the overpayment.

(h) *Criminal penalties.* (1) Any person who makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact under the circumstances described in paragraph (h)(1)(i) or (ii) of this section, must be imprisoned for not more than 1 year, fined under title 18, United States Code, or both.

(i) For the purpose of obtaining or increasing for that person or for any other person any payment authorized to be furnished under the Act or pursuant to an agreement under sec. 239 of the Act; or

(ii) When providing information during an investigation of a petition under sec. 221 of the Act.

(2) Whenever a violation under paragraph (h)(1) of this section is suspected, the State or the Department must refer the conduct to the U.S. Department of Labor Office of the Inspector General.

§ 618.836 Recovery of debts due the United States or to others by Trade Adjustment Assistance offset.

(a) *Debt due the United States.* Notwithstanding any other provision of this part, the State must apply TAA benefits, payable under this part to a person (as described in § 618.832(g)), for the recovery by offset of any debt due the United States from the person.

(b) *Debt due to others.* The State must not apply TAA Program benefits for the payment of any debt of any person to any State or any other entity or person, except for TRA and RTAA benefits as required by Federal UI law.

§ 618.840 Uniform interpretation and application of this part.

(a) *First rule of construction.* The implementing regulations in this part will be construed liberally to carry out the purposes of the Act.

(b) *Second rule of construction.* The implementing regulations in this part will be construed to assure, insofar as possible, the uniform interpretation and application of the Act and this part throughout the United States.

(c) *Effectuating purposes and rules of construction.* (1) To effectuate the purposes of the Act and this part and to assure uniform interpretation and application of the Act and this part throughout the United States:

(i) A State must, upon request, forward to the Department, not later than 10 days from the date of the request, a copy of any administrative ruling on an individual's eligibility to TAA benefits under this part.

(ii) Notwithstanding paragraph (c)(1)(i) of this section, a State must forward to the Department a copy of any determination or redetermination on an individual's eligibility to TAA benefits under this part appealed to the State's highest UI administrative appeals authority.

(iii) A State must forward to the Department a copy of notice of the institution of a State or Federal court proceeding and any State or Federal court ruling on an individual's eligibility to TAA Program benefits under this part, within 10 days of the notice or ruling.

(2) If the Department concludes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or this part, the Department may at any time notify the State of the Department's view. Thereafter, the State must issue a redetermination or appeal if possible and must not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings that involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State must inform the claims deputy or hearing officer or court of the Department's view and must make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(3) If the Department concludes that a determination, redetermination, or decision is patently and flagrantly violates of the Act or this part, the Department may at any time notify the State of the Department's view. If the determination, redetermination, or decision in question denies TAA to an individual, the State must follow the steps outlined in paragraph (c)(2) of this section. If the determination, redetermination, or decision in question awards TAA to an individual, the benefits are ''due'' within the meaning of sec. 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. However, the State must take the steps outlined in paragraph (c)(2) of this section, and payments to the individual may be temporarily delayed if redetermination or appeal action is taken not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of TAA and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than 2 weeks after the redetermination action is taken. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the 2-week limit, or any redetermination or decision or order is issued that affirms the determination, redetermination, or decision awarding TAA or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (c)(2) or (3) of this section, is treated as a precedent for any future application for TAA, the Secretary will decide whether the Agreement with the State entered into under the Act and this part will be terminated and § 618.804(e) applied.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part, including any determination, redetermination, or decision referred to in paragraph (c)(2) or (3) of this section, the Secretary will decide whether the State must restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in the absence of such restoration, the Agreement with the State will be terminated and § 618.804(e) applied and whether other action must be taken to recover such sums for the United States.

(5) A State may request, in writing, within 10 calendar days of receiving a notice under paragraph (c)(2) or (3) of this section, reconsideration of the notice. The State will have an opportunity to present its views and arguments if desired. The State must submit such a request to the Secretary and may include views and arguments on the matters the Secretary is to decide under paragraph (c)(3) of this section.

The Secretary must respond to the State's reconsideration request within 30 calendar days of receiving the request.

(6) Concurrence of the Department with a determination, redetermination, or decision must not be presumed from the absence of a notice issued pursuant to this section.

(d) *Payment when due.* If the determination, redetermination, or decision in question awards TAA Program benefits to an individual, the benefits are ''due'' within the meaning of sec. 303(a)(1) of SSA (42 U.S.C. 503(a)(1)), and therefore must be paid promptly to the individual. Payments to the individual may be temporarily delayed if a redetermination is issued not more than 1 business day following the day on which the first payment otherwise would be issued to the individual; and the State seeks an expedited appeal decision within not more than 2 calendar weeks after the appeal is filed. If the redetermination is not issued or the appeal is not filed within the time limit in the preceding sentence, or the decision on appeal is not obtained within the 2-calendar week limit in the preceding sentence, or any decision on appeal is issued that affirms the determination, redetermination, or decision awarding benefits under this part or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the individual.

§ 618.844 Inviolate rights to Trade Adjustment Assistance or Reemployment Trade Adjustment Assistance.

(a) Except as specifically provided in this part, the rights of individuals to TAA Program benefits will be protected in the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law. Such measures must include protection of applicants for TAA Program benefits from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to TAA Program benefits, except as provided in §§ 618.832 (overpayments; penalties for fraud) and 618.836 (recovery of debts due the United States or others by TAA offset).

(b) In the same manner and to the same extent as the rights of persons to UI are protected under the applicable State law, individuals must be protected from discrimination and obstruction in regard to the right to seek, apply for, and receive any TAA Program benefit.

§ 618.848 Veterans' priority of service.

The State must give priority for approval and funding of TAA Program benefits (including training, where the approval of training criteria are met) to a trade-affected worker meeting the veterans' priority of service criteria established under 38 U.S.C. 4215.

§ 618.852 Recordkeeping and disclosure of information requirements.

(a) *Recordkeeping.* (1) Each State must make and maintain such records pertaining to the administration of the Act as the Department requires and must make all such records available for inspection, examination, and audit by such Federal officials as the Department may designate or as may be required by law.

(2)(i) States must maintain records that contain any information that the Department determines to be appropriate in support of any reports that the Department may require, including those reports specified in §§ 618.860(f) (general fiscal and administrative requirements) and 618.864(e) (TAA Program performance).

(ii) States must maintain records as required by 2 CFR 200.333 for 3 years, or as indicated at 2 CFR 200.333(a) through (f).

(3) States must comply with the records requirements established in the Uniform Guidance at 2 CFR 200.333 through 200.337.

(4) States must document that they provided or offered the employment and case management services described in subpart C of this part to all trade-affected workers, either in a paper-based or electronic case management system. States must make these systems available for review upon request by the Department. Additionally, the case management file of each participant must demonstrate that the State notified each worker of the training enrollment deadlines set forth in proposed § 618.725(a).

(b) *Disclosure of information.* (1) Information in records maintained by a State in administering the Act must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to UI and the entitlement of individuals thereto may be disclosed under the applicable State law. Such information must not, however, be disclosed to an employer or any other person except to the extent necessary to obtain information from the employer or other person for the purposes of this part. The provision in this paragraph (b)(1) on the confidentiality of information maintained in the administration of the Act does not apply in the following circumstances:

(i) Disclosures to the Department;

(ii) For the purposes of § 618.832 or paragraph (a) of this section;

(iii) For providing information, reports, and studies required by § 618.856 (information, reports, and studies); or

(iv) Where nondisclosure would be inconsistent with the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act of 1974 (5 U.S.C. 552a).

(2) Where a State obtains confidential business information as part of assisting in an investigation under subpart B of this part, it must protect that information as required under that subpart.

(c) *Format of records and forms.* Forms and records used and maintained by States in the administration of this part may exist in paper or electronic form or a combination thereof. Regardless of the medium, these records must be available and accessible as required under paragraph (a)(1) of this section for oversight purposes.

(d) *Electronic signatures.* Electronic signatures are allowed where such use is in accordance with the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229).

§ 618.856 Information, reports, and studies.

A State must furnish to the Department such information and reports and conduct such studies as the Department determines are necessary or appropriate for carrying out the purposes of the Act and this part.

§ 618.860 General fiscal and administrative requirements and cost classification.

(a) *Uniform fiscal and administrative requirements.* (1) Each State receiving funds allocated for the TAA Program from the Department as an agent of the United States, must administer the TAA Program in accordance with the Uniform Guidance at 2 CFR part 200 and 2 CFR part 2900 and with the funding agreement.

(2) A State may expend funds awarded to it during a Federal fiscal year to carry out TAA Program activities under secs. 235 through 238 of the Act during that Federal fiscal year and the succeeding 2 Federal fiscal years.

(3) Equipment, as described in 2 CFR 200.33 and computing devices, as described in 2 CFR 200.20, includes equipment acquired with TAA funds under both current and prior Agreements.

(4) The addition method, described at 2 CFR 200.307, must be used for all program income earned under TAA grants. When the cost of generating program income has been charged to such grant, the gross amount earned

must be added to such grant. However, when these costs have not been charged to such grant, the cost of generating program income must be subtracted from the amount earned to establish the net amount of program income available for use under such grant.

(b) *Administrative costs.* (1) The administrative cost limit for the fiscal year program funding allocation for training, job search assistance, and relocation allowances is included in the TAA Program Annual Funding Agreement, with which States must comply.

(2) For purposes of the TAA Program, the costs of administration are the costs associated with performing the overall general administrative functions of the TAA Program in paragraphs (b)(2)(i) through (xviii) of this section and the coordination thereof within the American Job Center network established under WIOA:

(i) Accounting, budgeting, financial and cash management functions;

(ii) Procurement and purchasing functions;

(iii) Property management functions;

(iv) Personnel management functions;

(v) Payroll functions;

(vi) Coordinating the resolution of findings arising from audits, reviews, investigations, and incident reports;

(vii) Audit functions;

(viii) General legal services functions;

(ix) Developing systems and procedures, including information systems, required for these administrative functions;

(x) Processing applications for benefits under the Act;

(xi) Rendering and issuing eligibility determinations under the Act;

(xii) Performing oversight and monitoring responsibilities related to administrative functions;

(xiii) Costs of goods and services required for administrative functions of the program, including goods and services such as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space;

(xiv) Travel costs incurred for official business in carrying out administrative activities or the overall management of the TAA Program;

(xv) Costs of information systems related to administrative functions (*i.e.,* personnel, procurement, purchasing, property management, accounting, and payroll systems), including the purchase, systems development, and operating costs of such systems;

(xvi) Processing waivers of training requirements under subpart G of this part;

(xvii) Collecting, validating, and reporting data required under the Act; and

(xviii) Providing RTAA under subpart E of this part.

(3) Awards to subrecipients or contractors that are solely for the performance of administrative functions constitute administrative costs.

(4) Personnel and related nonpersonnel costs of staff that perform both administrative functions specified in paragraph (b)(2) of this section and programmatic services or activities must be allocated as administrative or program costs to the benefitting cost objectives/categories based on documented distributions of actual time worked or other equitable cost allocation methods.

(5) Costs of the information systems in paragraphs (b)(5)(i) through (iii) of this section, including the purchase, systems development, and operational costs, are charged to the program category:

(i) Tracking or monitoring of participant and performance information, including employment and case management services and activities;

(ii) Employment statistics information, including job listing information, job skills information, and demand occupation information. States must leverage existing resources provided under other Federal programs; and

(iii) Maintenance and enhancement of the systems specified in paragraphs (b)(5)(i) and (ii) of this section.

(6) Wherever possible, States must make efforts to streamline the administrative activities and services listed in this section by minimizing duplication and effectively using information technology to improve services and leveraging resources across programs.

(c) *Prior approval.* (1) Equipment purchases under the TAA Program are subject to the provisions at 2 CFR 200.313. In compliance with 2 CFR 2900.16, prior approval is hereby provided for equipment purchases under the TAA Program.

(2) As provided in 2 CFR 200.439(b)(1), the Department retains the prior approval requirement related to capital expenditures (2 CFR 200.13) and for capital assets (2 CFR 200.12) other than equipment.

(d) *Audit and oversight requirements.* (1) All States, local governments, nonprofit organizations, and for-profit entities that are recipients or subrecipients of TAA Program funds must follow the audit requirements under 2 CFR 200.500 through 200.521 and 2 CFR 2900.20.

(2)(i) *Oversight and monitoring.* Each recipient and subrecipient of funds under the Act must conduct regular oversight and monitoring of its program and those of any subrecipients and contractors, as required under sec. 239(i) of the Act, as well as under 2 CFR part 200, including 2 CFR 200.328, 200.330, and 200.331, and Department exceptions at 2 CFR part 2900, in order to:

(A) Determine that expenditures have been made against the proper cost categories and within the cost limitations specified in the Act, the regulations in this part, and administrative guidance;

(B) Determine whether there is compliance with other provisions of the Act, the regulations in this part, and administrative guidance;

(C) Assure compliance with 2 CFR part 200 and the Department's exceptions at 2 CFR part 2900; and

(D) Determine compliance with the nondiscrimination, disability, and equal opportunity requirements of sec. 188 of WIOA, including the Assistive Technology Act of 1998 (29 U.S.C. 3003).

(ii) *Resolution of subrecipient-level findings.* (A) The Governor is responsible for resolving findings that arise from the monitoring reviews, investigations, other Federal monitoring reviews, and audits (including under 2 CFR part 200) of subrecipients awarded funds through the Act.

(B) A State must use the written monitoring and audit resolution, debt collection and appeal procedures that it uses for other Federal grant programs.

(C) If a State does not have such written procedures as described in paragaph (d)(2)(ii)(B) of this section, it must prescribe standards and procedures to govern this grant program.

(D) For subrecipients awarded funds through a recipient of grant funds, the direct recipient of the grant funds must have written monitoring and resolution procedures in place that are consistent with 2 CFR part 200.

(iii) *Resolution of State findings.* (A) The Secretary is responsible for resolving findings that arise from Federal audits, monitoring reviews, investigations, incident reports, and audits under 2 CFR part 200 for direct recipients of Federal awards under the Act.

(B) The Secretary will use the Department's audit resolution process, consistent with 2 CFR part 2900, subpart F.

(C) A final determination issued by a Grant Officer under the process in this paragraph (d)(2)(iii) may be appealed to the DOL Office of Administrative Law

Judges under the procedures in 2 CFR 2900.22.

(e) *Government-wide debarment and suspension, and government-wide drug-free workplace requirements.* All TAA Program fund recipients and subrecipients must comply with the Government-wide requirements for debarment and suspension under subparts G and H of 2 CFR part 180 and the Government-wide requirements for a drug-free workplace at 29 CFR part 98.

(f) *Fiscal reporting requirements for States.* (1) In accordance with 2 CFR 200.327 and 2 CFR 2900.14, each State must submit a quarterly financial report to the Department as specified in the reporting instructions approved by OMB.

(2) States must report financial data on an accrual basis, and cumulatively by funding year of appropriation. Financial data may also be required on specific program activities as specified in the reporting instructions as approved by OMB.

(3) If the State's accounting system is not on the accrual basis of accounting, the State must develop accrual information through best estimates based on an analysis of the documentation on hand.

(4) The State must:

(i) Obligate funds on not less than a quarterly basis; and

(ii) Periodically review obligations and, in an appropriate and timely manner, de-obligate funds when a participant drops, completes, or is no longer eligible for training.

(g) *Use of funds.* Of the funds awarded to the States to carry out secs. 235 through 238 of the Act for a fiscal year, the State must use:

(1) Not more than 10 percent for the costs of administration, provided in paragraph (b)(2)(i) of this section; and

(2) Not less than 5 percent for employment and case management services under sec. 235 of the Act.

(h) *Technology.* States must maintain sufficient and effective technology for the purpose of tracking and reporting required participant data, and to provide appropriate services under the TAA Program.

(i) *Designation of resources for Management Information Systems (MIS) development.* States are required to dedicate an appropriate portion of administrative and employment and case management funding under TAA for management information systems development, upgrades, and ongoing maintenance.

§ 618.864 Trade Adjustment Assistance Program performance.

(a) *General rule.* Each State must report to the Department comprehensive performance accountability measures, to consist of:

(1) The primary indicators of performance described in paragraph (b) of this section;

(2) The additional indicators of performance established under paragraph (c) of this section, if any; and

(3) A description of efforts made to improve outcomes for workers under the TAA Program that promote efficient and effective program performance as provided in this section.

(b) *Primary indicators of performance*—(1) *Primary indicators.* The primary indicators of performance shall consist of:

(i) The percentage and number of workers who received benefits under the TAA Program who are in unsubsidized employment during the second calendar quarter after exit from the program;

(ii) The percentage and number of workers who received benefits under the TAA Program and who are in unsubsidized employment during the fourth calendar quarter after exit from the program;

(iii) The median earnings of workers who are in unsubsidized employment during the second quarter after exit from the program;

(iv) The percentage and number of workers who received benefits under the TAA Program (excluding those in OJT and customized training) who obtain a recognized postsecondary credential or a secondary school diploma or its recognized equivalent, during participation in the program or within 1 year after exit from the program; and

(v) The percentage and number of workers who received benefits under the TAA Program who, during a year while receiving such benefits, are in an education or training program that leads to a recognized postsecondary credential or employment and who are achieving measurable gains in skills toward such a credential or employment.

(2) *Indicator relating to credential attainment.* For purposes of paragraph (b)(1)(iv) of this section, a worker who received benefits under the TAA Program who obtained a secondary school diploma or its recognized equivalent is included in the percentage counted for purposes of paragraph (b)(1)(iv) of this section only if the worker, in addition to obtaining such a diploma or its recognized equivalent, has obtained or retained employment or is in an education or training program leading to a recognized postsecondary credential within 1 year after exit from the program.

(c) *Additional indicators.* The Department and a State may agree upon additional indicators of performance for the TAA Program, as appropriate.

(d) *Use of wage records.* States must, consistent with State law, use quarterly wage record information, as defined in 20 CFR 677.175, in measuring the progress on program performance indicators in paragraphs (b) and (c) of this section.

(1) The use of Social Security numbers from participants and such other information as is necessary to measure the progress of those participants through quarterly wage record information is authorized.

(2) States that participate in data sharing agreements for the purposes of obtaining wage record information may use such data sharing agreements to obtain wage record information for workers who received benefits under the TAA Program.

(3) To the extent that quarterly wage records are not available for a participant, States may use other information as is necessary to measure the progress of the participant.

(e) *Reporting requirements*—(1) *Data required.* States must report TAA Program demographics, performance, and services data, identified in paragraphs (b) and (c) of this section, to the Department on such forms and in such manner as the Department may prescribe.

(2) *Data reliability and validity.* States are required to establish procedures that are consistent with administrative guidance the Department issues to ensure the data States submit are valid and reliable.

(f) *Publication of performance results.* The Department will publish, annually, through electronic means, including posting on the Department's website, the TAA Program performance results of the States.

(g) *Control measures*—(1) *In general.* Each State must implement effective control measures to effectively oversee the operation and administration of the TAA Program and ensure the accurate collection of program data.

(2) *Location.* The control measures must be internal to a system used by the State to collect data.

(3) *Purpose.* States will implement these control measures in order to:

(i) Oversee the operation and administration of the TAA Program under this part;

(ii) Improve the timeliness and verifiability of reported data; and

(iii) Verify the accuracy of reported data, and must require:

(A) Periodic staff training;

(B) Participation in data validation and integrity efforts, as directed by the Department;

(C) Data analysis and monitoring on a quarterly basis to identify inaccurate data input;

(D) Data analysis and monitoring on a quarterly basis to identify missing data; and

(E) Resubmission of required reports upon correcting data the State identifies as a result of paragraphs (g)(3)(iii)(B) through (D) of this section.

(4) *Monitoring program.* In order to ensure the effective and efficient operation of the TAA Program, States must adopt a formal monitoring program designed to review and audit worker files.

(i) The monitoring program must be designed to identify and share best practices, identify and correct deficiencies, and identify and address staff training needs.

(ii) A minimum quarterly random sample of 20 cases must be audited as part of the monitoring program and must include cases from at least 2 certifications issued under subpart B of this part.

(iii) The four quarterly samples within a calendar year must also cover at least four different areas of the State administering the program.

(iv) If circumstances preclude a State from meeting the criteria in paragraphs (g)(4)(ii) and (iii) of this section, the State must contact the appropriate ETA regional office to design a monitoring program that better suits the TAA Program in that State, and make sure it is sufficient to ensure the accuracy and verifiability of such data.

(h) *Data on benefits received, training, outcomes, rapid response activities, and spending.* Data submitted by the States must be sufficient to provide, at a minimum, the information required in sec. 249B of the Act, including the following information:

(1) The number of workers receiving benefits under the TAA Program;

(2) The number of workers receiving each type of benefit, including employment and case management services, training, job search and relocation allowances, TRA (Basic, Additional, and Completion) and RTAA payments, and, to the extent feasible, the HCTC, if available;

(3) The average time during which such workers receive each type of benefit;

(4) The average number of weeks TRA were paid to workers;

(5) The number of workers who report that they have received benefits under a prior certification in any of the 10 fiscal years preceding the fiscal year for which the data are collected under this section;

(6) The number of workers who received TAA approved training, classified by major types of training, including but not limited to, classroom training, training through distance learning, training leading to an associate's degree, remedial education, prerequisite education, OJT, and customized training;

(7) The number of workers who exited TAA approved training, including who received prelayoff training or part-time training at any time during that training;

(8) The average duration of training and the average duration of training that does not include remedial or prerequisite education;

(9) The number of training waivers granted, classified by type of waiver;

(10) The number of workers who exited training and the average duration of such training;

(11) The number of workers who do not complete training and the average duration of the training such workers completed;

(12) The average cost per worker of receiving TAA approved training;

(13) The percentage of workers who received TAA approved training and obtained unsubsidized employment in a field related to that training;

(14) The age, preprogram educational level, and post-program credential attainment of the workers;

(15) The median earnings of workers during the second calendar quarter after exit from the program, expressed as a percentage of the median earnings of such workers before the calendar quarter in which such workers began receiving benefits under this part;

(16) The sectors in which workers are employed after receiving benefits under this part;

(17) Whether rapid response activities were provided with respect to each petition filed;

(18) The total amount of funds used to pay for TRA by the State; and

(19) The total amount of the TaOA payments to the State.

§ 618.868 Unemployment Insurance.

UI payable to an AAW shall not be denied or reduced for any week by reason of any right to a payment of TAA under the Act and this part.

§ 618.872 Travel under the Trade Adjustment Assistance Program.

(a) TAA Program participants are subject to the FTR at 41 CFR chapters 300 through 304 for all travel paid for with TAA Program funds.

(b) Except for the definition of ''commuting area,'' States may not apply State or local travel policies and restrictions to TAA Program participants receiving reimbursements for travel under the Act.

