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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Doc. No. AMS–SC–18–0099; SC19–981–1 FR]

Almonds Grown in California; Revisions to the Accepted User Program Requirements and New Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule implements a recommendation from the Almond Board of California (Board) to revise the almond accepted user program requirements currently prescribed under the Marketing Order for Almonds Grown in California (Order). This rule prohibits the transfer of inedible material between accepted users, implements a new information collection form and makes a conforming change to an existing form.

DATES: Effective December 26, 2019.

FOR FURTHER INFORMATION CONTACT: Peter R. Sommers, Marketing Specialist, or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or Email: *PeterR.Sommers@usda.gov* or *Terry.Vawter@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This final rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California. Part 981 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of growers and handlers operating within California.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this final rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule requires accepted users to dispose of inedible material within six months of receipt, submit public weighmaster weight certificates within 10 business days of receipt of inedible material, and submit an accepted user plan annually. In addition, this action prohibits the transfer of inedible material between accepted users, establishes a new information collection, and makes a conforming change to an existing form. The Board unanimously recommended these changes at its December 4, 2018, meeting.

Section 981.42 provides authority for the Board to impose quality control requirements. Paragraph (a) of that section obligates each handler to have their almonds inspected to determine the percentage of inedible kernels out of the total kernel weight received. Inspection results are sent to the Board. Inedible kernels in excess of two percent of the total represent the handler's ''inedible disposition obligation'' (obligation). Handlers are required to dispose of their obligation by delivering it to the Board or an approved accepted user (crusher, feed manufacturer, feeder, or dealer in nut waste). This section also gives the Board the authority to establish rules and regulations necessary and incidental to the administration of the inedible program.

Quality control requirements in section 981.442(a)(7) contain requirements to which accepted users must adhere to be eligible to receive disposition obligations. These include completing an application and business data sheet, maintaining prompt and accurate reporting of disposition notices, and providing a public weighmaster weight certificate for each lot received. The Board may deny or revoke accepted user status at any time if the accepted user fails to meet these terms and conditions.

Proper delivery of the obligation is tracked and credited to the handler through the completion of the Board's ''Form 8—Inedible and Exempt Outlet Disposition.'' Part A of the form is submitted to the Board by the handler and Part B, supported by a public weighmaster weight certificate, is submitted to the Board by the accepted user. The Order currently does not specify deadlines by which accepted users are required to dispose of inedible kernels or when to submit the public weighmaster weight certificate to the Board. With no specified deadlines, accepted users are not required to

dispose of the inedible kernels in the same crop year they received the material. This has led to handlers not receiving timely credit for their disposition obligation.

This final rule requires accepted users to dispose of inedible material within six months of receipt and to submit public weighmaster weight certificates within 10 business days of receipt of inedible material. These changes are expected to improve the timeliness and proper tracking of handler disposition obligations.

This rule requires submission of an annual accepted user plan, which provides a detailed description of how the accepted user receives, stores, uses, and documents inedible material received. This is an additional verification tool during accepted user annual reviews. The rule also specifies that an application and business sheet must be completed and submitted annually, as well. Additionally, this rule implements conforming changes to an existing form.

Current regulations do not prohibit the transfer of inedible material between accepted users; therefore, material may be transferred an unlimited number of times between accepted users, making handler disposition obligations increasingly difficult to properly track and verify. Specifying deadlines for submission of required documentation, requiring the annual submission of an accepted user plan, along with prohibiting the transfer of product between accepted users, will increase the effectiveness of the Board's compliance and verification activities.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 6,800 almond growers in the production area and approximately 100 almond handlers subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $30,000,000, and small agricultural producers are defined as those having annual receipts of less than $1,000,000 (13 CFR 121.201).

The National Agricultural Statistics Service (NASS) reported in its most recent (2017) Agricultural Census that there were 7,611 almond farms in the production area (California), of which 6,683 had bearing acres. The following computation provides an estimate of the proportion of agricultural producers (farms) and agricultural service firms (handlers) that would be considered small under the SBA definitions.

The NASS Census data indicate that out of the 6,683 California farms with bearing acres of almonds, 4,425 (66 percent) have fewer than 100 bearing acres.

For the almond industry's most recently reported crop year (2017), NASS reported an average yield of 2,270 pounds per acre and a season average grower price of $2.53 per pound. A 100-acre farm with an average yield of 2,270 pounds per acre would produce about 227,000 pounds of almonds. At $2.53 per pound, that farm's production would be valued at $574,310. The Census of Agriculture indicates that the majority of California's almond farms are smaller than 100 acres; therefore, it could be concluded that the majority of growers had annual receipts from the sale of almonds in 2017–18 of less than $574,310, which is below the SBA threshold of $1,000,000. Thus, over two-thirds of California's almond growers may be classified as small businesses according to SBA's definition.

There is no representative handler price available. Therefore, to estimate the proportion of almond handlers that may be considered small businesses, the unit value per shelled pound of almonds exported was used as a reasonable representation of a handler-level price. A unit value for a commodity is the value of exports divided by the quantity. Data from the Global Agricultural Trade System database of USDA's Foreign Agricultural Service showed that the value of almond exports from August 2016 to July 2017 (combining shelled and inshell almonds) was $4.072 billion. The quantity of almond exports over that time period was 1.406 billion pounds, combining shelled exports and the shelled equivalent of inshell exports. Dividing the export value by the quantity yields a unit value of $2.90 per pound. Subtracting this figure from the NASS 2016 estimate of season average grower price per pound ($2.44) yields $0.46 per pound as a representative grower-handler margin. Applying the $2.90 representative handler price per pound to 2016–17 handler shipment quantities provided by the Board shows that approximately 40 percent of California's almond handlers shipped almonds valued under $30,000,000 for that crop year. Therefore, 40 percent of handlers may be considered small businesses according to the SBA definition.

This rule requires, among other things, accepted users to dispose of inedible material within six months of receipt, submit public weighmaster weight certificates within 10 business days of receipt of inedible material, submit an annual accepted user plan, and prohibits the transfer of inedible material between accepted users. Authority for this action is provided in § 981.42(a) of the Order. The Board recommended this action at a meeting on December 4, 2018.

It is not anticipated that this action would impose additional costs on handlers, growers, or accepted users, regardless of size. These changes are expected to increase the effectiveness of the Board's verification and compliance activities.

The Board considered alternatives to this action, including not changing the current accepted user eligibility requirements. Prior to making its recommendation to the Secretary, a taskforce was created by the Board to review the accepted user program and make recommendations to the Board's Almond Quality, Food Safety and Services Committee (Committee). The Committee reviewed the program and the taskforce's recommendations and determined that the recommended changes were necessary to ensure the continued effectiveness of the program. Therefore, the Committee unanimously recommended this action to the Board.

This rule imposes additional reporting and recordkeeping requirements on companies that voluntarily participate in the accepted user program. Accepted users are required to dispose of inedible material within six months of receipt, submit public weighmaster weight certificates within 10 business days of receipt of inedible material, submit an annual accepted user plan, and are prohibited from transferring inedible materials.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. No public comments

were received regarding the initial regulatory flexibility analysis.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Board's meeting was widely publicized throughout the almond industry, and all interested persons were invited to attend the meeting and participate in Board deliberations. Like all Board meetings, the December 4, 2018, meeting was a public meeting, and all entities, both large and small, were able to express their views on this issue.