(c) In instances where the FTR is silent or defers to the Federal agency's travel policies, the State must apply the relevant policies of the Department.

§ 618.876 Verification of eligibility for program benefits.

(a) *Overall program eligibility.* In addition to all other eligibility criteria contained in this part, an individual must also be authorized to work in the United States to receive benefits under the TAA Program. States are required to verify the status of participants who are not a citizen or national of the United States.

(b) *Initial verification.* All States are required, under sec. 1137(d) of SSA (42 U.S.C. 1320b–7(d)), to initially verify the immigration status of self-reporting aliens who apply for UI through the system designated by the U.S. Customs and Immigration Service (or USCIS), currently the Systematic Alien Verification for Entitlement (or SAVE) program. No further verification is required except as described in paragraph (c) of this section.

(c) *Reverification.* (1) Once a State has verified satisfactory immigration status initially, the State must reverify the worker's immigration status if the documentation provided during initial verification will expire during the period in which that worker is potentially eligible to receive benefits under this subchapter.

(2) The State must conduct such redetermination in a timely manner, using the immigration status verification system described in sec. 1137(d) of SSA (42 U.S.C. 1320b–7(d)) or by review of other documentation, as described in that provision.

§ 618.884 Special rule with respect to military service.

(a) *In general.* Notwithstanding any other provision of this part, a State may waive any requirement of this part that the States determines is necessary to ensure that an AAW who is a member of a reserve component of the Armed Forces and serves a period of duty described in paragraph (b) of this section is eligible to receive a trade readjustment allowance, training, and other benefits under this part in the same manner and to the same extent as if the worker had not served the period of duty.

(b) *Period of duty described.* An AAW serves a period of duty described in paragraph (a) of this section if, before

completing training under sec. 236 of the Act, the worker:

(1) Serves on active duty for a period of more than 30 days under a call or order to active duty of more than 30 days; or

(2) In the case of a member of the Army National Guard of the United States or Air National Guard of the United States, performs full-time National Guard duty under 32 U.S.C. 502(f) for 30 consecutive days or more when authorized by the President or the Secretary of Defense for the purpose of responding to a national emergency declared by the President and supported by Federal funds.

§ 618.888 Equitable tolling.

(a) A TAA Program deadline must be equitably tolled when:

(1) An extraordinary circumstance prevented an individual's timely action; and

(2) The individual otherwise acted with diligence.

(b)(1) When an individual fails to take timely action because the State failed to give notice required under this part, that failure is prima facie evidence of an extraordinary circumstance.

(2) If the individual did not receive the required notice, but otherwise received actual notice with sufficient time to take timely action, the lack of receipt of the required notice is not evidence of an extraordinary circumstance.

(c) A TAA Program deadline equitably tolled under this section is tolled for the time period during which the extraordinary circumstance exists. Once that circumstance is resolved, the time period that was tolled begins to run again.

(d) Equitable tolling may extend an otherwise expired TAA Program deadline by no more than 36 months.

§ 618.890 Staffing flexibility.

(a) Staff employed under a merit personnel system as provided in sec. 303(a)(1) of the Social Security Act must be used for all reviews of benefit determinations under applicable State law.

(b) All determinations on eligibility for TAA Program benefits must be made by State staff, with the exception of the functions in paragraph (a) of this section, which must be made by staff meeting the criteria in paragraph (a) of this section.

(c) All other functions under the TAA Program, not subject to paragraphs (a) and (b) of this section, may be provided under a variety of staffing models.

§ 618.894 Nondiscrimination and equal opportunity requirements.

(a) States and subrecipients of financial assistance under the TAA Program are required to comply with the nondiscrimination and equal opportunity provisions codified in the Department's regulations at 29 CFR parts 31, 32, 35, and 36.

(b) States and subrecipients of financial assistance under the TAA Program are required to comply with the nondiscrimination and equal opportunity requirements of WIOA sec. 188 and its implementing regulations at 29 CFR part 38 if the agency or subrecipient:

(1) Operates its TAA programs and activities as part of the one-stop delivery system established under the WIOA; or

(2) Otherwise satisfies the definition of ''recipient'' in 29 CFR 38.4(zz).

(c) Questions about the nondiscrimination requirements cited in this section may be directed to the Director, Civil Rights Center, U.S. Department of Labor, Room N–4123, 200 Constitution Avenue NW, Washington, DC 20210.

(d)(1) This section does not affect the rights and protections (and exceptions thereto) available under any other Federal law or regulation regarding discrimination.

(2) This section does not affect the rights and protections (and exceptions thereto) available under any other State or local law or regulation regarding discrimination, except as provided in paragraph (d)(3) of this section.

(3) No State may discriminate on any basis protected by 29 CFR parts 31, 32, 35, 36, and 38 (and exceptions thereto), as applicable, in determining an individual's eligibility for any of the following:

(i) Receiving aid, benefits, services, training, or employment;

(ii) Participating in any TAA program or activity;

(iii) Being employed by any State; or

(iv) Practicing any occupation or profession.

§ 618.898 Applicable State law.

(a) The applicable State law for an AAW remains the applicable State law for such worker until such worker becomes entitled to UI under the State law of another State (whether or not such worker files a UI claim in that other State).

(b) For purposes of determining the applicable State law for UI entitlement:

(1) A worker is deemed entitled to UI under a State law if such worker satisfies the base period employment and wage qualifying requirements of such State law;

(2) In the case of a combined-wage claim, UI entitlement must be determined under the law of the paying State; and

(3) In case of a Federal UI claim, or a joint State and Federal UI claim, UI entitlement must be determined under the law of the applicable State for such claims.

Subpart I—Allocation of Funds to States for Training and Other Activities

Authority: 19 U.S.C. 2320; Secretary's Order No. 6–2010, 75 FR 66267 (Oct. 27, 2010).

§ 618.900 Annual cap on funds available for Training and Other Activities.

(a) The total amount of funds made available for the costs of carrying out secs. 235 through 238 of the Act, referenced here as Training and Other Activities (TaOA), will not exceed the annual cap established under sec. 236(a)(2)(A) of the Act. For each of Fiscal Years (FYs) 2015 through 2021, this cap is $450,000,000.

(b) Funds obligated during a fiscal year to carry out activities under secs. 235 through 238 of the Act may be expended by the State receiving such funds during that fiscal year and the succeeding 2 fiscal years.

§ 618.910 Initial allocation of funds.

(a) *Initial allocation.* In the initial allocation for a fiscal year, the Department will allocate 65 percent of the funds available under sec. 236(a)(2)(A) of the Act for that fiscal year. The Department will announce the amount of each State's initial allocation of funds, determined in accordance with the requirements of this section, at the beginning of each fiscal year. The Department will determine this initial allocation on the basis of the total funds available under the annual cap for that year, even if the full amount has not been appropriated to the Department at that time.

(b) *Timing of the distribution of the initial allocation.* The Department will, as soon as practical, distribute the initial allocation announced under paragraph (a) of this section. However, the Department will not distribute the full amount of the initial allocation until it receives the entire fiscal year's appropriation of funds for TaOA. If the full year's appropriated amount for TaOA is less than the annual cap on funds available for TaOA, then the Department will distribute 65 percent of the amount appropriated.

(c) *Hold harmless provision.* Except as provided in paragraph (d) of this section, or required by the appropriation, in no case will the

amount of the initial allocation to a State in a fiscal year be less than 25 percent of the initial allocation to that State in the preceding fiscal year.

(d) *Minimum initial allocation.* If a State has an adjusted initial allocation of less than $100,000, as calculated in accordance with paragraph (e)(2) of this section, that State will not receive an initial allocation, and the funds that otherwise would have been allocated to that State instead will be allocated among the other States in accordance with this section. A State that does not receive an initial allocation may apply to the Department under § 618.920(b) for reserve funds to obtain funding for TaOA.

(e) *Process of determining initial allocation.* (1) The Department will first apply the factors described in paragraph (f) of this section to determine an unadjusted initial allocation for each State.

(2) The Department will then apply the hold harmless provision of paragraph (c) of this section to the unadjusted initial allocation, as follows:

(i) A State whose unadjusted initial allocation is less than its hold harmless amount but is $100,000 or more, will have its initial allocation adjusted up to its hold harmless amount in accordance with paragraph (c) of this section. If a State's unadjusted allocation is less than $100,000, the State will receive no initial allocation, in accordance with paragraph (d) of this section, and those funds will be distributed among the other States as provided in paragraph (e)(3) of this section.

(ii) A State whose unadjusted initial allocation is no less than its hold harmless threshold will receive its hold harmless amount and, in addition, will receive an adjustment equal to the State's share of the remaining initial allocation funds, as provided in paragraph (e)(3) of this section.

(3) Any initial allocation funds remaining after the adjustments to initial allocations are applied as described in paragraph (e)(2)(i) of this section will be distributed among the States with unadjusted initial allocations that were no less than their respective hold harmless amounts, as described in paragraph (e)(2)(ii) of this section (the remaining States). The distribution of the remaining initial allocation funds among the remaining States will be made by using the formula in paragraph (f) of this section. This recalculation will disregard States receiving only their hold harmless amount under paragraph (e)(2)(i) of this section, so that the combined percentages of the remaining States total 100 percent.

(f) *Initial allocation factors.* (1) In determining how to make the initial allocation of funds, the Department will apply, as provided in paragraph (f)(3) of this section, the following factors with respect to each State:

(i) Factor 1: The trend in the number of trade-affected workers covered by certifications during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(ii) Factor 2: The trend in the number of workers participating in training during the most recent 4 consecutive calendar quarters for which data are available. The trend will be established by assigning a greater weight to the most recent quarters, giving those quarters a larger share of the factor;

(iii) Factor 3: The number of workers estimated to be participating in training during the fiscal year. The estimate will be calculated by dividing the weighted average number of workers in training for the State determined in paragraph (f)(1)(ii) of this section by the sum of the weighted averages for all States and multiplying the resulting ratio by the projected national average of workers in training for the fiscal year, using the projection methodology underlying the Department's most recent budget submission or update; and

(iv) Factor 4: The amount of funding estimated to be necessary to provide TAA approved training to such workers during the fiscal year. The estimate will be calculated by multiplying the estimated number of training participants in paragraph (f)(1)(iii) of this section by the average training cost for the State. The average training cost will be calculated by dividing total training expenditures for the most recent 4 quarters by the average number of training participants for the same time period.

(2) The four factors listed in paragraphs (f)(1)(i) through (iv) of this section are given equal weight.

(3) For each of the factors in paragraphs (f)(1)(i) through (iv) of this section, the Department will determine the national total and each State's percentage of the national total. Based on a State's percentage of each of these factors, the Department will determine the percentage that the State will receive of the total amount available for initial allocation for that fiscal year. The percentages of the initial allocation amount for all States combined will total 100 percent of the total amount of the initial allocation.

§ 618.920 Reserve fund distributions.

(a) The 35 percent of the TaOA funds for a fiscal year that remains after the initial allocation will be held by the Department as a reserve. Reserve funds will be used, as needed, for additional distributions to States during the remainder of the fiscal year, including distributions to those States that did not receive an initial allocation. The amount of any distributions of reserve funds will be determined by the Department within the time frame described in § 618.930, as appropriate, considering the information provided in reserve fund requests submitted by States as described in paragraph (b) of this section and the level of reserve funds available.

(b) A State requesting reserve funds must demonstrate that:

(1) At least 50 percent of its TaOA funds from the current year (if any were received) and previous fiscal years have been expended; or

(2) The State needs additional TaOA funds to meet demands for services due to unusual and unexpected events, which includes an unexpected increase in the number of trade-affected workers eligible for TaOA.

(c) A State requesting reserve funds under paragraph (b) of this section also must provide a documented estimate of funding needs through the end of the fiscal year. That estimate must be based on an analysis that includes at least the following:

(1) The average cost of training in the State;

(2) The expected number of participants in training through the end of the fiscal year; and

(3) The remaining TaOA funds the State has available.

§ 618.930 Second distribution.

The Department will distribute at least 90 percent of the total TaOA funds (including § 618.920 reserve funds) for a fiscal year to the States no later than July 15 of that fiscal year. The Department will first fund all acceptable requests for reserve funds filed before June 1. After these requests are satisfied, any funds remaining will be distributed to those States that received an initial allocation in an amount greater than their hold harmless amount, using the methodology described in § 618.910. Any funds remaining after the second distribution will be available for allotment under § 618.920.

§ 618.940 Insufficient funds.

If, during a fiscal year, the Department estimates that the amount of funds necessary to provide TaOA will exceed the annual cap under § 618.900, the

Department will decide how the available funds that have not been distributed at the time of the estimate will be allocated among the States for the remainder of the fiscal year, and will communicate this decision to States through administrative guidance.

§ 618.950 Recapture and reallocation of Training and Other Activities funds.

(a) The Department may:

(1) Recapture funds that were allocated to any State to carry out secs. 235 through 238 of the Act and that remain unobligated by the State during the second or third fiscal year after the fiscal year in which the funds were provided to the State; and

(2) Reallocate recaptured funds to States to carry out secs. 235 through 238 of the Act, in accordance with procedures established in this section.

(b) The Department may recapture and reallocate funds as authorized by paragraph (a) of this section if the Department determines:

(1) There are, or are projected to be, insufficient funds in a State or States to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year; or

(2) The recapture and reallocation of funds would likely promote the more efficient and effective use of funds among States to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year.

(c) If the Department makes a determination described in paragraph (b)(1) of this section for a fiscal year, the Department may recapture funds, to the extent needed, from one or more of the State or States that have the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States, as determined by the Department, and reallocate those funds to the States with, or projected to have, insufficient funds. In making the determination that a State has or is projected to have insufficient funds to carry out the activities described in secs. 235 through 238 of the Act for a fiscal year, the Department may consider a request submitted by the State in accordance with information required under § 618.920(b) or base such determination on other information the Department determines is appropriate.

(d) If the Department makes a determination described in paragraph (b)(2) of this section for a fiscal year, the Department may recapture funds from the State or States that have the highest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds were initially allocated to such States, as determined by the Department, and reallocate those funds to:

(1) The States with the lowest percentage of unobligated or unexpended funds from the second or third fiscal year after the fiscal year in which the funds initially were allocated to such States as determined by the Department, based on such additional factor or factors as the Department determines is or are appropriate; or

(2) All States from which funds are not being recaptured, in accordance with the formula factors described in § 618.910(f), relating to the initial distribution of funds.

(e) If the Department determines to recapture and reallocate funds pursuant to this section, an administrative notice must be issued to the States describing the methodology used and the amounts to be recaptured from and reallocated to each affected State, not less than 15 business days in advance of the recapture of funds.

(f) The reallocation of funds under this section does not extend the period of availability for the expenditure of those funds, which expenditure period remains 2 fiscal years after the fiscal year in which the funds were initially allocated by the Department to the State from which the funds are recaptured.

PART 90—[REMOVED AND RESERVED]

■ 5. Remove and reserve 29 CFR part 90.

Signed at Washington, DC.

John P. Pallasch,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2019–20788 Filed 11–6–19; 8:45 am]

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status for West Coast Distinct Population Segment of Fisher With Section 4(d) Rule; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2018–0105; 4500030113]

RIN 1018–BD85

Endangered and Threatened Wildlife and Plants; Threatened Species Status for West Coast Distinct Population Segment of Fisher With Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Revised proposed rule; availability of proposed section 4(d) rule; and reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are making changes to our October 7, 2014, proposed rule to list the West Coast Distinct Population Segment (DPS) of fisher (*Pekania pennanti*) as a threatened species under the Endangered Species Act (Act). Based on new information since 2014 and a reconsideration of the best available information in our files (including all comments received to date), we are revising the proposed rule to list the DPS as a threatened species under the Act. We also propose a concurrent rule under section 4(d) of the Act for this DPS. We are reopening the comment period to allow comments on the new information presented in this document relevant to the changes and proposed 4(d) rule described below. If we finalize this listing rule as proposed, it would extend the Act's protections to this DPS and, accordingly, add this DPS to the List of Endangered and Threatened Wildlife.

DATES: We will accept comments received or postmarked on or before December 9, 2019. Please note that if you are using the Federal eRulemaking Portal (see **ADDRESSES**, below), the deadline for submitting an electronic comment is 11:59 p.m. Eastern time on this date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by December 23, 2019.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2018–0105, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!'' Please ensure that you have found the correct rulemaking before submitting your comment.

(2) *By hard copy:* Submit by U.S. mail or hand delivery to: Public Comments Processing, Attn: Docket No. FWS–R8–ES–2018–0105; U.S. Fish and Wildlife Service, MS: JAO/1N, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see ''Public Comments,'' below). See Information Requested, below, for more information on submitting comments on the proposed rule.

Document availability: The revised proposed rule is available on *http://www.regulations.gov* at Docket No. FWS–R8–ES–2018–0105 and on our website at *https://www.fws.gov/Yreka.* Comments and materials we received during previous comment periods for the preceding proposed rule, as well as supporting documentation we used in preparing the preceding proposed rule, are also available for public inspection at Docket No. FWS–R8–ES–2014–0041. In addition, the supporting files for this revised proposed rule will be available for public inspection, by appointment, during normal business hours, at our Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097; telephone 530–842–5763.

FOR FURTHER INFORMATION CONTACT: Jenny Ericson, Field Supervisor, Yreka Fish and Wildlife Office, telephone: 530–842–5763. Direct all questions or requests for additional information to: WEST COAST DPS FISHER QUESTIONS, U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, CA 96097. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species may be an endangered or threatened species throughout all or a significant portion of its range, we are required to promptly publish a proposal in the **Federal Register** and make a determination on our proposal within 1 year. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does. This document revises the proposed rule to add the West Coast DPS of fisher (*Pekania pennanti*) as a threatened species to the List of Endangered and Threatened Wildlife in title 50 of the Code of Federal Regulations at 50 CFR 17.11(h) and proposes a rule under section 4(d) of the Act (a ''4(d) rule'').

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species based on any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. We have determined that the threats to the West Coast DPS of fisher are loss and fragmentation of habitat resulting from high-severity wildfire and wildfire suppression (*i.e.,* loss of snags and other large habitat structures on which the species relies, which are removed for human safety concerns), climate change, forest insects and tree diseases, and vegetation management; and potential direct impacts to individuals (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns) from wildfire, increased temperatures resulting from climate change, disease and predation, exposure to toxicants, and potential effects associated with small population size. These factors are resulting in a cumulative effect to such a degree that the best available information indicates the West Coast DPS of fisher meets the definition of a threatened species.

Peer review. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), we sought the expert opinions of multiple appropriate specialists on the 2014 draft Species Report to ensure that our decisions are based on scientifically sound data, assumptions, and analyses. Information received has been incorporated into the final (2016) Species Report and this revised proposed rule. Because we will consider all comments and information received during the comment period, our final determination may differ from

this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. Such final decisions would be a logical outgrowth of this proposal as long as we: (a) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

Information Requested

We will accept written comments and information during this reopened comment period on our revised proposed listing for the West Coast DPS of fisher. We will consider information and recommendations from all interested parties. We intend that any final action resulting from this revised proposal be as accurate as possible and based on the best available scientific and commercial data.

We are particularly interested in new information and comments regarding:

(1) Information related to anticoagulant and neurotoxicant rodenticides, and other toxicants, including law enforcement information and trend data.

(2) Information regarding population trend studies or data for the West Coast DPS of fisher, including information regarding areas that have been surveyed compared to areas that have not been surveyed, as well as all positive and negative survey results to help us assess distribution and population trends.

(3) Information regarding the threat of wildfire, including studies or information pertaining to current and future trends in wildfire frequency and severity, as well as information pertaining to the immediate response of fishers to post-fire landscapes in the West Coast DPS of fisher.

(4) Information regarding changes in low- to mid-elevation forests in different eco-regions within the range of the West Coast DPS of fisher, including scope and severity of vegetation management on Federal and non-Federal lands.

(5) Information regarding any effects associated with population size and isolation relevant to the West Coast DPS of fisher (*e.g.,* low reproductive capacity, inbreeding depression, demographic and environmental stochasticity).

(6) Information regarding any effects of ongoing and widespread tree mortality in the Sierra Nevada range on the West Coast DPS of fisher.

(7) Information regarding any conservation efforts designed to benefit the West Coast DPS of fisher that have been planned or implemented since the October 7, 2014, proposed rule.

(8) Information regarding our revised DPS determination.

(9) Information on regulations that are necessary and advisable for the conservation of the West Coast DPS of fisher to include in a section 4(d) rule for the species. Section 4(d) of the Act provides that when a species is listed as a threatened species, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of such species. The Service has proposed such measures here and will evaluate ideas provided by the public in considering the prohibitions that are appropriate to include in the 4(d) rule.

(10) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*) including information to inform the following factors such that a designation of critical habitat may be determined to be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat;

(11) Specific information on:

(a) The amount and distribution of habitat for the West Coast DPS of fisher,

(b) What areas, that are considered occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why,

(c) Special management considerations or protection that may be needed in critical habitat areas we may propose, including managing for the potential effects of climate change, and

(d) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the species; and,

(ii) Specific information that may support a determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the species and, contain at least one physical or biological feature essential to the conservation of the species.

(12) Any probable economic, national security, or other relevant impacts of designating any area that may be included in a proposed and final designation, and the benefits of including or excluding areas that may be impacted.

As indicated under **SUMMARY**, above, if you previously submitted comments or information on the October 7, 2014, proposed rule, please do not resubmit them. We have incorporated previously submitted comments into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this revised proposed listing will take into consideration all written comments and any additional information we have received since April 18, 2016 (81 FR 22710).

You may submit your comments and materials concerning the revised proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Public Hearing

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests for public hearings must be received by the date specified in **DATES** at the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal**

Register and local newspapers at least 15 days before the hearing.

Previous Federal Actions

We first found the West Coast DPS of fisher (previously delineated as a contiguous area encompassing parts of the three States of Washington, Oregon, and California) to be warranted for listing in 2004 and each subsequent year in the annual Candidate Notice of Review. On October 7, 2014, we proposed to list the West Coast DPS of fisher as a threatened species under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*) (79 FR 60419; Docket No. FWS–R8–ES–2014–0041). On April 18, 2016, we withdrew the proposed rule to list the West Coast DPS of fisher (81 FR 22710), concluding that the potential threats (stressors) acting upon the DPS were not of sufficient imminence, intensity, or magnitude to indicate that they were singly or cumulatively resulting in significant impacts at either the population or rangewide scales.

On October 19, 2016, the Center for Biological Diversity, Environmental Protection Information Center, Klamath-Siskiyou Wildlands Center, and Sierra Forest Legacy filed a complaint for declaratory and injunctive relief, alleging that our determination on the West Coast DPS of fisher violated the Act. By Order Re: Summary Judgment issued on September 21, 2018, the District Court for the Northern District of California vacated the listing withdrawal and remanded the Service's final determination for reconsideration. The Court's amended order, dated November 20, 2018, directs the Service to prepare a new determination by September 21, 2019.

On January 31, 2019, we reopened the comment period on the October 7, 2014, proposed rule to list the DPS as a threatened species (84 FR 644).

On May 17, 2019, the District Court for the Northern District of California granted a request by the Service for a 35-day extension to comply with the November 20, 2018, order as a result of delays due to the Federal Government's lapse in appropriations that prohibited the Service from working on this determination. The Court's amended order directed the Service to submit for publication a final listing determination or notice of a revised proposed rule by October 26, 2019, and in the event of publishing a revised proposed rule, submit for publication a final listing determination by April 25, 2020.

Additional information on Federal actions concerning the West Coast DPS of fisher prior to October 7, 2014, is outlined in the October 7, 2014, proposed listing rule (79 FR 60419) (hereafter referred to as the 2014 Proposed Rule).

Summary of Changes From the 2014 Proposed Rule

In this revised proposed listing rule, we incorporate additional information regarding the fishers, their habitat, and threats potentially impacting the species or its habitat; make clarifications regarding the delineation of the DPS; include a proposed 4(d) rule; and provide some changes to the structure of the rule as they relate to our analysis and policy information. Specifically:

(1) We have revised our delineation of the DPS for the West Coast population of fishers. In the 2014 Proposed Rule, we explained that the West Coast DPS encompassed the area where fishers historically occurred throughout western Washington, western Oregon, and California to the Sierra Nevada. We further elaborated that the West Coast DPS occurred in two original native populations (Northern California-Southwestern Oregon Population [NCSO] and the Southern Sierra Nevada Population [SSN]), three reintroduced populations (Northern Sierra Nevada Reintroduced Population [NSN] in California, Southern Oregon Cascades Reintroduced Population [SOC] in Oregon, and the Olympic Peninsula Reintroduced Population [ONP] in Washington). In this revised proposed listing rule, the West Coast DPS is now identified as comprising the two extant historically native subpopulations, NCSO and SSN, as well as the NSN and SOC subpopulations that resulted from reintroductions within a portion of the historical range of the DPS. Our decision to revise the DPS was predominantly based on: (a) The apparent absence of any extant historically native subpopulations in Washington or northern Oregon; and (b) the marked separation of the fisher subpopulations in the NCSO, SOC, NSN, and SSN from fishers reintroduced in Washington.

(2) The structure of this revised proposed rule varies slightly from the 2014 Proposed Rule. Information is organized in roughly the same order, although new sections have been added or sections have been revised to accommodate new information received since 2014; we have also updated policy standards and added discussion where relevant (*e.g.,* addition of a section on the DPS's resiliency, redundancy, and representation).

(3) New information has been added to this revised proposed rule that was not available for the 2014 Proposed Rule or 2014 draft Species Report (Service 2014, entire). Our record also includes our 2016 final Species Report (Service 2016, entire).

(4) At the time of the 2014 Proposed Rule, fisher populations in Oregon and California were identified and described as the historically native extant NCSO and SSN subpopulations, the NSN subpopulation established with fishers from the NCSO subpopulation, and the SOC subpopulation established with fishers from British Columbia and Minnesota populations. Since that time, the best available information indicates that the range of the NCSO subpopulation is adjacent to the range of the (reintroduced) SOC subpopulation, with documented interbreeding activity occurring in the SOC range (Pilgrim and Schwartz 2016, entire; Pilgrim and Schwartz 2017, entire). Therefore, we determined it was appropriate to conduct our new evaluation of the status of the DPS by including the contribution of the SOC, along with the other three subpopulations (NCSO, SSN, and NSN), to the DPS's overall viability.

(5) We added a proposed section 4(d) rule because we determined it was necessary and advisable to issue protective regulations in order to reduce the likelihood of the West Coast DPS of fisher becoming an endangered species. Under our proposed section 4(d) rule, with specific exceptions, all prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) of the Act would apply to the DPS. The specific exceptions from prohibitions include forestry management activities for the purposes of reducing the risk or severity of wildfires, forestry management activities pursuant to an approved fisher conservation plan or strategy, forestry management activities that are consistent with the conservation needs of the fisher but are not specifically designed as fisher conservation plans or strategies, and management activities designed to identify and clean-up toxicant-contaminated sites.

Distinct Population Segment Analysis

Under section 3(16) of the Act, we may consider for listing any species, including subspecies, of fish, wildlife, or plants, or any DPS of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Such entities are considered eligible for listing under the Act (and, therefore, are referred to as listable entities), should we determine that they meet the definition of an endangered or threatened species.

Under the Service's DPS Policy, three elements are considered in the decision concerning the determination and classification of a possible DPS as

threatened or endangered. These elements include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (*i.e.,* is the population segment endangered or threatened).

In considering a DPS analysis for fisher involving the segment of the species' distribution that historically occupied suitable habitat in portions of the three Pacific Coast States (western Washington, western Oregon, and northern California and the Sierra Nevada mountain range, *i.e.,* the West Coast range), we examined information in published range maps, published works that included historical occurrences, unpublished studies related to fisher distribution, and other submitted data, including comments received previously and during the most recent comment period (January 31, 2019; 84 FR 644). The historical distribution of fishers in this West Coast range is discussed in detail in the ''Prehistorical and Historical Distribution across the Range of the Species'' section of the final Species Report (Service 2016, pp. 25–26). As described above in Summary of Changes from the 2014 Proposed Rule, the current distribution of fishers in the West Coast range comprises various subpopulations, including several that had been established by introducing fishers taken from other parts of the species' range into areas in the West Coast range that supported fishers historically. These ''nonnative'' fishers, from British Columbia and Alberta, Canada, as well as from Minnesota, have established breeding populations in various parts of Washington (British Columbia- and Alberta-origin fishers) and southern Oregon (SOC; British Columbia- and Minnesota-origin fishers). These subpopulations of nonnative fishers in the West Coast range are in addition to the extant historically native subpopulations (NCSO and SSN) in southern Oregon and California. Therefore, while the West Coast range of fishers was historically occupied by fishers native to this region, it is now occupied both by fishers native to the three Pacific Coast States, as well as by fishers whose lineage was derived from nonnative fishers.

Further examination of this distribution clarifies that the northern portion of the West Coast range, the State of Washington and the northern part of Oregon, appears unoccupied by any subpopulations of native fishers, but nonnative fishers reintroduced in the State of Washington continue to persist and reproduce in several areas (although it is too soon to conclude that these breeding individuals will persist). By contrast, the southern portion of the West Coast range (*i.e.,* southern Oregon, northern California, and the southern Sierra Nevada) is predominantly occupied by subpopulations of native fishers. However, this southern portion of the range also includes the SOC subpopulation of reintroduced nonnative fishers, which has now been documented as interbreeding with native fishers of the NCSO (Pilgrim and Schwartz 2016, entire; Pilgrim and Schwartz 2017, entire).

Our 2014 Proposed Rule represented our response to the petition that was filed seeking the listing of the West Coast DPS of fisher, consisting of fishers in Washington, Oregon, and California. At that time, we recognized that the West Coast DPS encompassed the area where fishers historically occurred throughout western Washington, western Oregon, and California to the Sierra Nevada. We are now proposing a different DPS based on the apparent absence of any extant, historically native subpopulations in Washington or northern Oregon, and the marked separation of the fisher subpopulations within the newly identified DPS to the fishers that have been reintroduced from British Columbia and Alberta into the Olympic National Park and the southern and northern Washington Cascades in Washington State. Based on this demographic and geographic disparity between the northern and southern portions of the range, coupled with the fact that there is currently no tangible connection between nonnative fishers in the northern portion and the native and nonnative fishers occupying the southern portion, we now have determined that the appropriate DPS to consider in this evaluation was the segment consisting of the southern subpopulations, *i.e.,* NCSO, SSN, NSN, and SOC. Below, we summarize discreteness and significance for this DPS.

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

The West Coast DPS of fisher is markedly separate from other North American fisher populations of the east by enormous distances, geographical barriers, unsuitable habitat, and urban development. Fishers in this DPS are separated from the Rocky Mountains and the rest of the taxon in the central and eastern United States by natural physical barriers including the nonforested high desert areas of the Great Basin in Nevada and eastern Oregon. Other physical barriers that separate the West Coast population from Rocky Mountain and eastern U.S. fisher populations include major highways, urban and rural open-canopied areas, agricultural development, and other nonforested areas. In addition, all West Coast DPS subpopulations are markedly separate from the nearest other fisher populations to the north by approximately 270 miles (mi) (430 kilometers (km)), well beyond the various reported dispersal distances (as described in more detail in Service 2016, pp. 13–14). An additional component contributing to marked separation between the DPS subpopulations and fishers in Washington is the Columbia River and adjacent human developments (*e.g.,* roads and towns), which likely acts as a physical impediment to crossing by any fishers dispersing in either direction. Therefore, it is extremely unlikely that any transient individuals from the DPS subpopulations could disperse far enough to reach the Washington range of reintroduced fishers, and even if they attempted to do so, they would likely not be able to cross the Columbia River. In summary, the subpopulations comprising the West Coast DPS of fisher are all geographically isolated from all other subpopulations of the species. Therefore, the marked separation condition for discreteness is met by geographical barriers, urban development, and distances that are beyond the known dispersal distance of fishers.

Significance

If a population segment is considered discrete under one or more of the conditions described in the Service's DPS policy, its biological and ecological significance will be considered in light

of Congressional guidance that the authority to list DPSs be used ''sparingly'' (see Senate Report 151, 96th Congress, 1st Session). In making this determination, we consider available scientific evidence of the DPS's importance to the taxon to which it belongs. Since precise circumstances are likely to vary considerably from case to case, the DPS policy does not describe all the classes of information that might be used in determining the biological and ecological importance of a discrete population. However, the DPS policy describes four possible classes of information that provide evidence of a population segment's biological and ecological importance to the taxon to which it belongs. As specified in the DPS policy (61 FR 4722, February 7, 1996), this consideration of the population segment's significance may include, but is not limited to, the following:

(1) Persistence of the DPS in an ecological setting unusual or unique to the taxon;

(2) Evidence that loss of the DPS would result in a significant gap in the range of a taxon;

(3) Evidence that the DPS represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; or

(4) Evidence that the DPS differs markedly from other populations of the species in its genetic characteristics.

To be considered significant, a population segment needs to satisfy only one of these conditions, or other classes of information that might bear on the biological and ecological importance of a discrete population segment, as described in the DPS policy (61 FR 4722, February 7, 1996). For the fisher, we found that loss of the West Coast DPS would result in a significant gap in the range of the taxon. Losing the West Coast DPS would significantly impact representation of the species by shifting the southern boundary of the taxon approximately 900 mi (1,448 km) to the north. Therefore, the significance element of the DPS policy is met for the West Coast DPS of fisher.

Summary of DPS Analysis

Given that both the discreteness and significance elements of the DPS policy are met, we find that the West Coast DPS of fisher is a valid DPS, and therefore a listable entity under the Act. We now assess the DPS's conservation status in relation to the Act's standards for listing (*i.e.,* whether this DPS meets the definition of an endangered or threatened species under the Act).

Background

At the time of the 2014 Proposed Rule, a comprehensive draft Species Report (Service 2014, entire) was prepared that included new genetic and survey information. This report was subsequently updated in 2016 with additional information related to taxonomy, habitat, life-history characteristics (*e.g.,* reproduction), habitat description, habitat use (*e.g.,* dispersal and food habits), distribution and abundance, and potential threats across Washington, Oregon, and California (Service 2016, entire). Information related to the resources on which the species relies, conditions the species may experience currently or in the future, and threats (*i.e.,* an activity or process that may have some negative effect on fishers or their habitat) are outlined in these reports and summarized herein where applicable. These reports, coupled with new information available since 2016 and our reconsideration of the best available scientific and commercial data, including comments received in connection with the 2014 Proposed Rule and our January 31, 2019 (84 FR 644), **Federal Register** document, provide the scientific basis that informs our regulatory decision regarding the range of the DPS, and whether the DPS should be listed as an endangered or threatened species under the Act. New information available since 2016 and the results of our reconsideration of the best available scientific and commercial information are presented in this revised proposed rule.

I. Revised Proposed Listing Determination

Species Information and Distribution

The fisher is a medium-sized, light brown to dark blackish-brown mammal found only in North America, with the face, neck, and shoulders sometimes being slightly gray, and the chest and underside often having irregular white patches. The fisher is classified in the order Carnivora, family Mustelidae, which is a family that also includes weasels, mink, martens, and otters (Service 2016, p. 8). The occurrence of fishers at regional scales is consistently associated with low- to mid-elevation coniferous and mixed conifer and hardwood forests with characteristics of mid- and late-successional forests (*e.g.,* diverse successional stages, moderate to dense forest canopies, large-diameter trees, coarse downed wood, and singular features of large snags, tree cavities, or deformed trees). Throughout their range, fishers are obligate users of tree or snag cavities for denning, and they select resting sites with a high proportion of characteristics of late-successional forests. These characteristics are maintained and recruited in the forest through ecological processes such as fire, insect-related tree mortality, disease, and decay (*e.g.,* Service 2016, pp. 64, 123–124).

Fishers on the west coast of the continent have historically occurred in British Columbia, Washington, Oregon, and California. Fishers native to the west coast in the contiguous United States were historically well distributed in the habitats described above, from the State of Washington south through Oregon, and into northern California and the Sierra Nevada mountains. Subpopulations of these native fishers still occur in northern California/southwestern Oregon and the Sierra Nevada; however, populations of native fishers were extirpated from Washington (Lewis and Hayes 2004, p. 1) and northern Oregon (Aubry and Lewis 2003, pp. 81–82). Recent surveys in the northern Oregon Cascades yielded no fishers (Moriarty *et al.* 2016, entire), suggesting they remain absent in this area, whereas surveys in the southern Oregon Cascades suggest fisher range may be contracting to the south (Barry 2018, pp. 22–23) relative to where we estimated the fisher's range to be in the southern Oregon Cascades in both 2014 and 2016 (Service 2014 and 2016, entire). Fishers now occurring and reproducing in Washington were established using fishers translocated from outside this three-State region. Fishers from British Columbia were reintroduced to the Olympic Peninsula from 2008 to 2010 (Happe *et al.* 2017, p. viii), and to the Washington Cascade Range south of Mt. Rainier from 2015 to 2017 (Lewis *et al.* 2018, p. 5). Reproduction has been documented in both areas. Beginning in 2018, fishers from Alberta were released in the northern Washington Cascades in North Cascades National Park; translocations are expected to continue over the next 2 years in this area, completing planned reintroductions for western Washington (Hayes and Lewis 2006, p. 35).

Fishers were once well distributed throughout their historical range in the habitats described above. Now in Oregon and California, outside of the existing NCSO and SSN known subpopulations in Oregon and California (see figure 2, below), fishers are considered likely extirpated. Additionally, in California, recent survey efforts have not detected fishers south of the reintroduced NSN

subpopulation or north of the SSN subpopulation.

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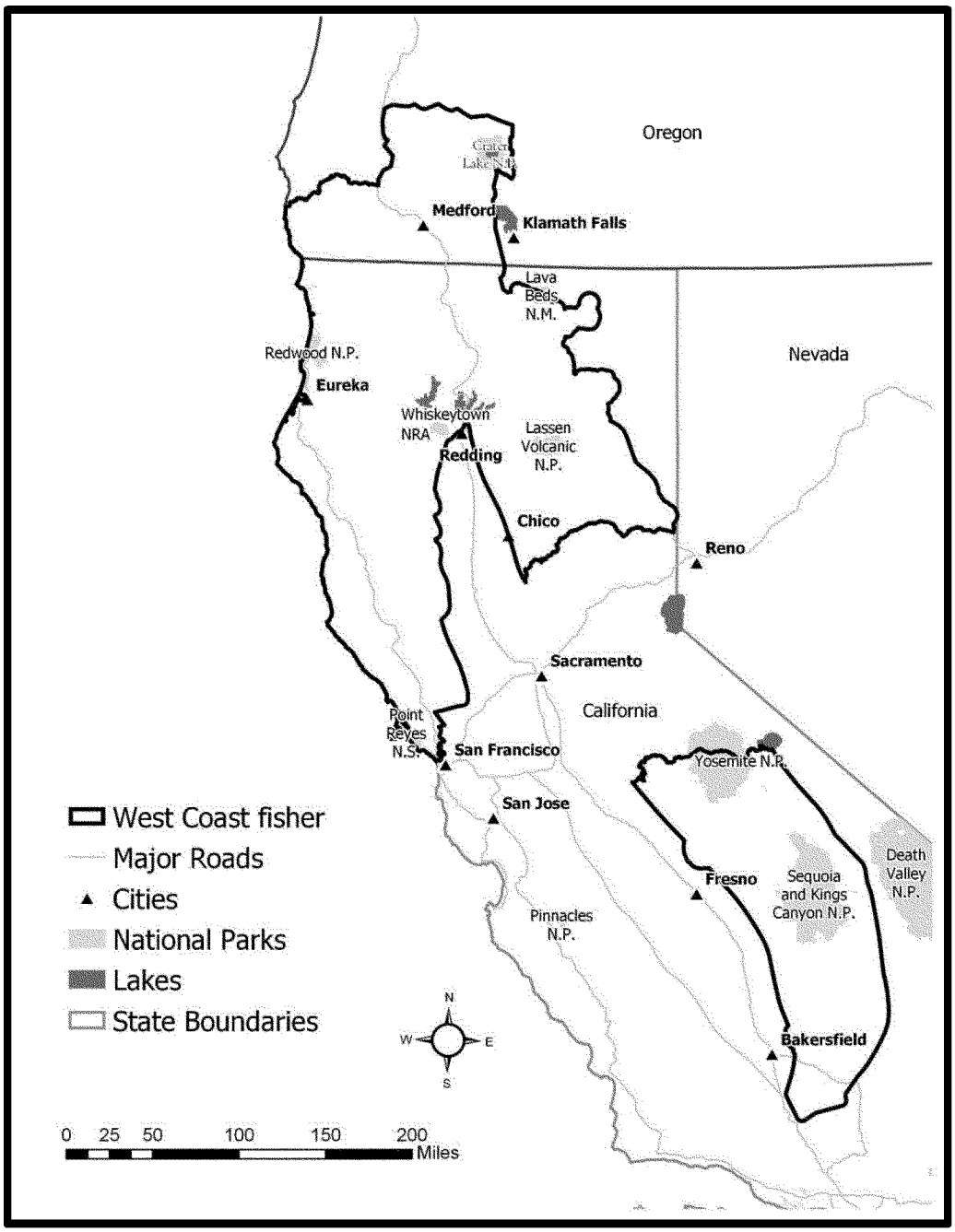

Figure 2. Current distribution of the West Coast DPS of fishers. (The northernmost boundary of the Southern Sierra Nevada (SSN) subpopulation, per current camera survey information, indicates fishers are south of the Tuolumne River in Yosemite National Park.)

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Additional information on the species' biology and distribution is described in the final Species Report (Service 2016, pp. 9–12, 25–53).

Summary of Biological Status and Threats

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an ''endangered species'' or a ''threatened species.'' The Act defines an endangered species as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as a species that is

''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether any species is an ''endangered species'' or a ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, and then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future. In our determination, we correlate the threats acting on the species to the factors in section 4(a)(1) of the Act.

Current Condition of the West Coast DPS of Fisher

Following are brief accounts of the NCSO (and by inclusion the SOC and NSN subpopulations) and SSN subpopulations. Primary threats are introduced in these summaries and described in more detail below in the ''*Risk Factors for the West Coast DPS of Fisher*'' section. Additional detail is also found in the ''Review of Stressors'' section of the final Species Report (Service 2016, pp. 53–162), although we provide updated/new information since 2016 in this document, when applicable. Regulatory and voluntary conservation efforts resulting from the plans and strategies being implemented within both subpopulations were previously described in detail in the 2016 final Species Report, and are updated in this document.

However, as explained in more detail below in the ''Existing Regulatory Mechanisms and Voluntary Conservation Measures'' section of this rule, we determined that we did not need to evaluate these voluntary conservation efforts under our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE; 68 FR 15100). While it is reasonably likely these conservation efforts will provide some benefit for fishers, we also note that these benefits will be realized at more of an individual fisher/local scale where implemented, and not necessarily at a scale and magnitude sufficient to ameliorate the primary significant threats imperiling the DPS. Therefore, while we acknowledge that the DPS may see conservation benefits from these efforts, we recognize that these benefits will not be sufficient to outweigh the DPS's primary threats, and as such, there is no reason to evaluate these conservation efforts under PECE for certainty of implementation and effectiveness.

NCSO—Northern California-Southwestern Oregon Subpopulation

Abundance information for the NCSO population is presented based on three different geographic portions of this subpopulation. First, the SOC portion west of Crater Lake is predominantly represented by nonnative, reintroduced individuals. However, recent analyses have documented that at least some of these nonnative SOC individuals and native NCSO individuals are overlapping in range, with confirmed interbreeding (Pilgrim and Schwartz 2016, entire; Pilgrim and Schwartz 2017, entire). Second, the NSN portion is represented by native, reintroduced fishers whose genetic stock is from fishers relocated from the Klamath-Siskiyou and Shasta-Trinity subregions (in the historically native NCSO subpopulation) to the northern Sierra Nevada. This geographic portion of the NCSO subpopulation occurs on land known as the SPI Stirling Management Unit in Butte, Plumas, and Tehama Counties, California (Powell *et al.* 2019, p. 2). Third, the remainder of the native fishers in the NCSO subpopulation occupy the California Coast Range mountains in southern Oregon and northern California, the Klamath-Siskiyou and Shasta-Trinity subregions in northern California, and the western portion of the southern Cascades in northern California.

Fishers in the SOC portion of the NCSO subpopulation stem from a translocation of 30 fishers from British Columbia and Minnesota to the southeastern Cascade Range and west of Crater Lake between 1977 and 1981, after an earlier reintroduction in 1961 failed (Aubry and Lewis 2003, p. 84; Lofroth *et al.* 2010, pp. 43–44). Based on survey and research efforts starting in 1995, genetic evidence shows these fishers continue to persist (Drew *et al.* 2003, p. 57; Aubry *et al.* 2004, pp. 211–215; Wisely *et al.* 2004, p. 646; Pilgrim and Schwartz 2014–2017, entire; Moriarity *et al.* 2017, entire; Barry 2018, pp. 6, 22–24). Prior to 2015, survey work in the Oregon Cascades north of the NCSO subpopulation was mainly limited to opportunistic or small-scale efforts. Fishers had not been detected, except for two single fishers: One detected just north of the SOC subpopulation in 2014 (Wolfer 2014, pers. comm.); and a single dispersing juvenile male detected in the same general area in the 1990s (Aubry and Raley 2006, p. 5), suggesting individuals may disperse north through the central Oregon Cascades. Over the winter of 2015–2016, systematic camera surveys occurred in the northern Oregon Cascades (specifically, the southern portion of the Mt. Hood National Forest and northern portion of the Willamette National Forest). No fishers were detected (Moriarty *et al.* 2016, entire), suggesting fishers may not reach this far north in the Oregon Cascades. Additionally, surveys over the past 3 years have not detected fishers north of the Rogue River in the central Oregon Cascades (Barry 2018, pp. 22–23) (see below).