Also, the Board has a number of appointed committees to review certain issues and make recommendations to the Board. The Committee met and discussed this issue in detail. That meeting was also a public meeting, and both large and small entities were able to participate and express their views.

A proposed rule concerning this action was published in the **Federal Register** on July 12, 2019 (84 FR 33182). Copies of the proposed rule were provided to Board members and California almond handlers. Additionally, the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending August 12, 2019, was provided to allow interested persons to respond to the proposal. No comments were received. Accordingly, USDA will make no changes to the rule as proposed.

AMS submitted a request to OMB for approval to modify three existing forms and create one new form in relation to the accepted user program. Once approved, the new information collection will be merged with the forms currently approved under OMB No. 0581–0178 Vegetable and Specialty Crops. This process for seeking approval of information collection requirements complies with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Should additional changes become necessary, AMS will submit them to OMB for approval.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Board and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 981 is amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

■ 1. The authority citation for part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 981.442, revise paragraph (a)(7) to read as follows:

§ 981.442 Quality control.

(a) * * *

(7) *Accepted Users.* An accepted user's eligibility shall be subject to the following criteria:

(i) Annual completion of an application with the Board for accepted user status;

(ii) Annual submission of a business data sheet to the Board;

(iii) Annual submission of an Accepted User Plan (Form ABC 30) to the Board by July 31 of each year;

(iv) The accurate and prompt submission of Form ABC 8, Part B, to the Board for each lot of almonds received. Each lot of inedible almonds received must be documented by a public weighmaster weight certificate issued at the request of the accepted user at the time of receipt of the lot. Weighmaster weight certificates must be submitted to the Board within 10 business days of issuance;

(v) Disposal of inedible almond material within 6 months of receipt; and

(vi) Disposal of inedible almond material received with no transfer of the material between accepted users.

(vii) The Board may deny or revoke accepted user status at any time if the applicant or accepted user fails to meet the terms and conditions of § 981.442, or if the applicant or accepted user fails to meet the terms and conditions set forth in the accepted user application (Form ABC 34).

(viii) The eligibility of accepted users shall be reviewed annually by the Board. Handlers will not receive credit towards their disposition obligations pursuant to paragraph (a)(4) of this section for inedible lots where the difference between the weight of the lot reported by the inspection agency on Form ABC 8 and the weight of the lot reported on the public weighmaster weight certificate exceeds 2.0 percent.

* * * * *

Dated: November 21, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–25661 Filed 11–25–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Doc. No. AMS–SC–19–0056; SC19–993–1 FR]

Dried Prunes Produced in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a recommendation from the Prune Marketing Committee (Committee) to decrease the assessment rate established for the 2019–20 and subsequent crop years from $0.28 to $0.25 per ton of salable dried prunes handled under the Marketing Order 993. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective December 26, 2019.

FOR FURTHER INFORMATION CONTACT: Maria Stobbe, Marketing Specialist, or Terry Vawter, Regional Director, California Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (559) 538–1674, Fax: (559) 487–5906, or Email: *Maria.Stobbe@usda.gov* or *Terry.Vawter@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, amends regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This rule is issued under Marketing Agreement and Order No. 993, as amended (7 CFR part 993), regulating the handling of dried prunes

produced in California. Part 993 (Referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers of dried prunes operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 13563 and 13175. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the Order now in effect, California dried prune handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate will be applicable to all assessable dried prunes beginning on August 1, 2019, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Order authorizes the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Committee's needs and with costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting where all directly affected persons have an opportunity to participate and provide input.

This final rule decreases the assessment rate from $0.28, the rate that was established for the 2013–14 and subsequent crop years, to $0.25 per ton of salable dried prunes handled for the 2019–20 and subsequent crop years.

The Committee met on June 20, 2019, and unanimously recommended 2019–20 crop year expenditures of $24,500 and an assessment rate of $0.25 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $20,470. The assessment rate of $0.25 is $0.03 lower than the rate currently in effect. The Committee recommended decreasing the assessment rate to reflect an anticipated larger crop size, which is expected to result in assessment revenue being greater than their anticipated expenses.

Of the total $24,500 budgeted for the 2019–20 crop year, major expenditures recommended by the Committee include $13,300 for personnel, and $11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018–19 were $10,490, and $9,980, respectively.

The assessment rate recommended by the Committee was derived by considering anticipated expenses and expected shipments of 110,000 tons of salable dried prunes. Income derived from handler assessments is estimated to be $27,500 (110,000 × $0.25), along with interest income, should be adequate to cover budgeted expenses of $24,500.

The assessment rate established in this final rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2019–20 crop year budget and those for subsequent crop years would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 800 producers of dried prunes in the production area and 20 handlers subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts less than $1,000,000, and small agricultural service firms are defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to Committee data, the average price for California dried prunes during the 2017–18 season was approximately $1,980 per ton with a total production of 105,000 tons. Using the average price and shipment information, the number of handlers (20), and assuming a normal distribution, the majority of handlers would have average annual receipts of greater than $30,000,000. Thus, the majority of California dried prune handlers may be classified as large business entities.

In addition, and assuming a normal distribution, dividing the average prune crop value for 2017 reported by the National Agricultural Statistics Service (NASS) of $206,084,000, by the number of producers (800) yields an average annual producer revenue estimate of about $257,605. Based on the foregoing, the majority of producers of California dried prunes may be classified as small entities.

This final rule decreases the assessment rate collected from handlers for the 2019–20 and subsequent crop years from $0.28 to $0.25 per ton of salable California dried prunes. The

Committee unanimously recommended 2019–20 expenditures of $24,500 and an assessment rate of $0.25 per ton of salable dried prunes handled. The assessment rate of $0.25 is $0.03 lower than the rate currently in effect. The quantity of assessable dried prunes for the 2019–20 crop year is estimated at 110,000 tons. Thus, the $0.25 rate should provide $27,500 in assessment income (110,000 × $0.25). Income derived from handler assessments, along with interest income, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2019–20 crop year include $13,300 for personnel, and $11,200 for operating expenses. In comparison, budgeted expenses for these items in 2018–19 were $10,490, and $9,980, respectively.

The Committee recommended decreasing the assessment rate given the increase in crop size and the associated revenue would be sufficient to fund their proposed 2019–20 crop year expenses.

Prior to arriving at this budget and assessment rate, the Committee considered information from various sources, such as the Committee's Executive Committee and NASS. Alternative expenditure levels were discussed by the Executive Committee, who reviewed the relative value of various activities to the prune industry. This committee determined that all program activities were adequately funded and; thus, no alternate expenditure levels were deemed appropriate. Additionally, maintaining the current assessment rate of $0.28 per ton of salable dried prunes was discussed. However, sufficient funds would be generated at the larger crop size ($27,500), even if assessed at the lower assessment rate. The rate of $0.25 per ton of salable dried prunes may exceed their anticipated expenses by $3,000, thereby providing a contingency funds for unexpected expenses.

Based on these discussions and estimated shipments, the assessment rate of $0.25 should provide $27,500 in assessment income. The Committee determined that assessment revenue, and interest income, should be adequate to cover budgeted expenses for the 2019–20 crop year.