Information is not available on population size for the SOC portion of

the NCSO subpopulation. In the northern portion of the SOC area, fishers were detected in the northern and eastern portions of Crater Lake National Park between 2013 and 2015 (Mohren 2016, pers. comm.). However, systematic surveys were conducted in 2016 and 2017 north and east of Crater Lake National Park and south to the Klamath Falls Resource Area (KFRA; south of the reintroduction area) of the Bureau of Land Management (BLM) Lakeview District (Barry 2018, entire). Few fishers were detected in an area east of Crater Lake National Park where fishers were captured and radio-collared in the early 1990s by Aubry and Raley (2002, entire). Fishers were found on the KFRA, south of where they were previously estimated to occur, and in areas where they were not previously detected (Hayner 2016, pers. comm.). These results suggest that fisher in the SOC area ''appears to have contracted, shifted south, or the previous population extent was incorrectly estimated'' (Barry 2018, pp. 22–24).

Fishers in the NSN portion of the NCSO subpopulation stem from a 2009 to 2011 translocation of 40 fishers (24 females, 16 males) from Humboldt, Siskiyou, and Trinity Counties, California, to the Sierra Pacific Industries (SPI) Stirling Management Unit in Butte, Plumas, and Tehama Counties, California. Ongoing monitoring has confirmed that fishers born onsite have established home ranges and have successfully reproduced. Trapping efforts in the fall of 2017 as part of ongoing monitoring of the reintroduced subpopulation indicate a minimum of 61 fishers (38 females, 23 males), which is 21 more than were originally introduced (Powell *et al.* 2019, p. 2).

Older estimates for the NCSO subpopulation (excluding the SOC and NSN reintroduced subpopulations) using various methodologies range from a low of 258–2,850 individuals, based on genetic data (Tucker *et al.* 2012, pp. 7, 9–10), to a high of 4,018 individuals based on extrapolation of data from two small study areas within the NCSO subpopulation to the entire NCSO subpopulation (Self *et al.* 2008, pp. 3–5). In 2017, a new estimate was developed for the NCSO subpopulation that includes southern Oregon and coastal California but excludes SOC and NSN (Furnas *et al.* 2017, pp. 2–3). Furnas *et al.* (2017) based their estimate of population size on the assumption of a density of 6.6 fishers per 39 mi^2 (100 km^2) across the area they defined for the NCSO subpopulation (rationale described in detail in Furnas *et al.* 2017, pp. 12–15). Using this estimate of fisher density, the NCSO subpopulation is estimated to be 3,196 individuals (2,507–4,184; 95 percent Confidence Interval (C.I.)) Furnas *et al.* 2017, p. 12). With the exception of the reintroduced NSN subpopulation area estimate, which is based on trapping results, Self *et al.* (2008) and Furnas *et al.* (2017) base their estimates for the size of the NCSO subpopulation on fisher habitat available prior to 2014.

Trend information for fishers within the NCSO subpopulation is based on the following two long-term study areas. As indicated above, we now consider the NCSO subpopulation to include the areas previously represented as the SOC and NSN reintroduced fisher subpopulations.

(1) The Hoopa study area is approximately 145 mi^2 (370 km^2) on the Hoopa Valley Indian Reservation north of California State Highway 299 and near Highway 96, which is largely surrounded by the Six Rivers National Forest and other private lands. The study area represents the more mesic portion (containing a moderate amount of moisture) of the NCSO subpopulation area. Fisher studies have been ongoing since 1996. The population trend in the period 2005–2012 indicates declining populations with lambda (population growth rate) of 0.992 (C.I. 0.883–1.100) with a higher lambda rate for females 1.038 (0.881–1.196) than males 0.912 (0.777–1.047) (Higley *et al.* 2014, p. 102, Higley 2015, pers. comm.).

(2) The Eastern Klamath Study Area (EKSA) is approximately 200 mi^2 (510 km^2) in size straddling the California/Oregon border. This study area represents the more xeric portion (containing little moisture; very dry) of the NCSO subpopulation area. Monitoring has occurred since 2006 (Green *et al.* 2018a, entire). The estimate for population growth rate in the period 2006–2013 is increasing (lambda = 1.06; C.I. 0.97–1.15) (Green *et al.* 2018a, p. 818). However, two years of data collected from 2014–2016 following two large fires in the study area indicate an estimated 40 percent reduction in the number of fishers post-fire (Green *et al.* 2019, p. 8).

The major habitat-based threats experienced by the NCSO subpopulation are loss of complex canopy forests and den/rest sites, and fragmentation of habitat, from high-severity wildfire, wildfire suppression activities (*e.g.,* backburning, fuel breaks, and snag removal), and vegetation management (*e.g.,* fuels reduction treatments, salvage, hazard tree removal). Major non-habitat related threats are exposure to toxicants and, in some areas, predation. Within the Oregon portion of the NCSO subpopulation, two dead fishers were tested for the presence of rodenticides; exposure was found in both (Clayton 2016, pers. comm.).

In addition to these threats acting on the DPS, there are also several conservation efforts designed to benefit fishers. Such efforts include those being implemented within the portion of the range covered by the Northwest Forest Plan (NWFP), including measures associated with Endangered Species Act section 7 consultations in overlapping northern spotted owl (*Strix occidentalis caurina*) designated critical habitat. Two principal conservation efforts exist in Oregon. First, there is an intergovernmental Memorandum of Understanding (MOU) for fisher conservation (DOI *et al.* 2016, entire), which provides a framework for cooperation and achieving mutual fisher conservation goals among Federal and State agencies (Service 2016, pp. 120–121). Second, a template Candidate Conservation Agreement With Assurances (CCAA) for fishers in western Oregon (81 FR 15737, March 24, 2016) requires conservation measures to protect occupied den sites, as well as additional contributions toward a fisher conservation program or work described in the template CCAA. A permit was recently issued under this template CCAA (84 FR 4851, February 19, 2019) and we are in the process of considering five additional permit applications (84 FR 31903, July 3, 2019).

For the portion of the NCSO subpopulation in California, reintroduction efforts have resulted in establishment of a fisher subpopulation in the SPI Stirling Management Area within the NSN (northern Sierra Nevada) with the potential to connect with fishers in the remainder of the NCSO subpopulation to the north. In 2016, an approximately 1.6 million-acre (ac) (647 thousand-hectare (ha)) CCAA for fishers on Sierra Pacific Industries (SPI) ownership in the Klamath, Cascade, and Sierra Nevada mountains was completed (SPI and Service 2016, entire), which incorporated the area and earlier monitoring agreements for the SPI Stirling Management Area CCAA (SPI and Service 2008, entire). Implementation and monitoring has been under way since October 2016. The objectives of this CCAA are to secure general forested habitat conditions for fishers for the 10-year time period and the retention of important fisher habitat components (large trees, hardwoods, and snags) suitable for denning and resting into the future. Additionally, the Green Diamond Forest HCP (GDRC 2018,

entire) is anticipated to provide a conservation benefit for fishers and their habitat (portions of forests on the west slope of the coastal and Klamath Mountains) in Del Norte and Humboldt Counties, California. Conservation benefits anticipated include (but are not limited to): Identifying and retaining fisher denning and resting trees, including maintaining a 0.25-mi (402-m) radius no-harvest buffer around active fisher dens; fisher-proofing water tanks and pipes; implementing measures that detect, discourage, and remove unauthorized marijuana cultivation and associated pesticide use; and cooperating with any Federal or State-approved fisher capture and relocation/reintroduction recovery programs (Service 2019a, p. 2).

SSN—Southern Sierra Nevada Subpopulation

The SSN native subpopulation of fisher is small and is geographically separated from the remainder of the DPS. The SSN subpopulation is found in Mariposa, Madera, Fresno, Tulare, and Kern Counties in California. Historically, the subpopulation likely extended farther north, but may have contracted due to unregulated trapping, predator-control efforts, habitat loss and fragmentation, or climatic changes. Today the approximate northern boundary is the Tuolumne River in Yosemite National Park (Mariposa County) and the southern limit is the forested lands abutting the Kern River Canyon, while the eastern limit is the high-elevation, granite-dominated mountains, and the western limit is the low-elevation extent of mixed-conifer forest. Multiple lines of genetic evidence suggest that the isolation of the SSN subpopulation from other subpopulations of native fishers within the West Coast States is longstanding and predates European settlement (Knaus *et al.* 2011, entire; Tucker *et al.* 2012, entire; Tucker 2015, pers. comm., pp. 1–2).

Estimates for the SSN subpopulation range from a low of 100 to a high of 500 individuals (Lamberson *et al.* 2000, entire). A recent estimate of 256 female fishers was based on habitat availability at the time (Spencer *et al.* 2016, p. 44). Other population estimates are: (1) 125–250 adult fishers based on fisher carrying capacity in currently occupied areas (Spencer *et al.* 2011, p. 788); and (2) fewer than 300 adult fishers or 276–359 fishers that include juveniles and subadults based on extrapolation from portions of the subpopulation where fishers have been intensely studied to the range of the entire population (Spencer *et al.* 2011, pp. 801–802). These population estimates are based on habitat conditions for fishers in the Sierra Nevada that predate the ongoing, large-scale tree mortality event in this geographic area that began in approximately 2010. The Sierra tree mortality event is affecting many of the key components of fisher habitat such as complex forest canopy structure and connected closed-canopy forest conditions. Research is currently ongoing to determine to what extent these large-scale habitat changes will have on the SSN subpopulation.

An 8-year monitoring study that sampled an average of 139.5 units (range 90–189) per year during the period 2002–2009 throughout the SSN subpopulation showed no declining trend in occupancy (Zielinski *et al.* 2013, pp. 3, 10–14; Tucker 2013, pp. 82, 86–91). However, this study had been designed to be run for 10 years while sampling 288 units per year and was intended to have an 80 percent probability of detecting a 20 percent decline over 10 years (Zielinski *et al.* 2013, p. 11; Tucker 2013, p. 82). As a result of the smaller sample size and shorter duration, the results of this study must be considered inconclusive.

Another study of radio-collared fishers monitored from 2007 through 2014 in the Sugar Pine area (49 mi^2 (128 km^2)) of the SSN subpopulation showed the survival rate (calculated using demographic parameters) of adult males, but not females, is lower than other subpopulations in the West Coast States. Specifically, Sweitzer *et al.* (2015a pp. 781–783; 2015b, p. 10) stated that their analysis ''suggested slightly negative growth ($\lambda = 0.966$) for the period of the research (Table 2). The upper range for λ (1.155) was well above 1.0, however, suggesting stability or growth in some years. The estimated range for λ (Table 2) was consistent with the estimated population densities, which did not indicate a persistent decline during 4 years from 2008–2009 to 2011–2012.'' Additionally, in a new report (Purcell *et al.* 2018) based on fishers studied in the previously mentioned Sugar Pine area, results for radio-collared fishers monitored from 2007 through 2017 (totaling 139 collared fishers) in the Sugar Pine area are updated, indicating an estimated lambda of 0.99 (C.I. 0.826 to 1.104) based on female fisher survival rates (Purcell *et al.* 2018, pp. 5–6, 17). Specifically, Purcell *et al.* (2018) stated: ''Given the length and intensity of the monitoring associated with calculating these estimates, and the lack of significant difference from zero, the SNAMP/Sugar Pine fisher population appears stable over the study period.'' Thus, population growth in the Sugar Pine portion of the SSN subpopulation is estimated to trend less than 1.0; however, the authors suggest that the population in this area is not in persistent decline but is offset by periods of stability or growth (Sweitzer *et al.* 2015a, p. 784; Purcell *et al.* 2018, p. 6). Finally, the authors express concern for the subpopulation and the need for continued monitoring (Sweitzer *et al.* 2015b, p. 10; Purcell *et al.* 2018, p. 6).

Available population estimates and trend information for the SSN subpopulation does not take into consideration extensive tree mortality that has impacted the habitat since 2015 to present. Research is currently being conducted to determine any potential effects that tree mortality may be having on the SSN fisher subpopulation, but results are not yet available (Green *et al.* 2019, entire).

The major threats for the SSN subpopulation are loss and fragmentation of habitat resulting from high-severity wildfire and wildfire suppression activities, vegetation management, and forest insects and tree diseases, as well as direct impacts that include high mortality rates from predation, exposure to toxicants, and potential effects associated with small population size. Tree mortality may be an additional threat on this subpopulation given the species' needs, but more information is necessary to determine population-level impacts. Potential conservation measures include the development of the Southern Sierra Nevada Fisher Conservation Strategy (Spencer *et al.* 2016, entire).

Risk Factors for the West Coast DPS of Fisher

Potential threats currently acting upon the West Coast DPS of fisher or likely to affect the species in the future are evaluated and addressed in the final Species Report (Service 2016, pp. 53–162). We consider these threats in light of the statutory factors identified in the Act, including: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. The reader is directed to the Species Report (Service 2016, entire) for a more detailed discussion of the threats summarized in this document (*http://www.fws.gov/cno/fisher/*). However, please note that our most recent consideration of new data since 2016

coupled with our reevaluation of the entirety of the best available scientific and commercial information is represented and summarized in this revised proposed rule.

Our analysis represents an evaluation of the biological status of the species, based upon our assessment of the cumulative impact of all effects anticipated from the identified threats, and how that cumulative impact may affect the species' continued existence currently and in the future. We used the best available scientific and commercial data, and the expert opinions of the analysis team members. Based on the analysis and discussion contained herein, in this document we evaluated potential habitat-based threats including high-severity wildfire, wildfire suppression activities, and post-fire management actions; climate change; forest insects and tree diseases; vegetation management; and human development (Factor A). We also evaluated potential threats related to direct mortality of fishers including trapping and incidental capture (Factor B), research activities (Factor B), disease or predation (Factor C), collision with vehicles (Factor E), exposure to toxicants (Factor E), and potential effects associated with small population size (Factor E). Finally, we also evaluated the inadequacy of existing regulatory mechanisms (Factor D).

The timing (immediacy) of each threat was assessed independently based upon the nature of the threat and time period that we can be reasonably certain the threat is acting on fisher populations or their habitat. In general, we considered that the trajectories of the threats acting on fisher subpopulations across the DPS's range could be reasonably anticipated over the next 35–40 years. We estimated this timeframe as a result of our evaluation of an array of time periods used in modeling. For example, climate models for areas with fisher habitat, habitat conservation plans (HCPs), and timber harvest models generally predict 50 to 100 years into the future, and forest planning documents often predict over shorter timeframes (10 to 20 years). We considered 40 years at the time of the 2014 Proposed Rule, and given the 5-year time period since, we are modifying the foreseeable future time period to a range of 35–40 years. This is a timeframe that we can reasonably determine that both the future threats and the species' responses to those threats are likely. This time period extends only so far as the predictions into the future are reliable, including a balance of the timeframes of various models with the types of threats anticipated during the 35- to 40-year time period.

As we conducted our threats analysis, we determined that the most significant drivers of the species' future status were: Wildfire and wildfire suppression, damage to forest health from disease and insect infestations, and the potential for climate change to exacerbate both of these threats, as well as the threats related to vegetation management and exposure to toxicants. While our assessment of the species' status was based on the cumulative impact of all identified threats, as explained above, we are only presenting our analyses on these specific primary threat drivers for the purposes of this revised proposed rule. Full detailed analyses for all the other individual threats, we refer the reader to the Species Report (Service 2016, entire).

Wildfire and Wildfire Suppression

Our evaluation includes both the effects of wildfire on fisher habitat as well as those activities associated with wildfire suppression that may result in changes to fisher habitat (for example, backburning, fuel breaks, and snag removal). Naturally occurring fire regimes vary widely within the range of fishers on the West Coast (Service 2014, p. 58). Potential for high-severity wildfire to affect fisher habitat and fisher populations is concentrated in northern California-southwestern Oregon and the Sierra Nevada areas as compared to the remainder of the fisher's historical range in the West Coast States (Service 2014, pp. 62–63). In general, high-severity wildfire has the potential to remove suitable fisher habitat by removing forest canopy, large trees, and structurally diverse understories, which can take from decades to a century or more to regrow, depending on the habitat feature (Service 2014, pp. 59–60). Mixed-severity wildfire includes patches of low-severity wildfire and patches of high-severity wildfire (Jain *et al.* 2012, p. 47).

At the landscape scale, mixed-severity wildfire effects to fisher habitat may only affect an area's ability to support fishers for a short period of time due to the patchy nature of burned and unburned areas. Additionally, a beneficial aspect of mixed-severity wildfires (as opposed to just high-severity wildfires) is that these wildfires may contribute to the regeneration of the hardwood component of mixed-conifer forest used by fisher (Cocking *et al.* 2012, 2014, entire). Low-severity wildfire may reduce some elements of fisher habitat temporarily, but also helps to contribute to the ecological processes necessary to create tree cavities essential for denning and resting fishers (Weir *et al.* 2012, pp. 237–238). Low-severity wildfire is unlikely to remove habitat, and post-wildfire areas are likely to still be used by fishers (Naney *et al.* 2012, p. 6; Truex and Zielinski 2013, p. 90).

Within shrub, grassland, and forested lands across the western United States (including the Sierra Nevada, southern Cascades, and Coast ranges), the wildfire season length increased over each of the last 4 decades, from 65 days in the 1970s to 140 days in the 2000s (Westerling 2016, pp. 3, 8, and 10). The lengthening of the wildfire season is largely due to declining mountain snowpack and earlier spring snowmelt, which contributes to a decrease in vegetation moisture that enables more frequent large wildfires and an increase in the total area burned (Westerling 2016, pp. 8–9). In the SSN subpopulation area, changes in climate are associated with large increases in the area burned by wildfire (Dettinger *et al.* 2018, p. 72), and increases in the frequency of large wildfires greater than 24,700 (ac) (9,996 (ha) (Westerling 2016, pp. 6–7). Recent publications on wildfire occurrence and severity within the NCSO and SSN fisher subpopulations have not changed our conclusions about this threat from the 2014 Proposed Rule (79 FR 60419, October 7, 2014; p. 60429).

Recent information on fishers' behavioral and localized population response to wildfires is available for both the NCSO and SSN fisher subpopulations, as shown below.

Northern California-Southern Oregon (NCSO)

In a monitored fisher population in the Klamath-Siskiyou area, declines in the overall fisher population occurred after wildfires in the study area in 2014 and 2015 (Green *et al.* 2019, entire). This population of fishers was monitored for 8 years pre-wildfire and the population was considered relatively stable. The decline in the number of fishers due to the wildfires is 40 percent, a decrease that became apparent the first full year following the fires and has persisted for at least 2 more years (Green *et al.* 2019, p. 8). Fisher densities declined across all wildfire severity types but declined the most in areas with more than a 50 percent loss of tree basal area (Green *et al.* 2019, p. 6).

Within the Biscuit Fire area in southwest Oregon, which burned in 2002, surveys conducted in 2016 and 2017 did not detect fishers within the burn perimeter (Barry 2018, pp. 22–23), suggesting fishers may not yet occupy

the area. The Biscuit Fire appears to have been unusually large and severe for the Klamath-Siskiyou region based on estimates of crown damage (Odion *et al.* 2004, p. 932) and area affected by surface fire (Thompson and Spies 2009, pp. 1,692–1,693).

To update our 2014 analysis of wildfire effects within the NCSO subpopulation, we conducted an analysis similar to the one completed for the 2014 draft Species Report (Service 2014, pp. 62–64; Service 2019b, unpublished data). Using the fisher habitat map developed for the 2014 Proposed Rule and U.S. Forest Service data for burn severity for 2008–2018 (USDA Forest Service 2019), we estimated the effects of high-severity wildfire to fisher habitat over the past 10 years. We assumed wildfires that burned at high severity (greater than 50 percent basal area loss) changed fisher habitat to a condition that would not be selected by fishers; this assumption was based on the recent results as reported in Green *et al.* (2019a, p. 6). Overall, high and intermediate quality fisher habitats in the NCSO subpopulation have decreased by 526,424 ac (213,036 ha) from 7,050,035 ac (2,853,047 ha) to 6,523,610 ac (2,640,011 ha), or approximately 7 percent, as a result of wildfires since 2008. The total area assessed was approximately 10,459,612 ac (4,232,855 ha).

For comparison purposes, in our 2014 draft Species Report, we estimated 4 to 8 percent of fisher habitat would be lost over the next 40 years due to high-severity wildfire (Service 2014, p. 64). Our 2014 area of analysis for the NCSO subpopulation was based on fire data from 1984 to 2011 and assessed approximately 24,080,693 ac (9,745,111 ha). The results of our new analysis is based on fire data from the period 2008 to 2018, a 10-year period of actual data, which indicates our earlier estimates of changes to fisher habitat from wildfire over the next 40 years may have been an underestimate.

Southern Sierra Nevada (SSN)

In an analysis of a portion of the SSN fisher subpopulation, fisher occupancy of sample units trends lower among those units burned by either prescribed burning or wildfire (Sweitzer *et al.* 2016, pp. 218–220); nonetheless, the overall results of this analysis did not include a consistent negative effect of fire on fisher habitat use. Results of modeling the variables of forest structure important to fishers for denning habitat on the Sierra National Forest and Yosemite National Park suggest that suitable denning habitat is maintained in burned forests, though primarily those with low-severity wildfire conditions (Bomdahl 2018, entire). Fisher behavior in post-wildfire landscapes in the French (2014) and Aspen Fires (2013) indicated an avoidance of areas affected by high- and moderate-severity wildfires, and a higher probability of being found in ravines or canyon bottoms in combination with unburned or lightly burned patches (Thompson *et al.* 2019, pp. 13–14). This new information differs from that reported in our final Species Report (Service 2016, p. 66) and may be due to different scales of analysis, the values chosen to identify wildfire severity classes, or the 2–4 year vs. 10-year post-wildfire sampling period (Hanson *et al.* 2013, entire; Thompson *et al.* 2019, pp. 15–18). Without demographic data on age class, survival, or reproduction, it is difficult to say with certainty whether fisher use of post-wildfire landscapes is for dispersal or whether such areas act as population sinks, as has been identified for the proposed coastal DPS of Pacific marten (*Martes caurina*) (Thompson *et al.* 2019, pp. 17–18).