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the average grower price for the 2019–20 crop year should be approximately $2,000 per ton of salable dried prunes. Therefore, the estimated assessment revenue for the 2019–20 crop year as a percentage of total grower revenue would be about 0.01 percent.

This final rule decreases the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Committee's meeting was widely publicized throughout the California prune industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 20, 2019, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This final rule imposes no additional reporting or recordkeeping requirements on either small or large California prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on September 24, 2019 (84 FR 49963). Copies of the proposed rule were provided to the California prune handlers. Finally, the proposal was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending on October 24, 2019, was provided for interested persons to respond to this proposal. No comments were received; and, thus, no changes were made to the proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material, including information and recommendation submitted by the Committee and other available information, it is hereby found that this final rule will tend to effectuate the declared policy of the act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plum, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2019, an assessment rate of $0.25 per ton of salable dried prunes is established for California dried prunes.

Dated: November 21, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–25660 Filed 11–25–19; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1599

RIN 0551–AA93

McGovern-Dole International Food for Education and Child Nutrition Program

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule with request for comments.

SUMMARY: The Foreign Agricultural Service (FAS) is revising the regulations governing the McGovern-Dole International Food for Education and Child Nutrition (McGovern-Dole) Program to add provisions related to the local and regional procurement of commodities under the program, and to

make other minor changes. The Agriculture Improvement Act of 2018 amended the statute authorizing the McGovern-Dole Program to provide that not more than ten percent of the funds made available to carry out the program shall be used to purchase agricultural commodities through local and regional procurement. This revision implements this statutory change by setting forth requirements applicable to the local or regional procurement of commodities by an award recipient under the McGovern-Dole Program, and it makes other technical changes to update the regulations.

DATES: This rule is effective November 26, 2019. Written comments must be received by FAS or carry a postmark or equivalent no later than December 26, 2019.

ADDRESSES: Comments, identified by Regulatory Information Number (RIN) 0551–AA93, may be sent by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: PPDED@fas.usda.gov*. Include RIN 0551–AA93 in the subject line of the message.
- *Mail:* Senior Director, International Food Assistance Division, Global Programs, Foreign Agricultural Service, 1400 Independence Ave. SW, STOP 1034, Washington, DC 20250.

Instructions: All submissions received must include the agency name and RIN 0551–AA93.

FOR FURTHER INFORMATION CONTACT: Ingrid Ardjosoediro, Deputy Director, International Food Assistance Division, Global Programs, Foreign Agricultural Service, 1400 Independence Ave. SW, STOP 1034, Washington, DC 20250. Telephone: (202) 720–2637; Fax: (202) 690–0251; Email: *FAD_Contact@fas.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

The McGovern-Dole International Food for Education and Child Nutrition Program helps support food security, child development, and education in low-income, food-deficit countries around the world. The program provides for the donation of U.S. agricultural commodities, as well as financial and technical assistance, to support school feeding and maternal and child health and nutrition projects. The McGovern-Dole Program is authorized in section 3107 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 1736o–1).

FAS uses the regulations in 7 CFR part 1599, McGovern-Dole International Food for Education and Child Nutrition Program, in the administration of the McGovern-Dole Program. The previous version of the regulations was published as a final rule on September 12, 2016 (81 FR 62614).

Revision of Regulations

FAS is revising the McGovern-Dole Program regulations in 7 CFR part 1599 through this final rule to implement a change made by the Agriculture Improvement Act of 2018 (Pub. L. 115–334) to section 3107 of the Farm Security and Rural Investment Act of 2002 to provide that not more than ten percent of the funds made available to carry out the McGovern-Dole Program shall be used to purchase agricultural commodities through local and regional procurement. FAS is adding definitions related to local and regional procurement in § 1599.2; adding a new § 1599.6, entitled ''Local and regional procurement of commodities,'' and re-numbering subsequent sections; and revising other sections within 7 CFR part 1599 to incorporate requirements applicable to the local or regional procurement of agricultural commodities by an award recipient under the McGovern-Dole Program.

In addition, FAS is revising the regulations to make changes that are technical in nature and intended to improve the efficiency and effectiveness of the McGovern-Dole Program, including the following:

(1) Clarifying that provisions specified by FAS during the negotiation of an agreement, which are in addition to provisions required by the regulations, will be included in the agreement but will not necessarily be in the plan of operation component of the agreement (7 CFR 1599.5(d)(6)).

(2) Clarifying that the required assertion by a recipient that adequate transportation and storage facilities will be available in the target country refers to the time of arrival of the commodities in the target country (7 CFR 1599.5(e)(6)).

(3) Modifying references to economic sanction programs to allow for situations in which a U.S. Government economic sanction program is not country-specific (7 CFR 1599.12(e) and 1599.15(b)(2)).

(4) Replacing the specific reference to a percentage of the ''Grand Total Costs'' in the agreement budget with a more general reference to the amount specified in the agreement, which would allow FAS to make a change to the budget format if it determines that it would be beneficial (7 CFR 1599.12(h)(1)).

(5) Allowing FAS to specify in the agreement the circumstances in which a recipient must submit to FAS a contract with a provider of goods, services, or construction work (7 CFR 1599.12(k)).

(6) Allowing for the possibility that there might not be any closeout and post-closeout provisions specified in an agreement and that only those provisions in 2 CFR 200.343 and 200.344 would apply (7 CFR 1599.17(b)(3)).

Notice and Comment

This rule is being issued as a final rule without prior notice and opportunity for comment. The Administrative Procedure Act exempts rules ''relating to agency management or personnel or to public property, loans, grants, benefits, or contracts'' from the statutory requirement for prior notice and opportunity for comment (5 U.S.C. 553(a)(2)). Accordingly, this rule may be made effective less than 30 days after publication in the **Federal Register**. However, members of the public may participate in this rulemaking by submitting written comments, data, or views. FAS will consider the comments received and may conduct additional rulemaking based on the comments. Written comments must be received by FAS or carry a postmark or equivalent no later than December 26, 2019.

Catalog of Federal Domestic Assistance

The program covered by this regulation is listed in the Catalog of Federal Domestic Assistance (CFDA) under the following FAS CFDA number: 10.608, Food for Education.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act of 2002 (44 U.S.C. chapter 36), to promote the use of the internet and other information technologies to provide increased opportunities for citizens' access to Government information and services, and for other purposes.

Executive Order 12866

This rule is issued in conformance with Executive Order 12866, ''Regulatory Planning and Review.'' It has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' This rule does not preempt State or local laws, regulations, or policies unless they

present an irreconcilable conflict with this rule. This rule will not be retroactive.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with officials of State and local governments that would be directly affected by the proposed Federal financial assistance. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for the State and local government coordination and review of proposed Federal financial assistance and direct Federal development. This rule will not directly affect State or local officials and, for this reason, it is excluded from the scope of Executive Order 12372.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally requires an agency to prepare a regulatory flexibility analysis of any rule that is subject to notice and comment rulemaking under the Administrative Procedure Act (APA) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act does not apply to this rule because FAS is not required by the APA or any other law to publish a notice of proposed rulemaking with respect to the subject matter of the rule.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' This rule will not have any substantial direct effect on 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, except as required by law. This rule does not impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States was not required.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that 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. FAS does not expect this rule to have any effect on Indian tribes.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because it does not impose any enforceable duty or contain any unfunded mandate as described under the UMRA.

List of Subjects in 7 CFR Part 1599

Agricultural commodities, Cooperative agreements, Exports, Food assistance programs, Foreign aid, Grant programs-agriculture, Technical assistance.

■ For the reasons stated in the preamble, the Foreign Agricultural Service revises 7 CFR part 1599 to read as follows:

PART 1599—McGOVERN-DOLE INTERNATIONAL FOOD FOR EDUCATION AND CHILD NUTRITION PROGRAM

Sec.

1599.1 Purpose and applicability.
1599.2 Definitions.
1599.3 Eligibility and conflicts of interest.
1599.4 Application process.
1599.5 Agreements.
1599.6 Local and regional procurement of commodities.
1599.7 Payments.
1599.8 Transportation of donated or procured commodities.
1599.9 Entry, handling, and labeling of donated or procured commodities and notification requirements.
1599.10 Damage to or loss of donated or procured commodities.
1599.11 Claims for damage to or loss of donated or procured commodities.
1599.12 Use of donated or procured commodities, sale proceeds, FAS-provided funds, and program income.
1599.13 Monitoring and evaluation requirements.
1599.14 Reporting and recordkeeping requirements.
1599.15 Subrecipients.
1599.16 Noncompliance with an agreement.
1599.17 Suspension and termination of agreements.
1599.18 Opportunities to object and appeals.
1599.19 Audit requirements.
1599.20 Paperwork Reduction Act.

Authority: 7 U.S.C. 1736o–1.

§ 1599.1 Purpose and applicability.

(a) This part sets forth the general terms and conditions governing the award of donated commodities and funds by the Foreign Agricultural Service (FAS) to recipients under the McGovern-Dole International Food for Education and Child Nutrition Program (McGovern-Dole Program). Under the McGovern-Dole Program, recipients use the donated commodities, proceeds from any sale of such commodities, FAS-provided funds, and program income to implement a project in a foreign country pursuant to an agreement with FAS. When authorized by an agreement, a recipient may use FAS-provided funds to make a local or regional procurement of qualified commodities to implement such a project.

(b)(1) The Office of Management and Budget (OMB) issued guidance on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200. In 2 CFR 400.1, the United States Department of Agriculture (USDA) adopted OMB's guidance in subparts A through F of 2 CFR part 200, as supplemented by 2 CFR part 400, as USDA policies and procedures for uniform administrative requirements, cost principles, and audit requirements for Federal awards.

(2) The OMB guidance at 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to the McGovern-Dole Program, except as provided in paragraphs (e), (f), and (g) of this section.

(c) Except as otherwise provided in this part, other regulations that are generally applicable to grants and cooperative agreements of USDA, including the applicable regulations set forth in 2 CFR chapters I, II, and IV, also apply to the McGovern-Dole Program.

(d) In accordance with 7 U.S.C. 1736o–1(e), assistance under the McGovern-Dole Program may be provided to private voluntary organizations, cooperatives, intergovernmental organizations, governments of developing countries and their agencies, and other organizations.

(e) The OMB guidance at 2 CFR part 200, and the provisions of 2 CFR part 400 and of this part, do not apply to an award by FAS under the McGovern-Dole Program to a recipient that is a foreign public entity, as defined in 2 CFR 200.46, and, therefore, they do not apply to a foreign government or its agency or an intergovernmental organization.

(f)(1) The OMB guidance at subparts A through E of 2 CFR part 200, as

supplemented by 2 CFR part 400 and this part, applies to all awards by FAS under the McGovern-Dole Program to all recipients that are private voluntary organizations, including a private voluntary organization that is a foreign organization, as defined in 2 CFR 200.47; cooperatives, including a cooperative that is a for-profit entity or a foreign organization; or other organizations, including organizations that are for-profit entities or foreign organizations, but not including intergovernmental organizations.

(2) The OMB guidance at subparts A through E of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to all subawards to all subrecipients under this part, except in cases:

(i) Where the subrecipient is a foreign public entity; or

(ii) Where FAS determines that the application of the provisions in this part to a subaward to a subrecipient that is a foreign organization would be inconsistent with the international obligations of the United States or the statutes or regulations of a foreign government or would not be in the best interest of the United States.

(g)(1) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies only to awards by FAS to recipients that are private voluntary organizations, cooperatives, or other organizations, but that are not for-profit entities or foreign organizations.

(2) The OMB guidance at subpart F of 2 CFR part 200, as supplemented by 2 CFR part 400 and this part, applies to subawards to subrecipients under this part, except where the subrecipient is a for-profit entity, foreign public entity, or foreign organization.

(3) Audit requirements for recipients and subrecipients that are for-profit entities or foreign organizations are set forth in § 1599.19.

§ 1599.2 Definitions.

These are definitions for terms used in this part. The definitions in 2 CFR part 200, as supplemented in 2 CFR part 400, are also applicable to this part, with the exception that, if a term that is defined in this section is defined differently in 2 CFR part 200 or 400, the definition in this section will apply to such term as used in this part.

Activity means a discrete undertaking within a project to be carried out by a recipient, directly or through a subrecipient, that is specified in an agreement and is intended to fulfill a specific objective of the agreement.

Agreement means a legally binding grant or cooperative agreement entered into between FAS and a recipient to implement a project under the McGovern-Dole Program.

Commodities means agricultural commodities, or products of agricultural commodities, that:

(1) Are produced in the United States; or

(2)(i) Are produced in and procured from:

(A) A developing country that is a target country; or

(B) A developing country in the target region; and

(ii) At a minimum, meet each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture.

Cooperative means a private sector organization whose members own and control the organization and share in its services and its profits and that provides business services and outreach in cooperative development for its membership.

Cost sharing or matching means the portion of project expenses, or necessary goods and services provided to carry out a project, not paid or acquired with Federal funds. The term may include cash or in-kind contributions provided by recipients, subrecipients, foreign public entities, foreign organizations, or private donors.

Country of origin means the country in which procured commodities were produced.

Developing country means a country that has a shortage of foreign exchange earnings and has difficulty meeting all of its food needs through commercial channels.

Disburse means to make a payment to liquidate an obligation.

Donated commodities means the commodities produced in the United States that are donated by FAS to a recipient under an agreement. The term may include donated commodities that are used to produce a further processed product for use under the agreement.

FAS means the Foreign Agricultural Service of the United States Department of Agriculture.

FAS-provided funds means U.S. dollars provided under an agreement to a recipient, or through a subagreement to a subrecipient, for expenses authorized in the agreement, such as expenses for the purchase of qualified commodities; any ocean transportation of the procured commodities; overland transportation, storage, and handling of the donated commodities or procured commodities; expenses involved in the administration, monitoring, and evaluation of the activities under the agreement; and the costs of activities conducted in the target country that would enhance the effectiveness of the activities implemented under the McGovern-Dole Program.

Food assistance means assistance that is provided to members of a targeted vulnerable group to meet their food needs.

Local procurement means the procurement of qualified commodities by a recipient, directly or through a subrecipient, in the target country to assist beneficiaries within that same country.

McGovern-Dole Program means the McGovern-Dole International Food for Education and Child Nutrition Program.