For comparison purposes based on data compiled for a new analysis of effects of wildfire on fisher habitat in the southern Sierra Nevada, the Conservation Biology Institute (CBI) analyzed high severity fire data from 2003 to 2017 (CBI 2019, pp. 26–28). This new analysis shows a loss of fisher denning, resting, and foraging habitat of approximately 25 percent over the time period 2003–2017, with most of that loss occurring between 2013 and 2017 (approximately 22 percent) (CBI 2019, p. 28). In addition, the wildfires occurring on the Sierra and Sequoia National Forests bisected and disrupted connectivity between—or reduced the overall size of—key core areas as identified in the SSN fisher conservation strategy (Spencer *et al.* 2016, p. 10; CBI 2019, pp. 26–28).

Wildfire and Wildfire Suppression Summary

When considering the best available scientific and commercial information regarding wildfire and wildfire suppression activities (including new information since the time of the 2014 Proposed Rule and our reevaluation of peer reviewer and other comments received), we maintain that wildfire is a natural ecological process. As stated above, wildfire may be increasing in terms of frequency, severity, and magnitude in California and southern Oregon. We acknowledge there is debate concerning whether wildfire severity is increasing (Mallek *et al.* 2013, pp. 11–17; Stephens *et al.* 2015, pp. 12–16; Hanson and Odion 2016, pp. 12–17; Odion *et al.* 2016, entire). Our best professional judgment leads us to conclude that if the severity and extent of wildfires are such that substantial areas of canopy and large trees are lost, multiple decades of forest growth and structural development would be necessary for those burned areas to support fisher reproduction. Alternatively, if wildfire severity is low or mixed, important habitat elements to fisher (*e.g.,* den trees) can be both created and removed within a home range such that the burned habitat may continue to support both fisher foraging and reproduction. Therefore, based on the research and data currently available (as described above and in Service 2014, p. 64; Sequoia Forest Keeper 2019, pers. comm.; Spencer *et al.* 2016, p. 10), we believe that, in areas where wildfires remove 50 percent or more of the basal area of trees in the habitats fisher select (high and intermediate quality), fisher occupancy and reproduction is negatively affected. In areas where less than 50 percent of the basal area is lost, the degree to which wildfire (and wildfire suppression activities) affects fisher populations depends on the forest type, landscape location, size, and intensity of the wildfire.

Climate Change

At the time of the 2014 Proposed Rule, we stated and reaffirm here that, overall, fisher habitat is likely to be affected by changing climate conditions, but the severity will vary, potentially greatly, among different regions, with effects to fishers ranging from negative, neutral, or potentially beneficial. Climate change is likely to alter the structure and tree species composition of fisher habitat, and also result in changes to habitat of prey communities and ultimately prey availability. Studies of climate change present a range of effects including some that indicate conditions could remain suitable for fisher, and others that indicate a reduction in habitat quality or suitability could lead to increased chronic stress of fishers. Climate throughout the West Coast States is projected to become warmer over the next century, and in particular, summers will be hotter and drier, with heat waves that are more frequent (Hayhoe *et al.* 2004, p. 12,423; Tebaldi *et al.* 2006, pp. 191–200; Mote and Salathé 2010, p. 41; Salathé *et al.* 2010, p. 69; Cayan *et al.* 2012, pp. 4, 10; Mote *et al.* 2013, p. 34; Pierce *et al.* 2013, pp. 844, 848).

- In Oregon, Dalton *et al.* (2017, pp. 4, 8) evaluated greenhouse gas emissions via global climate models

with future emission pathways called ''representative concentration pathways'' (RCPs). They considered multiple greenhouse gas emission scenarios, including low (RCP 4.5) and business-as-usual (RCP 8.5). Their analysis indicates that extreme heat events are expected to increase in frequency, duration, and intensity by the 2050s due to warming temperatures (RCP 4.5 = mean annual temperature increase predicted on average 3.6 degrees Fahrenheit (°F); RCP 8.5 = mean annual temperature increase predicted on average 5.0 °F). Summers are expected to warm more than the annual average and likely to become drier. Annual precipitation is projected to increase slightly, although with a high degree of uncertainty. Extreme heat and precipitation events are expected to increase in frequency, duration, and intensity.

• In California, information from Pierce *et al.* (2013) and Safford *et al.* (2012) used multiple general circulation models and downscaling with regional climate models to develop probabilistic projections of temperature and precipitation changes over California by the 2060s. Predictions indicate an annual mean temperature increase of 4.3 °F (2.4 degrees Celsius (°C)) by 2060 (Pierce *et al.* 2013, p. 844), which falls in line with already increased temperatures of around 1 to 2.5 °F (0.5 to 1.4 °C) over the past 75 to 100 years specifically in the Sierra Nevada (Safford *et al.* 2012, p. 25). In the Klamath Mountains portion of the NCSO subpopulation area, precipitation is likely to fall increasingly as rain rather than snow, becoming mainly rain-dominated by mid-century (Dalton *et al.* 2017, p. 17).

Higher temperatures during spring and summer, coupled with early snow melt, will reduce moisture of both live fuels and dead surface fuels by increasing evaporative demands during the dry season (Kelly and Syphard 2016, pp. 2–3). Additionally, annual precipitation changes have been and are likely to continue to be inconsistent across California (Polade *et al.* 2017, p. 1), as well as the remainder of the West Coast States.

Studies specific to predicting the effects of climate change on suitable fisher habitat have produced a wide range of results. Ecotype conversion to woodland, shrubland, or grassland would result in the loss of suitable fisher habitat. This type of shift is predicted, for example, in the southern Sierra Nevada (Gonzalez *et al.* 2010, fig. 3; Lawler *et al.* 2012, p. 388). On the other hand, shifts from conifer forest to hardwood-dominated mixed forest in the southern Sierra Nevada or Klamath region could either increase or decrease available habitat to fishers (Lawler *et al.* 2012, pp. 384–386; Loarie *et al.* 2008, p. 4 and fig. 4). Given the contribution of hardwood trees to fisher habitat in drier parts of the NCSO and SSN subpopulations, a shift to increasing hardwoods in the more coastal or higher elevation forest types could improve habitat. However, trees are long-lived and mature forests can persist under suboptimal conditions, preventing better-suited vegetation from becoming established until disturbance removes the original forest (Sheehan *et al.* 2015, p. 27). Consequently, the increase in the hardwood component of fisher habitat in predominantly conifer areas may not occur until after fires have removed enough of the existing stand to allow hardwood establishment, potentially decreasing suitable habitat in the interim.

Other studies suggest that climate change will adversely impact forest habitat by intensifying large-scale, high-severity wildfire, drought, and tree mortality (Kadir *et al.* 2013, pp. 132, 137; Westerling 2016, pp. 1–2; Stephens *et al.* 2018, p. 77). A wide range of assumptions and caveats typically accompanies these types of predictions.

Variables predicting fisher resting habitat as described by Zielinski and Gray 2018 (p. 903) include stand characteristics such as canopy closure, basal area of conifer and hardwood trees, and diameter and age of dominant conifers. To date climate change has not significantly affected resting habitat for fishers, which, according to Zielinski and Gray (2018, pp. 899, 903), has remained stable over the past 20 years across the California-portion of the DPS's range, although habitat suitability tended to be lower on private lands than public lands. However, when considering resting habitat trends over these 20 years to help us project potential future resting habitat conditions in light of climate change projections, survey data in the Eldorado and Sierra National Forests (within a portion of the SSN subpopulation area) indicate the beginning of a negative trend in resting habitat suitability (Zielinski and Gray 2018, p. 903), whereas resting habitat examined within the NCSO subpopulation area varied greatly (*i.e.,* suitable resting habitat decreased in the Shasta-Trinity National Forest, increased in the Six Rivers National Forest, and remained unchanged over time for both the Klamath and Mendocino National Forests).

In addition to the potential climate change effects to fisher habitat discussed above, some researchers have suggested climate change may cause direct effects to fishers, including increased mortality, decreased reproductive rates, alterations in behavioral patterns, and range shifts. Fishers may be especially sensitive, physiologically, to warming summer temperatures (Zielinski *et al.* 2004, p. 488; Slauson *et al.* 2009, p. 27; Facka 2013, pers. comm.; Powell 2013, pers. comm.). As a result, researchers (*e.g.,* Burns *et al.* 2003, Zielinski *et al.* 2004, Lawler *et al.* 2012, Olson *et al.* 2014) theorize that fishers likely will either alter their use of microhabitats or shift their range northward and upslope, in order to avoid thermal stress associated with increased summer temperatures.

Although we indicated in the 2014 Proposed Rule that climate change is not viewed as a direct threat to fishers or their habitat, the best available information indicates there is a link between changing climate conditions (temperature and precipitation changes, more frequent and prolonged droughts) and the resulting changes to overall habitat suitability and availability for fishers throughout their range, as well as potential to increase fisher stress levels when habitat changes occur. These changes more specifically affect the amount and distribution of habitat necessary for female fishers to be able to have places to den and raise their young. For example:

• *Climate change, wildfire, and air quality:* Ongoing climate change in California is likely to result in significant or amplified wildfire activity and air quality challenges, with area burned and severity likely to increase (Hurteau *et al.* 2019, pp. 1, 3; Moritz *et al.* 2018, p. 36). This in turn can result in reduced denning habitat availability for fishers, such as in the Coast Range and Klamath Mountains portion of the NCSO subpopulation area, which is projected to experience wildfire return intervals decreased by half and thus result in a near tripling of the annual area burned in this century compared to last (Sheehan *et al.* 2015, pp. 20–22; Dalton *et al.* 2017, p. 46).

• *Drought, tree mortality, and wildfire:* With increased drought conditions, tree mortality and large-scale high-severity wildfire are likely to increase in frequency and size, especially if fuel loads in forests are not decreased (Young *et al.* 2017, p. 78; Westerling and Bryant 2008, pp. S244–S248; Abatzoglou and Williams 2016, pp. 11,770, 11,773). The loss of adequate forest canopy cover to provide habitat suitable for denning female fishers is occurring due to tree mortality

as a result of drought and wildfire (CBI 2019, p. 9).

With regard specifically to droughts: Although we can expect that future droughts may be more intense, it is unknown whether or not droughts in the future will be worse than our worst droughts in the past (Keeley and Syphard 2016, p. 6). Regardless, it appears that climate change is exacerbating the effects of drought, given that changing climate conditions are estimated to have contributed 5 to 18 percent to the severity of one of the worst recent droughts in 20th-century California history (Keeley and Syphard 2016, p. 6).

• *Climate change, wildfire, disease, tree mortality:* The observed increases in wildfire activity in Oregon are partially due to climate change; increasing wildfire activity is expected under future warming, which in turn can exacerbate tree mortality from agents such as mountain pine beetles (Dalton *et al.* 2017, p. 46). Tree mortality (whether from changing climate conditions or any other factor), in turn, is likely to result in fishers experiencing reduced fitness (a positive relationship between higher amounts of tree mortality and higher cortisol levels in fishers), as documented in one portion of the SSN subpopulation (Kordosky 2019, pp. 14, 36) and an overall reduction in forest stand conditions known to be suitable denning habitat (CBI 2019, entire; Green *et al.* 2019, pp. 3–4).

Overall, at this time, the best available scientific and commercial information suggest that changing climate conditions (particularly increasing air temperatures coupled with prolonged and more frequent drought conditions) are exacerbating other threats to the fishers and their habitat within the West Coast DPS, including high-severity wildfires, the spread of forest insects, and tree diseases. Please see additional discussion about potential impacts to fishers or their habitat associated with wildfire (''Wildfire and Wildfire Suppression,'' above) and tree mortality (''Forest Insects and Tree Diseases,'' below) under those risk factor sections of this document.

Forest Insects and Tree Diseases

Since 2010, severe drought events have led to more than 147 million dead trees in California, with a high concentration in the southern Sierras due to increased susceptibility to forest insects and tree disease (CAL FIRE and USFS 2019, no page number). Over half of the potential fisher habitat in the SSN subpopulation has been significantly impacted by canopy loss due to tree mortality (CBI 2019, pp. 3–9, 29). Additionally, sudden oak death (*Phytophthora ramorum*) has caused some tree mortality in southwestern Oregon and northwestern California (COMTF 2019, p. 1; Oregon Department of Forestry (ODF) 2016, pp. 1–2). There is limited information on the direct impacts to fisher of tree mortality due to forest insects and tree disease. The usual pattern of localized outbreaks and low density of tree-consuming insects and tree diseases are beneficial, providing structures conducive to rest and den site use by fishers or their prey. However, large, area-wide epidemics of forest disease and insect outbreaks may displace fishers if canopy cover is lost and salvage and thinning prescriptions in response to outbreaks degrade the habitat (Naney *et al.* 2012, p. 36).

Preliminary information in the SSN subpopulation indicates a change in fisher habitat use whereby fishers avoid tree mortality areas (Green *et al.* 2019, entire). In addition, increased tree mortality on the landscape has resulted in reduced female fisher survival within the SSN population due to increased stress hormones (cortisol) (Kordosky 2019, pp. 31–34, 36–40, 54–61, 65–68, 94). Loss of canopy cover and large trees due to tree mortality from insects and tree diseases likely reduces habitat suitability for fishers, but it is unknown if the level of habitat loss will significantly impact fisher subpopulations throughout the DPS's range. It is likely that tree mortality will continue to be a threat into the future due to predicted increases in drought conditions that will likely continue to weaken trees and make them susceptible to bark beetles and disease (Millar and Stephenson 2015, pp. 823–826; Young *et al.* 2017, pp. 78, 85).

Vegetation Management

Vegetation management techniques of the past (primarily timber harvest) have been implicated as one of the two primary causes for fisher declines across the United States. Many fisher researchers have suggested that the magnitude and intensity of past timber harvest is one of the main reasons fishers have not recovered in the western United States as compared to the northeastern United States (Service 2014, pp. 54–56). At the time of the 2014 Proposed Rule, we stated that vegetation management techniques have, and can, substantially modify the overstory canopy, the numbers and distribution of structural elements, and the ecological processes that create them. Overall, fisher home ranges tend to be composed of mosaics of forest stand types and seral stages but often with a high proportion of mid- to late-seral forests (Raley *et al.* 2012, p. 231). Fishers occupy managed landscapes and stands where timber harvest and other vegetation management activities occur; the degree to which fishers tend to be found in these areas often depends on a multitude of factors, including the scale, intensity, and rate of activities, as well as the composition and configuration of suitable habitat, and amount and type of retained legacy structures (Service 2016, pp. 59–60; Thompson and Clayton 2016, pp. 11–16, 22; Marcot *et al.* 2018, p. 400; Parsons 2018, pp. 31, 53–55, 63; Purcell *et al.* 2018, pp. 60–61, 69–70).

At the time of the 2014 Proposed Rule, we concluded that data limitations in most subregions across the DPS prevented us from quantifying what proportion of the treatments actually resulted in habitat loss or downgrade. Thus, at that time, the severity scores presented in the 2014 draft Species Report and summarized in the 2014 Proposed Rule represented our best estimate and constituted a relatively broad range to incorporate this uncertainty. Our previous quantitative analysis of threats resulting in habitat loss also did not account for ingrowth (*i.e.,* forest stands becoming habitat as a result of forest succession) of fisher habitat over our 40-year analysis timeframe and, therefore, provided no values for net habitat change; while we acknowledged that ingrowth occurs, primarily on Federal lands, we lacked the data at that time to quantitatively estimate that ingrowth (Service 2014, pp. 84–92). Although we recognized data limitations in most subregions across the range of the DPS and we did not account for ingrowth, we found that vegetation management is a threat because activities that remove or substantially degrade fisher habitat through the removal of large structures and overstory canopy are projected to take place within the range of the DPS over the next 40 years.

Since the time of our 2014 Proposed Rule, we reevaluated our analysis and changed our approach to rely on available data on forest disturbances and past changes in older forest. Several sources of data provide information on past changes in vegetation in different areas of the DPS. Because of the large area encompassed by the fisher, these different sources are not directly comparable and do not easily combine to paint a complete picture of the vegetation trends within the West Coast DPS. We have acknowledged the limitations of this information, and we explicitly requested information from the public in our 2014 Proposed Rule to better inform our analysis of this threat

and to help us make a final determination. Specifically, we requested information related to the scope and degree of vegetation management on Federal land within the range of the fisher, and scientific or commercial information on the type, scope, and degree of vegetation management (timber harvest, restoration thinning, fuels reduction, etc.) on non-Federal land in Oregon and Washington. We also requested scientific evaluation of our use of the northern spotted owl habitat data as a surrogate for fisher habitat data, and its use in our 2014 draft Species Report as the best available data to determine the scope and degree of vegetation management effects on Federal lands.

Currently, no analysis explicitly tracks changes in fisher habitat in recent decades where loss specifically attributable to vegetation management can be determined. Therefore, we used other available information, as described below, and our best professional judgment to analyze the potential effects of this threat on the DPS of fisher. After considering the best available data, including comments received from peer reviewers and the public regarding the vegetation management threat analysis presented in the draft Species Report (Service 2014, pp. 85–96) and summarized in the 2014 Proposed Rule, we updated and reconsidered our analysis. Our updated analysis included the use of several different sources of information to depict forest vegetation changes caused by vegetation management activities within the range of the DPS. With the exception of the non-Federal timber harvest database in California (California Department of Forestry and Fire Protections (CAL FIRE) 2013), all of these sources are either new or updated since 2014 (Davis *et al.* 2015, entire; USDA Forest Service 2016, entire; Spencer *et al.* 2016, entire; Spencer *et al.* 2017, entire; gradient nearest neighbor (GNN) data/maps). Because we were able to use these sources of data, we did not need to rely on northern spotted owl habitat data as a surrogate for fisher habitat data in this evaluation. Our revised methodology is described in detail for the historical, three-State range of the DPS in the 2016 final Species Report (Service 2016, pp. 98–111); we summarize it below and describe its application to our revised proposed DPS.

While historical loss of older forests via timber harvest through much of the 1900s resulted in a substantial loss of fisher habitat in the West Coast States, harvest volume has sharply declined throughout this area since 1990, primarily on Federal lands, but also on non-Federal lands. Although timber harvest is still ongoing throughout the West Coast States, habitat ingrowth is also occurring, offsetting some of those losses.

Within the portion of the DPS overlying the Northwest Forest Plan region, we used information from the draft late-successional and old-growth forest monitoring report (Davis *et al.* 2015, entire) to assess changes in fisher habitat as a result of vegetation management. This information included use of the ''old growth structure index'' (OGSI), which is an index of 0–100 that consists of four old-growth elements: (1) The density of large live trees; (2) the density of large snags; (3) the amount of down wood cover; and (4) the tree size diversity of the stand. Over a 20-year period (1993–2012), Davis *et al.* (2015, pp. 5–6, 16–18) tracked changes in forests classed as OGSI–80, which represents forests that begin to show stand structures associated with older forests (*e.g.,* large live trees, snags, down wood, and diverse tree sizes). Though OGSI–80 forests are not a comprehensive representation of fisher habitat, we considered this report to be the best available scientific and commercial information to assess changes in fisher habitat within the NWFP area. This information was the only data set available that identified the amount of acres lost to specific disturbance types (*e.g.,* timber harvest or vegetation management, fire, and insects) and calculated specific acres of forest ingrowth, allowing us to explicitly track loss of a specific forest type condition to a specific disturbance category (vegetation management). All remaining data sets provided a net change in vegetation type but did not categorize or quantify the disturbance types (*e.g.,* acres and type of loss, acres of ingrowth).

Details of our analysis of Davis *et al.* (2015, entire) are explained in the 2016 final Species Report (Service 2016, pp. 101–102). We have since modified that analysis to only include data for the provinces that cover the current range of native fishers in the West Coast States (*i.e.,* the West Coast DPS of fisher, as described in Summary of Changes From the 2014 Proposed Rule, above). The California portion of the DPS covers all of the California physiographic provinces analyzed in Davis *et al.* (2015, pp. 10, 30–31). The Oregon portion of the DPS occurs mostly within the Oregon Klamath province, but overlaps somewhat into small portions of the western and eastern Cascades provinces (Davis *et al.* 2015, pp. 10, 30–31). We assessed the results of including and excluding the data from the two Cascades provinces, and because no substantial differences were revealed between the two data sets, we report here the results for including only the Oregon Klamath province data, along with data for all of the California physiographic provinces located within the NWFP.

Although loss of older forest habitat due to timber harvest on non-Federal lands (11.1 percent since 1993) was substantially greater than on Federal lands (1.0 percent since 1993), in combining all ownerships, the percent loss due to timber harvest over the past 20 years was low (5.0). This translates to a 2.5 percent loss per decade. However, this may underestimate future harvest trends because timber harvest volume within the NWFP area on Federal lands has been on a general upward trend since 2000. During the first decade of NWFP implementation, Federal agencies offered, on average annually, 54 percent of the timber harvest sale goals (probable sale quantity or PSQ) identified in the Plan, whereas volume offered in 2012 was at about 80 percent of the PSQ identified in the NWFP, as agencies became more familiar with implementing the NWFP (USDI BLM 2015, p. 340; Spies *et al.* 2018, pp. 8–9). In addition, BLM has recently revised their management plans in western Oregon and is no longer operating under the NWFP. Consequently, that agency is predicting an increase in timber volume above the NWFP sale quantity in the first decade (USDI BLM 2015, pp. 350–352). Hence, overall harvest trends on Federal lands over the next decade or so may be closer to rates observed in the last decade of NWFP implementation; however, the OGSI–80 harvest data we used was categorized by decade so we were not able to determine what the higher harvest rate during that time period translated to in terms of estimated habitat loss for fishers.

The net loss of habitat, however, is somewhat less because 2.5 percent per decade does not include ingrowth of OGSI–80 stands. Ingrowth is those stands that did not meet the OGSI–80 structural thresholds at the beginning of the 20-year monitoring period that, through vegetation succession, reached those thresholds at the end of the monitoring period. Ingrowth would result in a reduction in overall net habitat change because stands that grow into suitable habitat are assumed to offset the loss of habitat through disturbances such as fire or vegetation management. However, we acknowledge that fisher habitat occurs on a continuum, and habitat lost to timber

harvest or some other disturbance is not necessarily equivalent in quality to habitat that recently crosses a threshold of becoming suitable habitat.

Ingrowth of OGSI–80 stands within the NWFP area occurred at a rate of 8 percent over the 20-year period, or 4 percent per decade (calculated from Davis *et al.* (2015, tables 6 and 7, pp. 30–31)). While this change would offset the OGSI–80 stands lost to vegetation management, there is still a net loss of 1 percent per decade if we incorporate all disturbances (*i.e.,* wildfire and insects). Ingrowth rates are expected to increase in the foreseeable future on Federal lands within the NWFP area because forests regenerating from the post-World War II harvest boom starting in the 1940s are beginning to meet the OGSI–80 threshold (Davis *et al.* 2015, p. 7).

Elsewhere in the West Coast States, while we could track vegetation changes over time, the available data did not indicate the amount or types of disturbances affecting the specific vegetation types; that is, we could only determine net vegetation change of a particular vegetation type, not the specific amount of that type that was lost to a specific disturbance type, unlike in the NWFP area. Timber harvest records were available for the Sierra Nevada region, but idiosyncrasies in the FACTS (Forest Service Activity Tracking System) database (see Spencer *et al.* (2016, p. A–30)) and the fact that the available private lands database (CAL FIRE timber harvest plans) did not indicate types of treatment or what portion of the plans may have actually been implemented, led to concerns in translating acres of ''treatment'' as depicted in these databases into on-the-ground changes in forest vegetation types that could represent fisher habitat. Instead, we relied on net vegetation change data to display actual changes in forests that represent fisher habitat, realizing that net changes include other disturbances and that vegetation management will be some unknown portion of that change.

In the SSN subpopulation area, we approximated fisher habitat change using a vegetation trend analysis to track changes in forests with large structural conditions thought to be associated with fisher habitat. Note that the vegetation category tracked in this analysis is not equivalent to the OGSI–80 forests used by Davis *et al.* (2015, entire). Instead, available data limited us to using predefined structure conditions describing forests with larger trees (greater than 20 in (50 cm)), realizing this may not include all vegetation types used by fishers. This analysis showed that net loss of forests with larger structural conditions in the SSN subpopulation area was 6.2 percent across all ownerships over the past 20 years, which equates to a loss of 3.1 percent per decade, similar to the 2.5 percent loss per decade within the NWFP portion of the DPS.

In the single analysis where fisher habitat was actually modeled and tracked through time (*i.e.,* the SSN subpopulation area), ingrowth of fisher habitat actually replaced habitat lost by all disturbances between 1990 and 2012, showing a net increase in fisher habitat at the female home range scale (Spencer *et al.* 2016, pp. 44, A–21). However, the authors of this report have since cautioned that these conclusions may no longer be accurate based on ''dramatic changes [that] have occurred in Sierra Nevada mixed conifer forests due to drought and extraordinary tree mortality'' (Spencer *et al.* 2017, p. 1). Consequently, they recommended delaying application of habitat conservation targets until vegetation data can be updated and fisher habitat condition reassessed (Spencer *et al.* 2017, pp. 1–2). Hence, although our earlier analysis concluded that fisher habitat in the SSN subpopulation area may actually be increasing, we can no longer support that conclusion based on recent vegetation mortality.

Extensive areas of suitable habitat remain unoccupied by fishers, suggesting that there are also areas where habitat may not be the limiting factor for current or potential fisher populations. Recent fisher surveys in the western Cascades of Oregon suggest fishers do not occur in the northern portion of the Cascades, and their former distribution may even be contracting southward (Moriarty *et al.* 2016, entire; Barry 2018, pp. 20–23, 31–32). Lack of fisher detections in large areas with suitable habitat raises questions about our understanding of suitable habitat within the Oregon Cascades, and what the limiting factors are for fishers in Oregon. One such mechanism could be predation. Recent research in California suggests that landscape changes as a result of disturbances over the past century may have altered the carnivore community and affected predation rates on fishers by bobcats (Wengert 2013, pp. 59–66, 93, 97–100); proximity to open and brushy areas (vegetation selected for by bobcats) increased the risk of predation on fishers. Hence, while vegetation management may not be affecting large areas of suitable fisher habitat, fishers may be precluded from using the habitat due to other limiting factors.

Vegetation Management Summary

Old-forest losses on all ownerships combined in the past two decades were less than 2.5 percent per decade due to timber harvest within the NWFP area (which includes the NCSO subpopulation area), and 3.1 percent per decade as a result of all disturbance types within the Sierra Nevada region (which includes the SSN subpopulation area). Additionally, and specifically within the SSN subpopulation area, fisher habitat appeared to be increasing until recent vegetation mortality due to fires and drought. However, it is difficult to conclude the degree to which vegetation management threatens fishers throughout the DPS. Given the large home range of fishers and the geographic extent of forest management activities throughout the range of the DPS, some fisher individuals are likely affected as a result of habitat impacts (*e.g.,* Thompson and Clayton 2016, pp. 11–16; Purcell *et al.* 2018, pp. 60–61).

Although fishers occur in landscapes and stands where timber harvest has occurred (*e.g.,* Slauson *et al.* 2003, pp. 7–9; Self and Callas 2006, entire; Hamm *et al.* 2012, pp. 421–422; Clayton 2013, pp. 7–19; Niblett *et al.* 2015, entire), there is no information on how different vegetation management activities affect fisher subpopulations and their persistence within the DPS's range. Analysis is further confounded because the category of vegetation management contains activities ranging from those that result in substantial loss of habitat attributes valuable to fishers (*e.g.,* large clear-cut harvests that remove almost all tree canopy and structural features) to activities that modify habitat at small-scale levels yet appear to retain functionality as fisher habitat (*e.g.,* minor reductions in canopy cover and retention of structural features suitable for rest sites, den sites, or prey production). In addition, some of the trend data we analyzed did not allow us to tease out vegetation management disturbance from disturbances due to fire or other natural events. Finally, there appears to be substantial amounts of unoccupied fisher habitat, suggesting that habitat is not limiting for fishers and, therefore, habitat loss is not a threat. However, this finding may also be due to errors in our understanding of habitat, or that our definition of fisher habitat includes conditions suitable for other factors that may be limiting fishers (*e.g.,* unsuitable prey habitat or suitable predator habitat (see ''Disease or Predation,'' below)), or that still other factors unrelated to habitat are limiting fisher distribution. Consequently, based on the best available scientific and

commercial information, we find that some levels of vegetation management may threaten fisher, and will continue to do so in the foreseeable future, but many of the effects are exacerbated by other forms of habitat loss such as tree mortality from drought and severe wildfires.

Exposure to Toxicants

Rodenticides analyzed as a threat to fishers include first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides. First-generation anticoagulant rodenticides are in a bait form that is targeted for rodents to consume for several consecutive feedings (*i.e.,* sublethal doses) that deliver a lethal dose. Second-generation rodenticides are significantly more potent than first-generation rodenticides because a lethal dose can be ingested in a single feeding. Additionally, second-generation rodenticides are more likely to poison predatory wildlife (*e.g.,* fishers) that eat live or dead poisoned prey, or other non-target wildlife. Neurotoxicant rodenticides are delivered in either single or multiple doses and have highly variable potency (multiple hours or days).

Both first- and second-generation anticoagulant rodenticides and neurotoxicant rodenticides are most often used to kill small mammals that are destroying crops. Rodenticides impair an animal's ability to produce several key blood-clotting factors (anticoagulant rodenticides) or affect brain and liver function (neurotoxicant rodenticides). Anticoagulant rodenticide exposure is manifested by such conditions as bleeding nose and gums, extensive bruises, anemia, fatigue, difficulty breathing, and also damage to small blood vessels, resulting in spontaneous and widespread hemorrhaging. A sublethal dose of a rodenticide can produce significant clotting abnormalities and hemorrhaging, leading to a range of symptoms, such as difficulty moving and the decreased ability to recover from physical injury. Ingestion of the neurotoxicant bromethalin has fast-acting and physical effects such as unsteadiness and weakness, and at higher dosage levels, seizures. Both anticoagulant and neurotoxicant rodenticides can change or impede normal movement and foraging behaviors of fishers and therefore may increase the probability of mortality from other sources.

Both the draft and final Species Reports detail the exposure of fishers to rodenticides in the West Coast States (Service 2014, pp. 149–166; Service 2016, pp. 141–159). Data available since completion of the final Species Report in 2016 continue to document exposure and mortalities to fishers from rodenticides in both the NCSO and SSN subpopulations (Gabriel and Wengert 2019, unpublished data, entire). Fishers monitored as part of other studies, and that have died during these studies, have been collected and tested for causes of mortality and exposure to rodenticides (Gabriel and Wengert 2019, unpublished data). Data for 97 fishers collected in California in the period 2007–2014 indicate 81 percent of fishers tested positive for one or more rodenticides; 48 fishers were collected during 2015–2018, and the positive detection rate for rodenticides was 83 percent (Gabriel and Wengert 2019, unpublished data). Mortalities due to rodenticide toxicosis have increased from 5.6 to 18.7 percent since collection and testing of fisher mortalities began in 2007 (Gabriel *et al.* 2015, p. 7). From 2015 to 2018, additional fisher mortalities due to both anticoagulant and neurotoxicant rodenticides have been documented, including data verifying the exposure of neonatal kits to rodenticides through transplacental transfer (Gabriel and Wengert 2019, unpublished data, p. 4).

The most likely source of exposure of fishers to these toxicants continues to be rodenticides associated with illegal marijuana cultivation sites within occupied fisher habitat on public, private, and tribal lands in California and Oregon (Gabriel *et al.* 2015, pp. 14–15; Thompson *et al.* 2014, pp. 97–98). Data pertaining to the amount and types of rodenticides has been collected in more than 300 trespass grow sites in California during the period 2012–2018 (Gabriel and Wengert 2019, unpublished data, pp. 5–7). Collection of these data has shown that a lesser amount of second-generation rodenticides are being found at grow sites due to policy changes in 2014 related to pesticide use and additional restrictions now in place on the use of second-generation rodenticides in California. The change in policy has led to a more intensive use of first-generation anticoagulant rodenticide and the highest amount of neurotoxicant rodenticide use since 2012 (Gabriel and Wengert 2019, unpublished data, pp. 5–7). Please see additional discussion on the effects of first- and second-generation rodenticides in the 2016 Species Report (Service 2016, pp. 150–159).

Data are limited for the amount of pesticides used at sites outside of California. The U.S. Forest Service documented 63 trespass grows between 2006 and 2016, with toxicants present for all sites visited (Clayton 2019, pers. comm.). To date, only one site in southern Oregon has been sampled using the same protocol as in California. This southern Oregon location had 54 pounds (lb) (24.5 kilograms (kg)) of first-generation anticoagulant rodenticide and 8 lb (3.6 kg) of neurotoxicant rodenticide (Gabriel and Wengert 2019, unpublished data, p. 7) onsite.

As was stated in our 2014 Proposed Rule, the extent to which rodenticides may act as a threat varies across the landscape and our [then] determination regarding this threat was influenced by the availability of data for different parts of the fisher's range. In order to evaluate the risk to fishers from trespass grows and any differences between populations, a Maximum Entropy (MAXENT) model was developed to identify high and moderate likelihood of trespass marijuana grow sites being located within fisher habitat (Gabriel and Wengert 2019, unpublished data, pp. 7–10). This model indicates that 44 percent of habitat modeled (combined NCSO and SSN subpopulations) for fishers is within areas of high and moderate likelihood for marijuana cultivation. Separating these model results into the two fisher subpopulation areas (NCSO and SSN) indicates a difference in potential overlap of grow sites with fisher habitat between NCSO and SSN. In the NCSO subpopulation, there is a potential of 53 percent overlap between grow sites and fisher habitat; in the SSN subpopulation, there is a potential for 22 percent overlap of grow sites in fisher habitat. These modeled differences demonstrate the variability of this threat to fishers within the extant subpopulations. The extent to which the use of toxicants occurs on private land marijuana cultivation sites, as well as other agricultural, commercial, and public land sites within the range of the fisher (and habitats that fishers select for) is unknown.

At this time, our evaluation of the best available scientific and commercial information regarding toxicants and their effects on fishers leads us to conclude that individual fishers within the NCSO and SSN subpopulations have died from toxicant exposure. New data indicate a total of 19 mortalities specifically within the monitored fisher subpopulations (in both NCSO and SSN in California) have been directly caused by toxicant exposure (Gabriel and Wengert 2019, unpublished data, p. 5). In addition, of the two fishers found in Oregon that were tested for rodenticide exposure, both tested positive (Clayton 2016, pers. comm.). Toxicologists assume that fishers exposed to one or

more rodenticides and determined to have died from some other cause besides toxicosis were also experiencing sublethal levels of effects from these chemicals (from Rattner and Mastrota 2018, pp. 68–71; Elliott *et al.* 2016 *in:* López-Perea and Mateo 2018, p. 159). The degree of impact from sublethal toxicant exposure is unknown (see additional discussion on sublethal exposure in the 2016 Species Report, pp. 150–156); complex behavioral responses like prey capture efficiency and predator avoidance are not well studied (Rattner and Mastrota 2018, pp. 68–71).

Our analysis of this threat includes additional effort to reevaluate a variety of toxicant information in our files, including comments previously provided by peer reviewers on the 2014 Species Report, as well as new information such as:

(1) *Concentrations of active ingredients in bait and a description of how exposure to rodenticides is confirmed* (Erickson and Urban 2004, entire; Vandenbrouke *et al.* 2008, entire; Rattner *et al.* 2014, entire)—The livers of various species where mortality has occurred show a wide range of thresholds of rodenticide concentrations and that a toxicity threshold would need to account for adverse sublethal effects (Erckson and Urban 2004, p. 95). Thus, due to differences in individual fishers and rodenticide exposure, it remains unknown at what level of toxicant exposure fishers may be experiencing adverse impacts.

(2) *Rodent diversity at marijuana cultivation sites*—In grow sites sampled, rodent diversity at marijuana cultivation sites that were treated with rodenticides and sampled after remediation contained only mice, as compared to nearby untreated sites where rodenticides were not used and that contained large-bodied rodents (*e.g.,* woodrats, squirrels, chipmunks). These larger bodied rodents are the prey species that the fisher prefers (Gabriel *et al.* 2017, p. 10). This information provides support for the possibility that fishers could experience indirect effects from rodenticide use such as preferred prey species shifting outside of their home range, or prey depletion within their home ranges. Changes in prey abundance within fisher home ranges could lead to impaired reproduction or starvation of the resident fishers.

(3) *Estimating the extent of fisher exposure to rodenticides and determining the source(s)*—The delay in toxicity caused by rodenticides and their persistence within food webs can result in contaminated rodents being found within and adjacent to treated areas weeks or months after bait application (Geduhn *et al.* 2014, pp. 8–9; Tosh *et al.* 2012, pp. 5–6; Sage *et al.* 2008, p. 215). Predators that are (a) nocturnal, (b) opportunistic in feeding habitats where rodents are an important part of their diet, and (c) nonmigratory and live close to or within landscapes that are heavily impacted by human activities (*e.g.,* the grow sites) have a higher incidence of exposure to rodenticides and have relatively high liver residue concentrations of multiple rodenticide compounds (Hindmarch and Elliott 2018, p. 251). Because fishers are territorial (nonmigratory) mammals, and females specifically make few if any movements once they have established a territory (Arthur *et al.* 1993, p. 872), they are vulnerable to rodenticide exposure from grow sites within their home ranges. Additionally, fisher diets consist primarily of small mammals (Golightly *et al.* 2006, entire), which are the target species for rodenticides used in grow sites (Gabriel *et al.* 2015, entire; Thompson *et al.* 2014, pp. 97–98). Therefore, even though it may be difficult to assess persistence of rodenticides in food webs it is likely that fisher life-history traits make them vulnerable to long-term exposure to rodenticides.

(4) *Unreclaimed sites across the landscape.* During the ''Operation Forest Watch, Department of Justice'' campaign in California between October 2017 and September 2018, more than 20,000 pounds of fertilizer, pesticides, and chemicals were removed from 160 trespass cannabis grow sites (Department of Justice (DOJ) 2018, p. 2). Currently, 766 sites are still in need of reclamation (DOJ 2018, p. 2). Of the 160 grow sites mentioned above, 89 percent were confirmed or strongly suspected to have carbofuran or methamidophos (*i.e.,* toxic pesticides or insecticides that cause central nervous system dysfunction) present, up from the previous year total of 75 percent (DOJ 2018, p. 2). Estimates of the number of sites that necessitate reclamation of toxicants vary. In addition, law enforcement specialists estimate they locate and raid roughly 20 to 40 percent of sites each year and only about 10 percent of those are remediated (Thompson *et al.* 2017, p. 45). If these estimates are accurate, it is reasonable to conclude that hundreds to thousands of sites—known and unknown, and with an undetermined amount of toxicants present—remain scattered within both the NCSO and SSN subpopulations where trespass grows have been detected (Gabriel *et al.* 2015, entire; Thompson *et al.* 2017, p. 45).

(5) *Cannabis cultivation contributing to forest fragmentation*—Expansion of cannabis cultivation as a landscape use on private land is changing forest conditions within areas currently occupied by fishers. In Humboldt County, California (a portion of the NCSO subpopulation area), a recent analysis examined changes to forest patch metrics between 2000 and 2013 (Wang *et al.* 2017, entire). While many of the watershed-scale changes were due to timber harvest, the smaller scale changes (*e.g.,* approximately 0.4 mi^2 (1 km^2) of both timber harvest and cannabis cultivation) had many similar effects on forest fragmentation (Wang *et al.* 2017, pp. 4–5).

(6) *Habitat effects resulting from legal cannabis cultivation*—Since the 2014 Proposed Rule, the legal status of cannabis cultivation changed in Oregon (2015) and California (2016). We have no data to indicate that legalization of cannabis cultivation will change black market sales or how municipalities enacting local restrictions for cannabis cultivation on private lands will alter the number of illegal grows on public land. Data in Oregon pertaining to permitted cannabis cultivation show that, within counties currently occupied by fisher, 405 legal operations have been approved (Oregon Liquor Control Commission 2019, pp. 12–13, 18–34). Given the rural nature of these Oregon counties (Jackson, Josephine, Curry), many of these operations likely occur within areas occupied by fishers. At this time, we have limited data about the prevalence of rodenticide use on legal private grow sites and whether fishers are at risk from rodenticide use on private land. However, we have documentation of one radio-collared fisher within a wildland urban interface area in Jackson County, Oregon, that tested positive for two rodenticides and whose home range included two grow sites and rural residences (Clayton 2019, pers. comm.).

Marijuana cultivation sites are present on public and private land within or near fisher subpopulations in California and Oregon. The broad use of toxicants at illegal marijuana cultivation sites in these States has been documented to occur within or adjacent to habitat supporting fishers within the DPS (Gabriel and Wengert 2019, unpublished data, pp. 7–9). There are other possible sources of rodenticides from legal applications in agriculture and around buildings in rural areas. The legalization of marijuana in California and Oregon adds an element of uncertainty to evaluating the potential future effects of toxicant exposure to fishers. It is unknown whether or how the

legalization of marijuana will change grow-site location and potentially affect exposure and mortality rates of fishers due to rodenticides. The incidence of fisher exposure to toxicants from all uses across its range is unknown, and the best available mortality data are limited (19 individuals in California), given there are no wide-ranging studies across the DPS specifically focused on fisher toxicant exposure.

We view toxicants as a potentially significant threat to fishers because of reported mortalities of fishers from toxicants, the variety of potential sublethal effects due to exposure to rodenticides, and the degree to which illegal cannabis cultivation overlaps with the range and habitat of the fisher. The exposure rate of more than 80 percent of fisher carcasses tested in the NCSO and SSN subpopulations has not declined between 2007 and 2018 (Gabriel and Wengert 2019, unpublished data, pp. 3–4), while toxicosis has increased since 2007 (Gabriel *et al.* 2015, p. 7). We do not know the exposure rate of live fishers to toxicants as the data has not been collected. In addition, the minimum amount of anticoagulant and neurotoxicant rodenticides required for sublethal or lethal poisoning of fishers is currently unknown; however, we have evidence of fisher mortality and sublethal effects as a result of rodenticides. Overall, rodenticides are likely a threat to fisher within the DPS now and in the foreseeable future, although we do not have information about the magnitude or mechanisms of population-level effects at this point in time.

Effects Associated With Small Population Size

In general, species that occupy a narrow geographic range with specific habitat requirements and that always occur in small populations have a high conservation priority (Primack 2014, p. 158). Small populations are vulnerable to a rapid decline in their numbers and localized extinction due to the following: (1) Loss of genetic variability (*e.g.,* inbreeding depression, loss of evolutionary flexibility), (2) fluctuations in demographic parameters (*e.g.,* birth and death rates, population growth rates, population density), and (3) environmental stochasticity or random fluctuations in the biological (*e.g.,* predation, competition, disease) and physical environment (*e.g.,* wildfire, drought events, flooding) (Primack 2014, pp. 252–268). Some information is available that demonstrates fisher's vulnerability to small population effects, particularly in the SSN population area, including fisher's decreased genetic variability from north to south, limited gene flow, and existing barriers to dispersal (Wisely *et al.* 2004, pp. 642–643; see also additional discussion in Service 2016, pp. 134–137). While we do not have data across the entire range demonstrating that the West Coast DPS is exhibiting these specific effects associated with small population size, consideration of these three elements along with life-history traits can provide an extinction vulnerability profile for the West Coast DPS of fisher. In sum, this DPS exhibits the following attributes that may limit its distribution and population growth:

(1) Loss of large contiguous areas of historical habitat in combination with restriction of the species to forested habitats that have been lost or modified due to timber harvest practices, human development, and large, high-severity wildfires whose frequency and intensity are in turn influenced by the effects of climate change.

(2) Dependence on specific elements of forest structure that may be limited on the landscape, including microsites for denning and resting.

(3) Susceptibility to injury or mortality due to predation from co-occurring larger predators.

Each of these vulnerabilities may separately, or together, exacerbate any of the threats described in this analysis for the West Coast DPS of fisher.

A scarcity of verifiable sightings in the Oregon Cascades, coastal Oregon, and the north and central sections of the Sierra Nevada in California indicate that subpopulations of fishers in the DPS are isolated from fishers elsewhere in North America. Native fishers in the West Coast States are currently restricted to two historically extant native subpopulations (NCSO and SSN) and one extant reintroduced native subpopulation (NSN). The NCSO subpopulation has not expanded and may have even contracted, nor have fishers recovered portions of their range in Oregon beyond our previous estimates (Barry 2018, p. 22). We continue to recognize that the two geographic areas of fisher subpopulations in the DPS (*i.e.,* SSN and NCSO, the latter of which includes the SOC and NSN for this analysis) are geographically isolated from one another with little opportunity for genetic interchange. Additionally, we continue to recognize that the SSN subpopulation is relatively small. With regard to small populations, we note that forest carnivore populations are often isolated and generally occur in low densities. Because we lack specific information about genetic processes in small, isolated forest carnivore populations, it is unknown whether generalities about persistence based on untested theoretical models may apply to fisher (Ruggiero *et al.* 1994, p. 146), at least with regard to the SSN subpopulation. In the specific case of fishers in this DPS, our evaluation of the best scientific and commercial information available indicates that the separation of the SSN and NCSO subpopulations occurred a very long time ago, possibly on the order of more than a thousand years, pre-European settlement (Tucker *et al.* 2012, pp. 1, 7). Despite their isolation and the small size of the SSN subpopulation, the native NCSO and SSN subpopulations have persisted over a long period of time.