Overland transportation means any transportation other than ocean transportation. It includes internal transportation within the target country and regional transportation within the target region.

Private voluntary organization means a not-for-profit, nongovernmental organization (in the case of a United States organization, an organization that is exempt from Federal income taxes under section 501(c)(3) of the Internal Revenue Code of 1986) that receives funds from private sources, voluntary contributions of money, staff time, or in-kind support from the public, and that is engaged in or is planning to engage in voluntary, charitable, or development assistance activities (other than religious activities).

Procured commodities means the qualified commodities that are procured by a recipient, directly or through a subrecipient, under an agreement.

Program income means interest earned on proceeds from the sale of donated commodities, as well as funds received by a recipient or subrecipient as a direct result of carrying out an approved activity under an agreement. The term includes but is not limited to income from fees for services performed, the use or rental of real or personal property acquired under a Federal award, the sale of items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Program income does not include proceeds from; FAS-provided funds or interest earned on such funds; or funds provided for cost sharing or matching contributions, refunds or rebates, credits, discounts, or interest earned on any of them.

Project means the totality of the activities to be carried out by a recipient, directly or through a subrecipient, to fulfill the objectives of an agreement.

Purchase country means a developing country in which procured commodities are purchased.

Qualified commodities means commodities that are produced in a developing country that is the target country or in the target region under an agreement, and that meet each nutritional, quality, and labeling standard of the target country, as determined by the Secretary of Agriculture, as well as any other criteria specified in § 1599.6(b).

Recipient means an entity that enters into an agreement with FAS and receives donated commodities, FAS-provided funds, or both to carry out activities under the agreement. The term recipient does not include a subrecipient.

Regional procurement means the procurement of qualified commodities by a recipient, directly or through a subrecipient, in a developing country in the target region, other than the target country, to assist beneficiaries within the target country.

Sale proceeds means funds received by a recipient from the sale of donated commodities.

Subrecipient means an entity that enters into a subagreement with a recipient for the purpose of implementing in the target country activities described in an agreement. The term does not include an individual that is a beneficiary under the agreement.

Target country means the foreign country in which activities are implemented under an agreement.

Target region means the continent on which the target country is located.

USDA means the United States Department of Agriculture.

Voluntary committed cost sharing or matching contributions means cost sharing or matching contributions specifically pledged on a voluntary basis by an applicant or recipient, which become binding as part of an agreement. Voluntary committed cost sharing or matching contributions may be provided in the form of cash or in-kind contributions.

§ 1599.3 Eligibility and conflicts of interest.

(a) A private voluntary organization, a cooperative, or another organization that is not an intergovernmental organization is eligible to submit an application under this part to become a recipient under the McGovern-Dole Program. FAS will set forth specific eligibility information, including any factors or priorities that will affect the eligibility of an applicant or application for selection, in the full text of the applicable notice of funding opportunity posted on the U.S. Government website for grant opportunities.

(b) Applicants, recipients, and subrecipients must comply with policies established by FAS pursuant to 2 CFR 400.2(a), and with the requirements in 2 CFR 400.2(b), regarding conflicts of interest.

§ 1599.4 Application process.

(a) An applicant seeking to enter into an agreement with FAS must submit an application, in accordance with this section, that sets forth its proposal to carry out activities under the McGovern-Dole Program in a proposed target country(ies). An application must contain the items specified in paragraph (b) of this section and any other items required by the notice of funding opportunity and must be submitted electronically to FAS at the address set forth in the notice of funding opportunity.

(b) An applicant must include the following items in its application:

(1) A completed Form SF–424, which is a standard application for Federal assistance;

(2) An introduction and a strategic analysis, which includes an impact analysis, as specified in the notice of funding opportunity;

(3) A plan of operation that contains the elements specified in the notice of funding opportunity;

(4) A summary line item budget and a budget narrative that indicate:

(i) The amounts of any sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that the applicant proposes to use to fund:

(A) Administrative costs;

(B) Commodity procurement costs, where applicable, for qualified commodities obtained through local or regional procurement;

(C) Overland transportation, storage, and handling costs; and

(D) Activity costs;

(ii) Where applicable, how the applicant's indirect cost rate will be applied to each type of expense; and

(iii) The amount of funding that will be provided to each proposed subrecipient under the agreement;

(5) A project-level results framework that outlines the changes that the applicant expects to accomplish through the proposed project and is based on the McGovern-Dole Program-level results framework, as set forth in the notice of funding opportunity;

(6) Unless otherwise specified in the notice of funding opportunity, an evaluation plan that describes the proposed design, methodology, and time frame of the project's evaluation activities, and how the applicant intends to manage these activities, and that will include a baseline study, interim evaluation, final evaluation, and any applicable special studies; and

(7) Any additional required items set forth in the notice of funding opportunity.

(c) Each applicant (unless the applicant has an exception approved by FAS under 2 CFR 25.110(d)) is required to:

(1) Be registered in the System for Award Management (SAM) before submitting its application;

(2) Provide a valid unique entity identifier in its application; and

(3) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

§ 1599.5 Agreements.

(a) After FAS approves an application by an applicant, FAS will negotiate an agreement with the applicant. The agreement will set forth the obligations of FAS and the recipient.

(b) The agreement will specify the general information required in 2 CFR 200.210(a), as applicable.

(c) The agreement will incorporate general terms and conditions, pursuant to 2 CFR 200.210(b), as applicable.

(d) To the extent that this information is not already included in the agreement pursuant to paragraphs (b) and (c) of this section, the agreement will also include the following:

(1) The kind, quantity, and use of the donated commodities and an estimated commodity call forward schedule, with the month and year indicated for each expected commodity shipment;

(2) A plan of operation, which will include the following:

(i) The objectives to be accomplished under the project;

(ii) A detailed description of each activity to be implemented;

(iii) The target country(ies) and the areas of the target country(ies) in which the activities will be implemented;

(iv) The methods and criteria for selecting the beneficiaries of the activities;

(v) Any contributions for cost sharing or matching, including cash and non-cash contributions, that the recipient expects to receive from non-FAS sources that:

(A) Are critical to the implementation of the activities; or

(B) Enhance the implementation of the activities;

(vi) Any subrecipient that will be involved in the implementation of the activities, and the criteria for selecting a subrecipient that has not yet been identified;

(vii) Any other governmental or nongovernmental entities that will be involved in the implementation of the activities; and

(viii) Any processing, packaging, or repackaging of the donated commodities or procured commodities that will take place prior to the distribution, sale, or barter of the donated commodities, or the distribution of the procured commodities, by the recipient;

(3) A budget, which will set forth the maximum amounts of sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions that may be used for each line item, as well as other applicable budget requirements;

(4) Performance goals for the agreement, including a list of results, with long-term benefits where applicable, to be achieved by the activities and corresponding indicators, targets, and time frames;

(5) Requirements relating to any local or regional procurement of qualified commodities authorized in the agreement, as set forth in § 1599.6; and

(6) Any additional provisions specified by FAS during the negotiation of the agreement.