At this point in time, the fisher subpopulations are already considered relatively small, especially when taking into account the original/historical range of the species within the West Coast states, and the population growth rates do not indicate that the subpopulations are increasing. The best available information suggests these populations are expected to remain small (as has been apparent since pre-European settlement). The SSN subpopulation is likely to remain smaller than the NCSO subpopulation into the future, primarily given the other stressors that have the potential to exacerbate the impacts of small population size. Estimates of fisher population growth rates for the NCSO subpopulation and the portion of the SSN subpopulation surveyed do not indicate any overall positive or negative trend. The NCSO subpopulation, which encompasses both the SOC and NSN reintroduction sites, covers a relatively large geographic area of approximately 15,444 mi^2 (40,000 km^2). The most recent subpopulation size estimate is 3,196 individuals (range 2,507–4,184); however, this estimate excludes SOC and NSN individuals (Furnas *et al.* 2017, pp. 2–3). Although the areas monitored for population trend are limited, for the Hoopa study area, the population trend from 2005 through 2012 indicates a population growth rate of 0.992 (C.I. 0.883–1.100) with a higher growth rate for females 1.038 (0.881–1.196) than males 0.912 (0.777–1.047) (Higley *et al.* 2014, p. 102, Higley 2015, pers. comm.). Additionally, the most recent information for the Eastern Klamath Study Area suggests a growth rate of 1.06 (C.I. 0.97–1.15, years 2006–2013) (Powell *et al.* 2014, p. 23); however, this growth rate may no longer be valid as suggested by 2 years of data (2014–2016) that follow two large fires in the study area, which indicate an

estimated 40 percent reduction in the number of fishers post-fire (Green *et al.* 2019, p. 8).

For the SSN subpopulation, which is smaller and estimated to range anywhere in size from 100 to 500 individuals (Service 2016, pp. 48–50), the population growth rate is estimated as 0.97 (C.I. 0.79–1.16, years 2007–2014) (Sweitzer *et al.* 2015a, p. 784). At this point in time, we do not have sufficient information to predict whether population trends of the two DPS subpopulation areas will be positive or negative into the foreseeable future.

Overall, a species (or DPS) with relatively few populations may be a concern when there are significant threats to the species such that one or more populations may be permanently lost in the future. One of the two remaining native fisher subpopulations, SSN, is considered relatively small, and both the SSN and NCSO subpopulations have not appeared to grow or expand, despite the availability of suitable habitat. At this time, the best available information for monitored subpopulations within the DPS (*e.g.,* Green 2017, Higley *et al.* 2014, Powell *et al.* 2014, entire, Sweitzer *et al.* 2015a, entire) does not indicate whether the NCSO or SSN subpopulations, as a whole, are stable or exhibiting significant declines.

Existing Regulatory Mechanisms and Voluntary Conservation Measures

We stated in the 2014 Proposed Rule, and we reaffirm here that there are many Federal and State existing regulatory mechanisms that provide a benefit to fishers and their habitat. For example, trapping restrictions have substantially reduced fisher mortality throughout the range of the West Coast DPS of fisher. In some places, forest management practices are explicitly applied to benefit fishers or other species with many similar habitat requirements, such as the northern spotted owl. In addition, some HCPs are in place and to provide a benefit to fishers and their habitat.

State and Federal regulatory mechanisms have abated the large-scale loss of fishers to trapping and loss of fisher habitat, especially on Federal land (Service 2014, pp. 117–141). Additionally, rodenticides are regulated under Federal and State laws. However, fishers may still be exposed to such rodenticides in certain areas where they can still be used legally. Fishers are also exposed to some degree to rodenticides used illegally (as discussed below).

Forest Service and BLM

A number of Federal agency regulatory mechanisms pertain to management of fisher (and other species and habitat). Most Federal activities must comply with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*). NEPA requires Federal agencies to formally document, consider, and publicly disclose the environmental impacts of major Federal actions and management decisions significantly affecting the human environment. NEPA does not regulate or protect fishers, but requires full evaluation and disclosure of the effects of Federal actions on the environment. Other Federal regulations affecting fishers are the Multiple-Use Sustained Yield Act of 1960, as amended (16 U.S.C. 528 *et seq.*) and the National Forest Management Act of 1976, as amended (NFMA) (90 Stat. 2949 *et seq.;* 16 U.S.C. 1601 *et seq.*).

NFMA specifies that the Forest Service must have a land and resource management plan to guide and set standards for all natural resource management activities on each National Forest or National Grassland. Additionally, the fisher has been identified as a sensitive species by the Forest Service throughout its range. BLM management is directed by the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1704 *et seq.*). This legislation provides direction for resource planning and establishes that BLM lands shall be managed under the principles of multiple use and sustained yield. This law directs development and implementation of resource management plans, which guide management of BLM lands at the local level. Fishers are also designated as a sensitive species throughout its range on BLM lands.

In addition, the NWFP was adopted by the Forest Service and BLM in 1994 to guide the management of more than 24 million ac (9.7 million ha) of Federal lands within the range of the northern spotted owl, which overlaps with portions of the West Coast DPS of fisher's range in Oregon and northwestern California (U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1994, entire). The NWFP Record of Decision amended the management plans of National Forests and BLM Districts and provided the basis for conservation of the northern spotted owl and other late-successional and old-growth forest associated species on Federal lands. However, in 2016 the BLM revised their Resource Management Plan (RMP), replacing NWFP direction for BLM-administered lands in western Oregon, totaling approximately 2.5 million ac (1 million ha) (USDI BLM 2016a, 2016b, entire).

Compared with management under the NWFP, BLM's revised RMP results in a decrease in land allocated for timber harvest, from 28 percent of their planning area in the Matrix allocation under NWFP, to 20 percent under their revised RMP. However, volume of timber harvest is expected to increase to 278 million board feet per year through the first decade, up from the highest NWFP annual amount of about 250 million board feet, and the average NWFP annual amount of 167 (USDI BLM 2015, pp. 350–352). Forest stand conditions assumed to represent fisher habitat are expected to decline in the first two decades under the revised RMP, similar to projections under the NWFP. However, by decade three, habitat is projected to increase under the revised plan compared to the NWFP because more fisher habitat is in reserve allocations under the revised plan (75 percent of fisher habitat on BLM land) than under the NWFP (49 percent) (USDI BLM 2015, pp. 1,704–1,709).

Federal lands are important for fishers because they have retained a network of late-successional and old-growth forests (LSRs) that currently provide fisher habitat, and the amounts of habitat are expected to increase over time. Also, the National Forest and BLM units with anadromous fish watersheds provide buffers for riparian reserves on either side of a stream, depending on the stream type and size. With limited exceptions, timber harvesting is generally not permitted in riparian habitat conservation areas, and the additional protection guidelines provided by National Forests and BLM for these areas may provide refugia and connectivity among more substantive blocks of fisher habitat. Also, the Forest Service under the NWFP, while anticipating losses of late-successional and old-growth forests in the initial decades of plan implementation, projected that recruitment would exceed those losses within 50 to 100 years (Davis *et al.* 2015, p. 7). Furthermore, BLM, under its revised management plans, is also projecting an increase in forest stand conditions that are assumed to represent fisher habitat above current conditions beginning in the third decade of plan implementation (USDI BLM 2015, p. 875).

National Park Service

Statutory direction for the National Park Service lands within the range of the DPS is provided by provisions of the

National Park Service Organic Act of 1916, as amended (54 U.S.C. 100101). Land management plans for the National Parks within Oregon and California do not contain specific measures to protect fishers, but areas not developed specifically for recreation and camping are managed toward natural processes and species composition and are expected to maintain fisher habitat. In addition, hunting and trapping are generally prohibited in National Parks (*e.g.,* 16 U.S.C. 60, 98, 127, 204c, and 256b).

Tribal Lands

Several tribes within the range of the DPS recognize fishers as a culturally significant species, but only a few tribes have fisher-specific guidelines in their forest management plans. Some tribes, while not managing their lands for fishers explicitly, manage for forest conditions conducive to fisher (for example, marbled murrelet (*Brachyramphus marmoratus*) habitat, old-forest structure restoration). Trapping is typically allowed on most reservations and tribal lands, and is frequently restricted to tribal members. Whereas a few tribal governments trap under existing State trapping laws, most have enacted trapping laws under their respective tribal codes. However, trapping (in general) is not known to be a common occurrence on any of the tribal lands.

Rodenticide Regulatory Mechanisms

The threats posed to fishers from the use of rodenticides are described under ''Exposure to Toxicants,'' above. In the 2016 final Species Report (Service 2016, pp. 187–189), we analyzed whether existing regulatory mechanisms are able to address the potential threats to fishers posed from both legal and illegal use of rodenticides. As described in the 2016 final Species Report, the use of rodenticides is regulated by several Federal and State mechanisms (*e.g.,* Federal Insecticide, Fungicide, and Rodenticide Act of 1947, as amended, (FIFRA) 7 U.S.C. 136, *et seq.;* California Final Regulation Designating Brodifacoum, Bromadiolone, Difenacoum, and Difethialone (Second Generation Anticoagulant Rodenticide Products) as Restricted Materials, California Department of Pesticide Regulation, 2014). The primary regulatory issue for fishers with respect to rodenticides is the availability of large quantities of rodenticides that can be purchased under the guise of legal uses, but are then used illegally in marijuana grows within fisher habitat. Both the Environmental Protection Agency (EPA), through its 2008 Risk Mitigation Decision for Ten Rodenticides (EPA 2008, entire), which issued new legal requirements for the labeling, packaging, and sale of second-generation anticoagulants, and California's Department of Pesticide Regulation, through a rule effective in July 2014, which restricts access to second-generation anticoagulants, are attempting to reduce the risk posed by second-generation anticoagulants.

State Regulatory Mechanisms

Oregon

The fisher is a protected wildlife species, which prohibits killing or possessing fishers in the State of Oregon (Oregon Administrative Rule (OAR) 635–044–0430). In addition, ODFW does not allow trapping of fishers in Oregon. Although fishers can be injured and/or killed by traps set for other species, known fisher captures are infrequent. State parks in Oregon are managed by the Oregon Parks and Recreation Department, and many State parks in Oregon provide forested habitats suitable for fisher. The Oregon Forest Practice Administrative Rules (OAR chapter 629, division 600) and Forest Practices Act (Oregon Revised Statutes (ORS) 527.610 to 527.770, 527.990(1) and 527.992) (ODF 2018, entire) apply to all non-Federal and non-tribal lands in Oregon, regulating activities that are part of the commercial growing and harvesting of trees, including timber harvesting, road construction and maintenance, slash treatment, reforestation, and pesticide and fertilizer use. The OAR provides additional guidelines intended for conserving soils, water, fish and wildlife habitat, and specific wildlife species while engaging in tree growing and harvesting activities, and these rules may result in retention of some structural features (*i.e.,* snags, green trees, downed wood) that contribute to fisher habitat. Management of State forest lands is guided by forest management plans. Managing for the structural habitats as described in existing plans should increase habitat for fishers on State forests.

California

At the time of the 2014 Proposed Rule, fishers were a Candidate Species in California; thus, take (under the CESA definition) was prohibited during the candidacy period. On June 10, 2015, CDFW submitted its status review of the fisher to the California Fish and Game Commission, indicating that listing of the fisher in the Southern Sierra Nevada ESU as threatened was warranted, but that fishers in the Northern California ESU were not threatened (CDFW 2015, entire). On August 6, 2015, the California Fish and Game Commission voted to list the southern Sierra Nevada Evolutionarily Significant Unit (ESU) of the fisher as a threatened species under the California Endangered Species Act (CESA). Consequently, take (*i.e.,* removing, harming, or killing a protected species), is prohibited by California only in the southern Sierra Nevada portion of the proposed DPS's range. It is also illegal to intentionally trap fishers in California (Cal. Code Regs. title 14, § 460 (2017).

The California Environmental Quality Act (CEQA) can provide protections for a species that meets one of several criteria for rarity (CEQA 15380). Fishers throughout the proposed DPS's range in California meet these criteria, and under CEQA, a lead agency can require that adverse impacts be avoided, minimized, or mitigated for projects subject to CEQA review that may impact fisher habitat. All non-Federal forests in California are governed by the State's Forest Practice Rules (FPR) under the Z'Berg Nejedly Forest Practice Act of 1973, a set of regulations and policies designed to maintain the economic viability of the State's forest products industry while preventing environmental degradation. FPRs do not contain rules specific to fishers, but they may provide some protection of fisher habitat as a result of timber harvest restrictions.

Voluntary Conservation Mechanisms

Northern California-Southern Oregon (NCSO)

An intergovernmental MOU for fisher conservation was signed by Federal and State agencies in Oregon (DOI *et al.* 2016, entire) to facilitate fisher conservation activities. The western Oregon template fisher CCAA (81 FR 15737, March 24, 2016) has been published, and we are negotiating site plans and processing permit applications. Conservation actions in the CCAA include protection of occupied den sites as well as landowner participation and collaboration with fisher surveys and research as part of a defined program of work.

In 2009, a programmatic Safe Harbor Agreement (SHA) was completed for northern spotted owls in Oregon (74 FR 74 35883, July 21, 2009). The agreement authorizes the ODF to extend incidental take coverage with assurances through issuance of Certificates of Inclusion to eligible, non-Federal landowners who are willing to carry out habitat management measures benefitting the northern spotted owl. The purpose of

the agreement is to encourage non-Federal landowners to create, maintain, and enhance spotted owl habitat through forest management, which would also benefit fishers given the two species' use of similar habitat components.

In 2016, an approximately 1.6 million-ac (647 thousand-ha) CCAA for fishers on lands in Sierra Pacific Industries (SPI) ownership in the Klamath, Cascade, and Sierra Nevada mountains was completed (SPI and Service 2016, entire). This CCAA encompasses approximately 5 percent of potentially suitable fisher habitat in California, 2.7 percent of which is within the currently occupied range. Implementation and monitoring has been under way since that time. The objectives of this CCAA are to secure general forested habitat conditions for fishers for a 10-year time period and the retention of important fisher habitat components (large trees, hardwoods, and snags) suitable for denning and resting into the future.

In 2019, we finalized an incidental take permit for the Green Diamond Forest HCP (GDRC 2018, entire), which is anticipated to provide a conservation benefit for fishers and their habitat (portions of forests on the west slope of the coastal and Klamath Mountains) in Del Norte and Humboldt Counties, California. Conservation benefits anticipated include (but are not limited to): Identifying and retaining fisher denning and resting trees, including maintaining a 0.25-mi (402-m) radius no-harvest buffer around active fisher dens; fisher-proofing water tanks and pipes; implementing measures that detect, discourage, and remove unauthorized marijuana cultivation and associated pesticide use; and cooperating with any Federal or State-approved fisher capture and relocation/reintroduction recovery programs (Service 2019a, p. 2).

Southern Sierra Nevada (SSN)

The Sierra Nevada Fisher Working Group completed a conservation strategy in 2016 (Spencer *et al.* 2016, entire), but the authors of the report later released a changed circumstances letter due to new tree mortality information (Spencer *et al.* 2017, entire). The changed circumstances letter provides details on the conservation measures that may no longer be applicable and an interim process for designing and evaluating vegetation management projects. Current benefits that still exist for fisher from the conservation strategy and the changed circumstances letter include long-term desired conditions representing a range of characteristics to strive for in various areas to inform fine-scale assessment of key fisher habitat elements, including their connectivity within potential home ranges and across the landscape (Spencer *et al.* 2017, pp. 2–6). A revised/final conservation strategy that addresses the new tree mortality information does not yet exist.

Resiliency, Representation, and Redundancy of the West Coast DPS of Fishers

In this section, we synthesize the information above to evaluate resiliency, redundancy, and representation as they relate to fishers in the proposed West Coast DPS both currently and into the future.

- Resiliency reflects a species' ability to withstand stochastic events (events arising from random factors). Resiliency refers to the capacity of an ecosystem, population(s) (or DPS), or organism to recover quickly from disturbances such as random fluctuations in reproductive rates and fecundity (demographic stochasticity), variations in temperature or rainfall (environmental stochasticity), and the effects of anthropogenic activities. Resilient populations demonstrate an ability to tolerate or adapt to changes or effects caused by a disturbance or a combination of disturbances.
- Redundancy reflects a species' ability to withstand catastrophic events (such as a rare destructive natural event or episode involving one or many populations). Redundancy is about spreading the risk of such an event across multiple or large resilient population(s). As such, redundancy can be measured by the number or distribution of resilient population(s) across the range of the species. In this context, a species with adequate or high-level redundancy compensates for fluctuations in or loss of populations across the species' range such that the loss of a single population (or a portion of a single large population) has little or no lasting effect on the structure and functioning of the species as a whole.
- Representation characterizes the ability of a species to adapt to changing environmental conditions. This adaptive potential can be measured by genetic and ecological variability. Representation is directly correlated to a species' ability to adapt to changes (natural or human-caused) in its environment.

The degree of resiliency of a species (or a DPS) is influenced by both the representation and redundancy of the species. Resiliency increases with increasing genetic diversity or a higher number of individuals; it decreases when the species has less genetic diversity or fewer individuals. Resiliency can also decrease depending on the magnitude, extent, and immediacy of impacts affecting one or more populations. In the case of the proposed West Coast DPS of fisher, resiliency may be lower than historical levels to some degree because the total population size is considered by some as small, particularly in the SSN subpopulation; although, forest carnivores generally occur at low densities (Ruggiero *et al.* 1994, p. 146).

The West Coast DPS of fisher faces a variety of threats including loss and fragmentation of habitat (*i.e.,* from high-severity wildfire and wildfire suppression actions, climate change, forest insects and tree diseases, vegetation management, and development) and potential direct impacts to individuals (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns) from wildfire, increased temperatures, increased tree mortality, disease and predation, exposure to toxicants, and potential effects associated with small population size. These threats (some more than others) cumulatively play a large role in both the current and future resiliency of the species. Of greatest importance at this time are:

(1) The long-term suitability of habitat conditions throughout the DPS's range given the continued presence/extent of high-severity and wide-ranging wildfires, and prolonged drought conditions that exacerbate forest insects and tree diseases. These conditions: (a) Reduce the availability of the natural resources (*e.g.,* appropriate canopy cover, old growth forest structure with large trees and snags) that the species relies on to complete its essential life-history functions, (b) contribute to increased stress hormones (cortisol) and reduced female fisher survival (as noted in one study in a portion of the SSN subpopulation), and (c) increase habitat fragmentation within and between populations.

(2) The sustained presence of toxicants from marijuana grow sites across a likely significant proportion of the landscape (primarily the NCSO subpopulation area) that contribute to continued fisher mortalities. Fisher mortalities continue to occur either by direct consumption or sublethal exposure to anticoagulant rodenticides, the latter of which may increase fisher death rates from other impacts such as predation, disease, or intraspecific conflict.

(3) Continued fragmentation of habitat in conjunction with the isolation and

potential inbreeding (due to an overall small population size) of the SSN subpopulation (see the SSN subpopulation discussion above under ''Current Condition of the West Coast DPS of Fisher'') when taking into account primarily (1) above (and likely to an insignificant degree (2) above). The ongoing threats exacerbate this subpopulation's vulnerability to extinction from stochastic events. Regardless of this subpopulation's potential for growth into the small amount of available but unoccupied suitable habitat present, we do anticipate this subpopulation will be small into the long-term future (see also Service 2016, pp. 133–137). Comments on the 2014 Proposed Rule received to date generally agree that the SSN subpopulation is small. Comments received to date on the NCSO subpopulation vary widely between consideration of this subpopulation as large or small.

Overall, the West Coast DPS of fisher has remained somewhat resilient across its current range given the degree of habitat loss and fragmentation from prolonged drought conditions and wildfire impacts, coupled with mortalities from toxicants (both anticoagulant and neurotoxicant rodenticides), and given at least some reduced female survival associated with increased stress hormones and reduced habitat suitability documented in a portion of the SSN subpopulation (see ''Forest Insects and Tree Diseases,'' above). However, considering the best available science and information at this time, it is likely that the resiliency of the DPS is likely to decrease in the near-term future given the cumulative impacts associated with current climate change model predictions for continued periodic but prolonged drought conditions, predictions of continued and increased intensity of wildfires across southern Oregon and northern California, the high likelihood of continued presence and spread of forest insect and tree diseases, and the low likelihood that a significant proportion of existing toxicants on the landscape would be removed in the near-term future.

Multiple, interacting populations across a broad geographic area or a single wide-ranging population (redundancy) provide insurance against the risk of extinction caused by catastrophic events. As was known at the time of the 2014 Proposed Rule, population redundancy continues to exist across the range of the DPS as a result of there being two native subpopulations: (1) The NCSO subpopulation (which for the purposes of this analysis and as described in this proposed rule, incorporate the interbreeding nonnative SOC subpopulation and the adjacent native NSN subpopulation) in southern Oregon and northern California; and (2) the SSN subpopulation in the Sierra Nevada range of California. The existence of these subpopulations, one of which is broadly distributed, contributes to the probability that fishers in the DPS will persist into the future and contribute to long-term genetic and demographic viability across the range. If either the NCSO or SSN native subpopulations or a significant proportion of the wider-ranging NCSO subpopulation were to be permanently lost, the fisher's redundancy in the DPS would be lowered, thereby decreasing the DPS's chance of survival in the face of potential environmental, demographic, and genetic stochastic factors and catastrophic events (extreme drought, wildfire, etc.).

We consider representation (*i.e.,* demographic persistence and preservation of overall genetic diversity) across the West Coast DPS of fisher to be moderate at this point in time, considering the persistence of two native (NCSO and SSN) subpopulations, including the reintroduced native NSN individuals. Also taken into consideration are the nonnative fishers reintroduced as the SOC subpopulation (now documented to be interbreeding with the NCSO native subpopulation); technically, these genes provide for increased representation. Finally, native fishers no longer appear to be present in some fragmented, suitable habitat areas across the DPS's range, including (but not limited to) north of the NSN reintroduction site, fragmented areas throughout portions of the NCSO subpopulation area, and throughout most of the unoccupied, suitable habitat in central and northern Oregon. Overall, fishers are represented across a smaller range than their historical presence, and occur in smaller numbers than historically with some introduction of nonnative genes from the NSN reintroduction.