(e) The agreement will also include specific terms and conditions, and certifications and representations, including the following:

(1) The agreement will prohibit the sale, resale, or transshipment of the donated commodities or procured commodities by the recipient to a country not specified in the agreement, or the use of the donated commodities for other than domestic purposes, for as long as the recipient has title to such donated commodities or procured commodities;

(2) The agreement will prohibit the use of procured commodities, if applicable, for any purpose other than food assistance;

(3) The recipient will assert that it has taken action to ensure that any donated commodities that will be distributed to beneficiaries, and any qualified commodities that will be obtained through regional procurement, will be imported free from all customs, duties, tolls, and taxes; and all donated commodities and procured commodities will be distributed free from all customs, duties, tolls, and taxes. The recipient must submit information to FAS to support this assertion;

(4) The recipient will assert that, to the best of its knowledge, the importation, if applicable, and distribution of the donated commodities or procured commodities in the target country will not result in a substantial disincentive to or interference with domestic production or marketing in that country. The recipient must submit information to FAS to support this assertion;

(5) The recipient will assert that, to the best of its knowledge, any sale or barter of the donated commodities will not displace or interfere with any sales of United States commodities that may otherwise be made to or within the target country. The recipient must submit information to FAS to support this assertion; and

(6) The recipient will assert that adequate transportation and storage facilities will be available in the target country at the time of the arrival of the donated commodities, or any procured commodities obtained through regional procurement, to prevent spoilage or waste of the donated commodities or procured commodities. The recipient must submit information to FAS to support this assertion.

(f) FAS may enter into a multicountry agreement in which donated commodities are delivered to one country and activities are carried out in another.

(g) FAS may provide donated commodities and FAS-provided funds under a multiyear agreement contingent upon the availability of commodities and funds.

§ 1599.6 Local and regional procurement of commodities.

(a)(1) An agreement may authorize a recipient to use FAS-provided funds to procure qualified commodities, through a local or regional procurement or both, to implement a project. The provisions of this section will apply in such a situation.

(2) The agreement will specify the types of qualified commodities approved for procurement; the approved purchase country(ies); and the approved method(s) of procurement (local procurement, regional procurement, or a combination of these methods). The agreement will prohibit the recipient from procuring qualified commodities from any country not specified in the agreement or utilizing methods of procurement that differ from those approved in the agreement.

(b) In carrying out an agreement, the recipient must comply with the following requirements, as applicable, relating to the procurement of qualified commodities under the agreement:

(1) The recipient must procure qualified commodities at a reasonable market price with respect to the economy of the purchase country, as determined by FAS.

(2) If the recipient procures qualified commodities that are grains, legumes, or pulses, the commodities must meet the food safety standards of the target country; provided, however, that if the target country does not have food safety standards for grains, legumes, or pulses, as applicable, then the recipient must ensure that such commodities meet the food safety standards specified in the agreement.

(3) If the recipient procures qualified commodities that are food products other than grains, legumes or pulses, such as processed foods, fortified blended foods, and enriched foods, the commodities must comply, in terms of raw materials, composition, or manufacture, with the food safety standards specified in the agreement.

(4) If the recipient procures qualified commodities that are cereals, groundnuts, or tree nuts, or food products derived from or containing cereals, groundnuts, or tree nuts, the commodities must be tested for aflatoxin and have their moisture content certified. The maximum acceptable total aflatoxin level is 20 parts per billion, the U.S. Food and Drug Administration action level for aflatoxin in human foods.

(5) If the recipient procures an unprocessed commodity, it must ensure that the commodity has been produced either in the target country or in another developing country within the target region.

(6) If the recipient procures a processed commodity, it must ensure that the processing took place, and the primary ingredient has been produced, either in the target country or in another developing country within the target region. The primary ingredient is determined on the basis of weight in the case of solid foods, or volume in the case of liquids.

(7) If the recipient procures qualified commodities through a competitive tender, the recipient must specify the minimally acceptable commodity specifications and food safety and quality assurance standards in the tender. Purchases that are made from commercial wholesalers in a local or regional market must meet the food safety and quality assurance standards specified in paragraphs (b)(2), (3), and (4) of this section.

(8) The recipient must enter into a contract that complies with this paragraph (b) for every local or regional procurement of qualified commodities from a commodity vendor. The recipient must ensure that the contract between

the recipient and the commodity vendor clearly specifies the country of origin and the specific market(s) in which the procurement will take place, commodity safety and quality assurance standards, product specifications, price per metric ton, and delivery terms. The recipient will be required to make such contract available to FAS upon request.

(9) The recipient must enter into a contract with an established inspection service to survey and report on the safety, quality, and condition of all procured commodities, prior to their shipment and distribution. The recipient will be required to submit any survey reports or certificates issued by such inspection service to FAS upon request.

(c) The agreement will require the recipient to submit a procurement plan for FAS's approval within the time period specified in the agreement. The procurement plan will include time periods, broken down by month, for commodity procurement, delivery, and distribution. The agreement will require the recipient to comply with the procurement plan, as approved by FAS, and will prohibit the recipient from making any changes to the procurement plan without obtaining the prior written approval of FAS.

§ 1599.7 Payments.

(a) If a recipient arranges for transportation in accordance with § 1599.8(b)(2), FAS will, as specified in the agreement, pay the costs of such transportation to the ocean carrier or to the recipient. The recipient must, as specified in the agreement, submit to FAS, arrange to be submitted to FAS, or maintain on file and make available to FAS, the following documents:

(1) The original, or a true copy, of each on board bill of lading indicating the freight rate and signed by the originating ocean carrier;

(2) For all non-containerized cargoes:

(i) A signed copy of the Federal Grain Inspection Service (FGIS) Official Stowage Examination Certificate;

(ii) A signed copy of the National Cargo Bureau Certificate of Readiness; and

(iii) A signed copy of the Certificate of Loading issued by the National Cargo Bureau or a similar qualified independent surveyor;

(3) For all containerized cargoes, a copy of the FGIS Container Condition Inspection Certificate;

(4) A signed copy of the U.S. Food Aid Booking Note or charter party covering ocean transportation of the cargo;

(5) In the case of charter shipments, a signed notice of arrival at the first discharge port, unless FAS has determined that circumstances that could not have been reasonably anticipated or controlled (force majeure) have prevented the ocean carrier's arrival at the first port of discharge; and

(6) A request for payment of freight, survey costs other than at load port, and other expenses approved by FAS.

(b) If the agreement specifies that some or all of the documents listed in paragraph (a) of this section will be submitted to FAS, then FAS will not render payment for transportation services until it has received all of the specified documents.

(c) If a recipient arranges for transportation in accordance with § 1599.8(b)(2), and the recipient uses a freight forwarder, the recipient must ensure that the freight forwarder is registered in the SAM and require the freight forwarder to submit the documents specified in paragraph (a) of this section. The recipient will ensure that the total commission or fees paid to intermediaries in the transportation procurement process will not exceed two and a half percent of the total transportation costs.

(d) In no case will FAS provide payment to a recipient for demurrage costs or pay demurrage to any other entity.

(e) If FAS has agreed to be responsible for the costs of transporting, storing, and distributing the donated commodities from the designated discharge port or point of entry, and if the recipient will bear or has borne any of these costs, in accordance with the agreement, FAS will either provide an advance payment or a reimbursement to the recipient in the amount of such costs, in the manner set forth in the agreement.

(f) If the agreement authorizes the payment of FAS-provided funds, FAS will generally provide the funds to the recipient on an advance payment basis, in accordance with 2 CFR 200.305(b). In addition, the following procedures will apply to advance payments:

(1) A recipient may request advance payments of FAS-provided funds, up to the total amount specified in the agreement. When making an advance payment request, a recipient must provide, for each agreement for which it is requesting an advance, total expenditures to date; an estimate of expenses to be covered by the advance; total advances previously requested, if any; the amount of cash on hand from the preceding advance; and, if necessary, a request to roll over any unused funds from the preceding advance to the current request period. The advance payment request must take into account any program income earned since the preceding advance.

(2) Whenever possible, a recipient should consolidate advance payment requests to cover anticipated cash needs for all food assistance program awards made by FAS to the recipient. A recipient may request advance payments with no minimum time required between requests.

(3) A recipient must minimize the amount of time that elapses between the transfer of funds by FAS and the disbursement of funds by the recipient. A recipient must fully disburse funds from the preceding advance before it submits a new advance request for the same agreement, with the exception that the recipient may request to retain a reasonable (minimal) balance of any funds that have not been disbursed and roll it over into a new advance request if the new advance request is made within 90 days after the preceding advance was made.

(4) FAS will review all requests to roll over funds from the preceding advance that have not been disbursed and make a decision based on the merits of the request. FAS will consider factors such as the amount of funding that a recipient is requesting to roll over, the length of time that the recipient has been in possession of the funds, any unforeseen or extenuating circumstances, the recipient's history of performance, and findings from recent financial audits or compliance reviews.

(5) FAS will not approve any request for an advance or rollover of funds if the most recent financial report, as specified in the agreement, is past due, or if any required report, as specified in any open agreement between the recipient and FAS or the Commodity Credit Corporation (CCC), is more than three months in arrears.

(6)(i) A recipient must return to FAS any funds advanced by FAS that have not been disbursed as of the 91st day after the advance was made; provided, however, that paragraphs (f)(6)(ii) and (iii) of this section will apply if the recipient submits a request to FAS before that date to roll over the funds into a new advance.

(ii) If a recipient submits a request to roll over funds into a new advance, and FAS approves the rollover of funds, such funds will be considered to have been advanced on the date that the recipient receives the approval notice from FAS, for the purposes of complying with the requirement in paragraph (f)(6)(i) of this section.

(iii) If a recipient submits a request to roll over funds into a new advance, and FAS does not approve the rollover of

some or all of the funds, such funds must be returned to FAS.

(iv) If a recipient must return funds to FAS in accordance with paragraph (f)(6) of this section, the recipient must return the funds by the later of five business days after the 91st day after the funds were advanced, or five business days after the date on which the recipient receives notice from FAS that it has denied the recipient's request to roll over the funds; provided, however, that FAS may specify a different date for the return of funds in a written communication to the recipient.

(7) Except as may otherwise be provided in the agreement, a recipient must deposit and maintain in an insured bank account located in the United States all funds advanced by FAS. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that the requirement in this paragraph (f)(7) would constitute an undue burden. A recipient will not be required to maintain a separate bank account for advance payments of FAS-provided funds. However, a recipient must be able to separately account for the receipt, obligation, and expenditure of funds under each agreement.

(8) A recipient may retain, for administrative expenses, up to $500 per Federal fiscal year of any interest earned on funds advanced under an agreement. The recipient must remit to the U.S. Department of Health and Human Services, Payment Management System, any additional interest earned during a Federal fiscal year on such funds, in accordance with the procedures in 2 CFR 200.305(b)(9).

(g) If a recipient is required to pay funds to FAS in connection with an agreement, the recipient must make such payment in U.S. dollars, unless otherwise approved in advance by FAS.

§ 1599.8 Transportation of donated or procured commodities.

(a) Shipments of donated commodities and procured commodities requiring ocean transportation are subject to the requirements of 46 U.S.C. 55305, regarding carriage on U.S.-flag vessels.

(b) Transportation of donated commodities and other goods such as bags that may be provided by FAS under the McGovern-Dole Program will be arranged for under a specific agreement in the manner determined by FAS. Such transportation will be arranged for by:

(1) FAS in accordance with the Federal Acquisition Regulation (FAR) in 48 CFR chapter 1, the Agriculture Acquisition Regulation (AGAR) in 48 CFR chapter 4, and directives issued by the Director, Office of Procurement and Property Management, USDA; or

(2) The recipient, with payment by FAS, in the manner specified in the agreement.

(c) A recipient must arrange for all transportation of procured commodities. FAS will pay for the transportation, as provided for in the agreement, through an advance payment or reimbursement to the recipient.

(d) A recipient that is responsible for arranging for the transportation of donated commodities or procured commodities must declare in the transportation contract the point at which the ocean carrier or overland transportation company will take custody of the donated commodities or procured commodities to be transported.

(e) A recipient may only use the services of a transportation company that is legally operating in the country in which it will be transporting the donated commodities or procured commodities and that would not have a conflict of interest in transporting such donated commodities or procured commodities.

(f) A recipient that arranges for transportation in accordance with paragraph (b)(2) of this section may only use the services of a freight forwarder that is licensed by the Federal Maritime Commission and that would not have a conflict of interest in carrying out the freight forwarder duties. To assist FAS in determining whether there is a potential conflict of interest, the recipient must submit to FAS a certification indicating that the freight forwarder:

(1) Is not engaged in, and will not engage in, supplying commodities or furnishing ocean transportation or ocean transportation-related services for commodities provided under any McGovern-Dole Program agreement to which the recipient is a party; and

(2) Is not affiliated with the recipient and has not made arrangements to give or receive any payment, kickback, or illegal benefit in connection with its selection as an agent of the recipient.

§ 1599.9 Entry, handling, and labeling of donated or procured commodities and notification requirements.

(a) A recipient must make all necessary arrangements for receiving in the target country the donated commodities and any procured commodities obtained through regional procurement, including obtaining appropriate approvals for entry and transit. The recipient must make arrangements with the target country government for all donated commodities that will be distributed to beneficiaries, and all procured commodities, to be imported and distributed free from all customs duties, tolls, and taxes. A recipient is encouraged to make similar arrangements, where possible, with the government of a country where donated commodities to be sold or bartered are delivered.

(b) A recipient must, as provided in the agreement, arrange for transporting, storing, and distributing the donated commodities or procured commodities from the designated point and time where title to the donated commodities or procured commodities passes to the recipient.

(c)(1) A recipient must store and maintain the donated commodities in good condition from the time of delivery at the port of entry or the point of receipt from the originating carrier until their distribution, sale, or barter.

(2) A recipient must store and maintain the procured commodities in good condition from the time of delivery at the port of entry or the point of receipt from the commodity vendor(s) until their distribution.

(d)(1) If a recipient arranges for the packaging or repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the donated commodities;

(iii) Includes a statement indicating that the donated commodities are furnished by the United States Department of Agriculture; and

(iv) Includes a statement indicating that the donated commodities must not be sold, exchanged, or bartered.

(2) If a recipient arranges for the processing and repackaging of donated commodities that are to be distributed, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the processed product;

(iii) Includes a statement indicating that the processed product was made with commodities furnished by the United States Department of Agriculture; and

(iv) Includes a statement indicating that the processed product must not be sold, exchanged, or bartered.