Determination of the West Coast DPS of Fisher

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as a species that is ''in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as a species that is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The Act requires that we determine whether a species meets the definition of ''endangered species'' or ''threatened species'' because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

We evaluated threats to the species and assessed the cumulative effect of the threats under the section 4(a)(1) factors. Our 2016 Species Report (Service 2016, entire) is the most recent detailed compilation of fisher ecology and life history, and has a significant amount of analysis related to the potential impacts of threats within the DPS's range. In addition, we collected and evaluated new information available since 2016 to ensure a thorough analysis, as discussed above. Our analysis as reflected in this finding included our reassessment of the previous information and comments received on the 2014 Proposed Rule regarding the potential impacts to the West Coast DPS of fisher, as well as our consideration of new information regarding the past, present, and future threats to the DPS.

We considered whether the West Coast DPS of fisher is presently in danger of extinction, and determined that endangered species status is not appropriate. While threats are currently acting on the species and many of those threats are expected to continue into the future (see below), we did not find that the species is currently in danger of extinction throughout all of its range. With two subpopulations occurring across a large portion of the DPS's range, the current condition of the species still provides for enough resiliency, redundancy, and representation such that it is not currently in danger of extinction.

At this time, the best available information suggests that future resiliency for the West Coast DPS of fisher is low. As discussed above in the ''Risk Factors for the West Coast DPS of Fisher'' section (along with some detail in the 2014 draft and 2016 final Species Reports (Service 2014 and 2016, entire)), the species faces a variety of threats including: Loss and fragmentation of habitat resulting from high-severity

wildfire and wildfire suppression, climate change, forest insects and tree diseases, vegetation management, and development; and potential direct impacts to individuals (*e.g.,* increased mortality, decreased reproductive rates, increased stress/hormone levels, alterations in behavioral patterns) from wildfire, increased temperatures, increased tree mortality, disease and predation, exposure to toxicants, and potential effects associated with small population size (primarily the SSN subpopulation).

Currently, fishers in the West Coast DPS exist in two extant subpopulations: One small SSN subpopulation, and a larger NCSO subpopulation. The estimate of the SSN subpopulation is approximately 300 individuals (range = low of 100 to a high of 500 individuals), but there is no statistically detectable trend in population size or growth. There are no discernible positive or negative total trends in the NCSO subpopulation, and studies have suggested both positive and negative population trends at various times and at localized study sites. The most recent estimate of the NCSO subpopulation (excluding NSN and SOC is 3,196 individuals (range = low of 2,507 to a high of 4,184 individuals) (Furnas *et al.* 2017, p. 12). Overall, the West Coast DPS of fisher exists in two separate subpopulations (with the SSN subpopulation appearing significantly smaller than the NCSO subpopulation; see NCSO and SSN population descriptions, above, under ''Current Condition of the West Coast DPS of Fisher'') that have persisted but do not appear to be expanding.

We took into consideration all of the threats operating within the NCSO and SSN subpopulation areas that currently represent the West Coast DPS of fisher; these subpopulations are reduced in size due to historical trapping and past loss of late-successional habitat and, therefore, are more vulnerable to extinction from random events and increases in mortality. We evaluated the potential for synergistic effects (interaction of two or more threats that produce an effect greater than the sum of their individual effects) of multiple threats, although we are unable to quantify the scope and degree of synergistic effects and the variation of these effects across the landscape. However, just as threats are not occurring in equal scope and degree across the DPS's range, it is reasonable to conclude that the effects from these threats are occurring more in some areas than others. Some examples of the synergistic effects of multiple threats on fisher include:

- Destruction, modification, or curtailment of habitat, which may increase fishers' vulnerability to predation (Factors A and C);
- Impacts associated with climate change, such as increased risk of wildfire and tree mortality (tree insects and disease), and environmental impacts of human development, that will likely interact to cause large-scale ecotype conversion including shifts away from habitat types used by fisher, which could impact the viability of populations and reduce the likelihood of reestablishing connectivity (Factors A and E);
- Increases in disease caused by climate change (Factors A and C); and
- Human development (primarily within the Sierra Nevada), which is likely to cause increases in vehicle collisions, conflicts with domestic animals, and infections contracted from domestic animals (Factors A, C, and E).

Depending on the scope and degree of each of the threats and how they combine cumulatively, these threats can be of particular concern where populations are small and isolated. The cumulative effect (all threats combined) is of concern currently and particularly so in the foreseeable future, mainly in areas not managed for retention and recruitment of fisher habitat attributes, areas sensitive to climate change, and areas where direct mortality of fishers reduces their ability to maintain or expand their populations (Service 2014, pp. 166–169). Additionally, although there is currently a wide array of regulatory mechanisms and voluntary conservation measures in place to provide some benefits to the species and its habitat (see ''Existing Regulatory Mechanisms and Voluntary Conservation Measures,'' above), these measures are currently insufficient to protect the species from becoming an endangered species in the foreseeable future as a result of the current scope and degree of the threats (in particular threats related to illegal rodenticide use, increasing high-severity wildfires, and prolonged droughts that exacerbate the effects from wildfire, forest insects, and tree disease.

Overall and as stated above, we found that several threats are likely resulting in population-level impacts (as opposed to impacts to a few individuals) within the DPS's range, although there is some uncertainty in regard to the scope and degree of impacts. While there is uncertainty, the best available information suggests that impacts occur in both the NCSO and SSN subpopulations, although they appear particularly problematic in the SSN subpopulation area because of the narrow band of habitat that comprises this subpopulation and probable negative impacts associated with its small population size. As noted in our analysis, preliminary habitat-based population models suggest that the configuration of habitat affects population numbers in this region, and that some areas with high-quality habitat may remain unoccupied even at equilibrium population sizes, probably due to restricted connectivity between these locations and the main body of the population (Service 2016, p. 44; Rustigian-Romsos 2013, pers. comm.). Therefore, the cumulative impacts related to the habitat-based threats are likely to have a negative effect on the DPS because connectivity would likely decrease further (Service 2016, p. 69).

For the mortality-related threats, we reaffirm our quantitative assessment from 2014 regarding potential cumulative impacts in those portions of the DPS's range where data were available to do so. For fishers within this DPS, mortality related to research activities, collisions with vehicles, and anticoagulant rodenticide poisoning collectively add 3–17 percent annual mortality to naturally occurring mortality from disease and predation (collectively 6–32 percent mortality) and other natural sources such as starvation (as was last analyzed/reported in the final Species Report (Service 2016, p. 160)). For example, modeling completed for the SSN subpopulation demonstrate that a 10 to 20 percent increase in mortality rates could prevent fisher populations from the opportunity to expand in the future (Spencer *et al.* 2011, pp. 10–12). Coupled with habitat-related threats, the best available information suggests that cumulative effects to the West Coast DPS of fisher are reducing the resiliency of fisher subpopulations to such a degree that the species is likely to become an endangered species in the foreseeable future throughout all of its range (in other words, the future resiliency for the West Coast DPS of fisher is likely to be low). We also recognize that there likely will be differences in how the threats, both singly and cumulatively, present themselves across the landscape within the DPS's range.

Based on our review of the best scientific and commercial data available, we have determined the West Coast DPS of fisher meets the definition of a threatened species under the Act. Per our 2014 draft and 2016 final Species Reports, as well as our most recent analysis summarized herein, we find the most significant threats to the West Coast DPS are the cumulative

impact of all identified threats, especially habitat loss and fragmentation due to high-severity wildfire (Factor A) and vegetation management (Factor A) (noting that forest insects and tree diseases are exacerbated by changing climate conditions and thus also play a role under Factor A), and exposure to toxicants (Factor E). The existing regulatory mechanisms (Factor D) are not sufficient to address these threats to the level that the species does not meet the definition of a threatened species. We also find that the threat of trapping (Factor B) that was prevalent in the early 1900s is no longer a threat to the West Coast DPS of fisher, but the two extant populations are not expanding geographically even though this threat has been removed.

Thus, after assessing the best available information, we conclude that the West Coast DPS of fisher is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future (estimated as 35–40 years) throughout all of its range. In reaching this conclusion, we have considered available conservation measures and existing regulatory mechanisms that may ameliorate these threats.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Because we have determined that the West Coast DPS of fisher is likely to become an endangered species within the foreseeable future throughout all of its range, we find it unnecessary to proceed to an evaluation of potentially significant portions of the range. Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language. We note that the court in *Desert Survivors* v. *Department of the Interior,* No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), did not address this issue.

Determination of Status

Our review of the best available scientific and commercial information indicates that the West Coast DPS of fisher meets the definition of a threatened species. Therefore, we propose to list the West Coast DPS of fisher as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation by Federal, State, tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning includes the development of a recovery outline shortly after a species is listed and preparation of a draft and final recovery plan. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review when a species may be ready for downlisting or delisting, and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*http://www.fws.gov/endangered*), or from our Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (for example, restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and tribal lands. If the West Coast DPS of fisher is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of California and Oregon would be eligible for Federal funds to implement management actions that promote the protection or recovery of the West Coast DPS of fisher. Information on our grant programs that are available to aid species recovery can be found at: *http://www.fws.gov/grants*.

Although the West Coast DPS of fisher is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing

this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities as well as toxicant use on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, BLM, and National Park Service; issuance of section 404 Clean Water Act permits by the Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration.

II. Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features (a) Essential to the conservation of the species, and (b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary of the Interior that such areas are essential for the conservation of the species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdictions of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

We did not identify any of the factors above to apply to the West Coast DPS of fisher. Therefore, we find designation of critical habitat is prudent for the West Coast DPS of fisher.

Our regulations (50 CFR 424.12(a)(2)) further state that critical habitat is not determinable when one or both of the following situations exists: (1) Information sufficient to perform required analysis of the impacts of the designation is lacking; or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. A careful assessment of the economic impacts that may occur due to a critical habitat designation is not yet complete, and we are in the process of working with the States and other partners in acquiring the complex information needed to perform that assessment. Because the information sufficient to perform a required analysis of the impacts of the designation is lacking, we therefore find designation of critical habitat for the West Coast DPS of fisher to be not determinable at this time.

III. Proposed Rule Issued Under Section 4(d) of the Act

Provisions of Section 4(d) of the Act

Under section 4(d) of the Act, the Secretary of the Interior has the discretion to issue such regulations as he deems necessary and advisable to provide for the conservation of threatened species. The Secretary also has the discretion to prohibit by regulation with respect to any threatened species of fish or wildlife any act prohibited under section 9(a)(1) of the Act. The prohibitions of section 9(a)(1) of the Act make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered species of fish or wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife or fish that has been taken illegally. To the extent the section 9(a)(1) prohibitions apply only to endangered species, this proposed rule would apply those same prohibitions to the West Coast DPS of fisher with some exceptions, in accordance with section 4(d) of the Act. In other words, we are not applying the full suite of section 9(a)(1) protections to the West Coast DPS of fisher, and instead are including some exceptions to the section 9(a)(1) prohibitions for specific management activities that result in a long-term benefit to the species.

The courts have recognized the extent of the Secretary's discretion to develop prohibitions, as well as exclusions from those prohibitions, that are appropriate for the conservation of a species. For example, the Secretary may decide not to prohibit take, or to put in place only limited take prohibitions. See *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002). In addition, as affirmed in *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988), the protective regulations for a species need not address all the threats to the species. As noted by Congress when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him with regard to the permitted activities for those species.'' He may, for example, ''permit taking, but not importation of such species,'' or he may choose to forbid both taking and importation but allow the transportation of such species, as long as the measures will ''serve to conserve, protect, or restore the species concerned in accordance with the purposes of the

Act'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Proposed 4(d) Rule for the West Coast DPS of Fisher

As explained above, we have determined that the West Coast DPS of fisher meets the definition under the Act of a threatened species, in that it is likely to become an endangered species within the foreseeable future throughout its range. As such, we are proposing to add the West Coast DPS of fisher as a threatened species to the List of Endangered and Threatened Wildlife (50 CFR 17.11). However, we have also determined that it is necessary and advisable to issue protective regulations under section 4(d) of the Act in order to reduce the likelihood of the West Coast DPS of fisher becoming an endangered species. Under our proposed section 4(d) rule, except as described and explained below, all prohibitions and provisions that apply to endangered wildlife under section 9(a)(1) of the Act would apply to the West Coast DPS of fisher. Applying these section 9(a)(1) prohibitions will help minimize threats that could cause further declines in the status of the species for this DPS. Central to the protections afforded by this application is the prohibition of take. Take is defined under the Act as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct,'' and, therefore, any actions that would result in unlawful take of the species would be prohibited as a result of this proposed section 4(d) rule.

The fisher is a forest-dwelling species, and, as such, the potential for take may arise anywhere the effects of actions coincide with the occupied forested habitat in the range of this DPS. Numerous forest management activities occur within the range of the DPS, many of which could potentially result in take of fishers, either through death or injury to fishers resulting from significant habitat modification or degradation of their habitat. However, we also recognize that many of these activities are conducted under the scope of forest management plans or actions that are likely to have an overarching net beneficial impact for the conservation of fishers in this DPS. Therefore, while activities conducted under such forest management plans or actions may result in some short-term or small level of localized negative effect to fishers, we are providing exceptions to the section 9(a)(1) prohibitions for these activities, as we believe doing so will provide a net conservation benefit for the species.

Our first exception is aimed at forestry management activities for the purposes of reducing the risk or severity of wildfires. The proposed exception states that these activities could include forest management practices such as those to remove horizontal and vertical fuels, to remove fuels within 150 ft (45.7 m) of legally permitted structures and within 300 ft (91.4 m) of habitable structures, or to implement Fuel Break/Defensible Space Prescriptions that allow for the removal of trees or other vegetation to create shaded fuel breaks along roads or natural features or to create defensible space. All actions taken during a wildfire to support fire suppression activities would also be exempt.

With regard to Exception 1, we note that the long-term viability of the fisher, as with many wildlife species, is intimately tied to the condition of its habitat. As described in our analysis of the species' status, one of the primary driving threats to the fisher's continued viability is the destruction of its habitat from large-scale, stand-replacing wildfires (see ''Wildfire and Wildfire Suppression,'' above). Because of climate change and warming temperatures, the increase in the frequency and severity of these large-scale, stand-replacing wildfires increases the risk to the species from this threat. Actions taken by forest managers in the range of the fisher to reduce the risk or severity of uncharacteristically large and severe wildfires, while potentially resulting in some short-term or localized negative effects to fishers, will likely further the goal of reducing the likelihood of the species from becoming an endangered species, and will ultimately contribute to its conservation and long-term viability. Therefore, we will not apply the section 9(a)(1) prohibitions to these actions. Although we propose this exception to take prohibitions for these forest management activities, we encourage forest managers to design them in a way that avoids take of fishers provided the fire reduction purposes of the activities still can be achieved.

Our second exception is related to forestry management activities conducted in the range of the West Coast DPS of fisher pursuant to a fisher conservation plan or strategy approved by the Service or the California Department of Fish and Wildlife. With regard to this exception, we note that extensive work has gone into developing specific forest management measures, as part of overarching fisher conservation plans or strategies, which can contribute to the conservation needs of the fisher. Forest management conducted under the scope of such publicly available fisher conservation plans or strategies (*e.g.,* Southern Sierra Nevada Fisher Conservation Strategy (Spencer *et al.* 2016, entire; and subsequent addendum letter, Spencer *et al.* 2017)) that include the objectives outlined below, while having the potential to result in some small level of localized disturbance or temporary negative effects to fishers or their habitats, is expected to improve overall habitat conditions and contribute to the species' overall long-term viability. Therefore, we will not prohibit incidental take of fishers that may occur as a result of actions implemented under such conservation plans or strategies.

Our third exception is aimed at forestry management activities conducted in the range of the West Coast DPS of fisher and with Federal or State oversight that are not specifically designed as fisher conservation plans or strategies, but are nevertheless consistent with the conservation needs of the West Coast DPS of fisher. Activities consistent with the conservation needs of fisher could include the following measures: Retention of known den and rest sites; retention of multi-layered, structurally diverse forests; retention of larger diameter trees, including those with damage or decay; increased vegetation diversity, including desirable species such as hardwoods or mast- or fruit-bearing trees; retention of shrubs and smaller trees in areas with sparse overstory cover; and no poisoning of prey species, such as mountain beavers, porcupines, snowshoe hares, and woodrats.

With regard to Exception 3, we acknowledge that there are forest management activities conducted under management mechanisms that are not specifically designed for fisher conservation, in contrast to Exception 2 above, but that are implemented in ways that serve to maintain forest habitat conditions beneficial to fishers. The management mechanisms included under this Exception vary, but all are conducted with Federal or State oversight. While activities conducted under such mechanisms have the potential to result in some small level of localized disturbance or temporary negative effects to fishers or their habitats, the overall forest habitat will be maintained in conditions beneficial to fishers, which will contribute to the DPS's long-term viability. Therefore, incidental take of fishers that may occur as a result of actions implemented under such forest management mechanisms will not be prohibited under this section 4(d) rule.

Our fourth exception is for management activities conducted for the purpose of identification and clean-up of toxicant-contaminated sites for which the Service has determined that such activities to remove toxicants would be consistent with conservation strategies for the West Coast DPS fishers. Those activities could include use of machinery that may cause localized, short-term disturbance to West Coast DPS fishers (*e.g.,* helicopters or off-road vehicles), as well as require limited removal of some habitat structures valuable to West Coast DPS fishers (*e.g.,* hazard trees that may be a suitable den site).

With regard to Exception 4, we note that exposure to toxicants, especially anticoagulant and neurotoxicant rodenticides, is a threat to the fisher, and that illegal marijuana cultivation sites are the biggest source of these toxicants in the forested habitats used by the species. These types of toxicants in the environment can result in both lethal and sublethal effects to fishers through their ingestion of contaminated prey items, and also cause indirect effects to fishers as a result of declines in their prey base. Identification and cleanup of such contaminated sites is vitally important in removing this threat; however, site reclamation may involve machinery that can disturb fishers (*e.g.,* helicopters, off-road vehicles), and hazardous material removal activities may eliminate some structures used by fisher. As a result, these cleanup activities have the potential to result in negative impacts to fisher individuals. However, the removal of these toxicants that can have long-term detrimental effects on fishers or their prey will reduce the potential for lethal and sublethal effects in fishers, and will improve the overall condition of the habitat, thereby contributing to the long-term viability of the species. Accordingly, incidental take of fishers that may occur as a result of toxicant cleanup activities will not be prohibited under this section 4(d) rule.

Therefore, as explained above, we are proposing to issue protective regulations under section 4(d) of the Act. The prohibitions under section 9(a)(1) will apply to fishers throughout the range of the West Coast DPS, with specific exceptions tailored to the conservation needs of the species. While we are providing these exceptions to the prohibitions and provisions of section 9(a)(1), we clarify that all Federal agencies (including the Service) that fund, permit, or carry out the activities described above will still need to ensure, in consultation with the Service (including intra-Service consultation when appropriate), that the activities are not likely to jeopardize the continued existence of the DPS. Private entities who undertake any actions other than those described in the exceptions above that may result in adverse effects to the West Coast DPS of fisher, when there is no associated Federal nexus to the action, may wish to seek an incidental take permit from the Service before proceeding with the activity. The proposed provisions of the 4(d) rule are set forth at the end of this document in the rule portion.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) and consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of the West Coast DPS of fisher.

Required Determinations

Clarity of the Rule

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

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

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

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. In development of the 2014 Species Report, we sent letters noting our intent to conduct a status review and requested information from all tribal entities within the historical range of the West Coast DPS of fisher, and we provided the draft Species Report to those tribes for review. We also notified the tribes via email to ensure they were aware of the January 31, 2019, document in the **Federal Register** to reopen the comment period on the October 7, 2014, proposed rule to list the DPS as a threatened species. As we move forward in this listing process, we will continue to consult on a government-to-government basis with tribes as necessary.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *http://www.regulations.gov* and upon request from the Yreka Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Pacific Southwest Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title

50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245; unless otherwise noted.

■ 2. Amend part 17.11(h) by adding an entry for ''Fisher (West Coast DPS)'' in alphabetical order under Mammals to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

EPA—APPROVED OHIO REGULATIONS

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Fisher (West Coast DPS) ...	*Pekania pennanti*	U.S.A. (CA and OR)	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.40(s).[4d]
*	*	*	*	*

* * * * *

■ 3. Amend § 17.40 by adding paragraph (s) to read as set forth below:

§ 17.40 Special rules—mammals.

* * * * *

(s) West Coast DPS of fisher (*Pekania pennanti*).

(1) *Prohibitions.* Except as noted in paragraph (a)(2) of this section, all prohibitions and provisions of section 9(a)(1) of the Act apply to the West Coast DPS of fisher.

(2) *Exceptions from prohibitions.* Incidental take of the West Coast DPS of fisher will not be considered a violation of the Act if the take results from any of the following activities:

(i) Forestry management activities conducted in the range of the West Coast DPS of fisher for the purposes of reducing the risk or severity of wildfires. These activities could include forest management practices such as those to remove horizontal and vertical fuels, to remove fuels within 150 ft (45.7 m) of legally permitted structures and within 300 ft (91.4 m) of habitable structures, or to implement Fuel Break/Defensible Space Prescriptions that allow for the removal of trees or other vegetation to create shaded fuel breaks along roads or natural features or to create defensible space. All actions taken during a wildfire to support fire suppression activities would also be exempt.

(ii) Forestry management activities conducted in the range of the West Coast DPS of fisher pursuant to a fisher conservation plan or strategy approved by the Service or the California Department of Fish and Wildlife.

(iii) Forestry management activities conducted in the range of the West Coast DPS of fisher and with Federal or State oversight that are not specifically designed as fisher conservation plans or strategies, but are nevertheless consistent with the conservation needs of the West Coast DPS of fisher. Activities consistent with the conservation needs of fisher could include the following measures: Retention of known den and rest sites; retention of multi-layered, structurally diverse forests; retention of larger diameter trees, including those with damage or decay; increased vegetation diversity, including desirable species such as hardwoods or mast- or fruit-bearing trees; retention of shrubs and smaller trees in areas with sparse overstory cover; and no poisoning of prey species, such as mountain beavers, porcupines, snowshoe hares, and woodrats.

(iv) Management activities conducted for the purpose of identification and clean-up of toxicant-contaminated sites for which the Service has determined that such activities to remove toxicants would be consistent with conservation strategies for the West Coast DPS fishers. Those activities could include use of machinery that may cause localized, short-term disturbance to West Coast DPS fishers (*e.g.,* helicopters or off-road vehicles), as well as require limited removal of some habitat structures valuable to West Coast DPS fishers (*e.g.,* hazard trees that may be a suitable den site).

(v) Take as set forth at § 17.31(b).

* * * * *

Dated: October 21, 2019.

Margaret E. Everson,

Principal Deputy Director, U.S. Fish and Wildlife Service, Exercising the Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2019–23737 Filed 11–6–19; 8:45 am]

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