(3) If a recipient arranges for the packaging or repackaging of procured commodities, the recipient must ensure that the packaging:

(i) Is plainly labeled in the language of the target country;

(ii) Contains the name of the procured commodities;

(iii) Contains the name of the country of origin;

(iv) Includes a statement indicating that the procured commodities are furnished through a project funded by the United States Department of Agriculture; and

(v) Includes a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(4)(i) If a recipient distributes donated commodities that are not packaged, the recipient must display a sign at the distribution site that includes the name of the donated commodities, a statement indicating that the commodities are being furnished by the United States Department of Agriculture, and a statement indicating that the donated commodities must not be sold, bartered, or exchanged.

(ii) If a recipient distributes procured commodities that are prepackaged or not packaged, the recipient must display a sign at the distribution site that includes the name of the procured commodities, the country of origin, a statement indicating that the procured commodities are being furnished through a project funded by the United States Department of Agriculture, and a statement indicating that the procured commodities must not be sold, bartered, or exchanged.

(e) A recipient must ensure that signs are displayed at all activity implementation and commodity distribution sites to inform beneficiaries that funding for the project was provided by the United States Department of Agriculture.

(f) A recipient must also ensure that all public communications relating to the project, the activities, or the donated commodities or procured commodities, whether made through print, broadcast, digital, or other media, include a statement acknowledging that funding was provided by the United States Department of Agriculture.

(g) FAS may waive compliance with one or more of the labeling and notification requirements in paragraphs (d), (e), and (f) of this section if a recipient demonstrates to FAS that the requirement presents a safety or security risk in the target country. If a recipient determines that compliance with a labeling or notification requirement poses an imminent threat of destruction of property, injury, or loss of life, the recipient must submit a waiver request to FAS as soon as possible. The recipient will not have to comply with such requirement during the period prior to the issuance of a waiver determination by FAS. A recipient may submit a written request for a waiver at any time after the agreement has been signed.

(h) In exceptional circumstances, FAS may, on its own initiative, waive one or more of the labeling and notification requirements in paragraphs (d), (e), and (f) of this section for programmatic reasons.

§ 1599.10 Damage to or loss of donated or procured commodities.

(a)(1) FAS will be responsible for the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for the donated commodities following the transfer of title to the donated commodities to the recipient. The title will transfer as specified in the agreement.

(2) A recipient will be responsible for the procured commodities following the transfer of title to the procured commodities from the commodity vendor(s) to the recipient. FAS may require the recipient to purchase transportation insurance against commodity loss or damage.

(b) A recipient must inform FAS, in the manner and within the time period set forth in the agreement, of any damage to or loss of the donated commodities or procured commodities that occurs following the transfer of title to the donated commodities or procured commodities to the recipient. The recipient must take all steps necessary to protect its interests and the interests of FAS with respect to any damage to or loss of the donated commodities or procured commodities that occurs after title has been transferred to the recipient.

(c) A recipient will be responsible for arranging for an independent cargo surveyor to inspect the donated commodities, and any procured commodities transported by ocean, upon discharge from the ocean carrier and to prepare a survey or outturn report. The report must show the quantity and condition of the donated commodities or procured commodities discharged from the ocean carrier and must indicate the most likely cause of any damage noted in the report. The report must also indicate the time and place when the survey took place. All discharge surveys must be conducted contemporaneously with the discharge of the ocean carrier, unless FAS determines that failure to do so was justified under the circumstances. For donated commodities or procured commodities shipped on a through bill of lading, the recipient must also obtain a delivery survey. All surveys obtained by the recipient must, to the extent practicable, be conducted jointly by the surveyor, the recipient, and the carrier, and the survey report must be signed by all three parties. The recipient must obtain a copy of each discharge or delivery survey report within 45 days after the completion of the survey. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(d) When procured commodities are transported overland, the recipient will ensure that the overland transportation contract includes a requirement that a loading and offloading report be prepared and provided to the recipient. The report must show the quantity and condition of the procured commodities loaded on the overland conveyance, as well as the time and place that the loading and offloading occurred. The recipient must obtain a copy of the report from the overland transportation company within 45 days after the completion of the commodity delivery. The recipient must make each such report available to FAS upon request, or in the manner specified in the agreement. FAS will reimburse the recipient for the reasonable costs of these services, as determined by FAS, in the manner specified in the agreement.

(e) If donated commodities or procured commodities are damaged or lost during the time that they are in the care of the ocean carrier or overland transportation company:

(1) The recipient must ensure that any reports, narrative chronology, or other commentary prepared by the independent cargo surveyor, and any such documentation prepared by a port authority, stevedoring service, or customs official, or an official of the transit or target country government or the transportation company, are provided to FAS;

(2) The recipient must provide to FAS the names and addresses of any individuals known to be present at the time of discharge or unloading, or during the survey, who can verify the quantity of damaged or lost donated commodities or procured commodities;

(3) If the damage or loss occurred with respect to a bulk shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor:

(i) Observes the discharge of the cargo;

(ii) Reports on discharging methods, including scale type, calibrations, and any other factors that may affect the accuracy of scale weights, and, if scales

are not used, states the reason therefor and describes the actual method used to determine weight;

(iii) Estimates the quantity of cargo, if any, lost during discharge through carrier negligence;

(iv) Advises on the quality of sweepings;

(v) Obtains copies of port or ocean carrier records, if possible, showing the quantity discharged; and

(vi) Notifies the recipient immediately if the surveyor has reason to believe that the correct quantity was not discharged or if additional services are necessary to protect the cargo; and

(4) If the damage or loss occurred with respect to a container shipment on an ocean carrier, the recipient must ensure that the independent cargo surveyor lists the container numbers and seal numbers shown on the containers, indicates whether the seals were intact at the time the containers were opened, and notes whether the containers were in any way damaged.

(f) If a recipient has title to the donated commodities or procured commodities, and commodities valued in excess of $5,000 are damaged at any time prior to their distribution or sale under the agreement, regardless of the party at fault, the recipient must immediately arrange for an inspection by a public health official or other competent authority approved by FAS and provide to FAS a certification by such public health official or other competent authority regarding the exact quantity and condition of the damaged donated commodities or procured commodities. The value of damaged donated commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS. The value of damaged procured commodities must be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities. The recipient must inform FAS of the results of the inspection and indicate whether the damaged donated commodities or procured commodities are:

(1) Fit for the use authorized in the agreement and, if so, whether there has been a diminution in quality; or

(2) Unfit for the use authorized in the agreement.

(g)(1) If a recipient has title to the donated commodities or procured commodities, the recipient must arrange for the recovery of that portion of the donated commodities or procured commodities designated as fit for the use authorized in the agreement. The recipient must dispose of donated commodities or procured commodities that are unfit for such use in the following order of priority:

(i) Sale for the most appropriate use, *i.e.,* animal feed, fertilizer, industrial use, or another use approved by FAS, at the highest obtainable price;

(ii) Donation to a governmental or charitable organization for use as animal feed or another non-food use; or

(iii) Destruction of the donated commodities or procured commodities if they are unfit for any use, in such manner as to prevent their use for any purpose.

(2) A recipient must arrange for all U.S. Government markings to be obliterated or removed before the donated commodities or procured commodities are transferred by sale or donation under paragraph (g)(1) of this section.

(h) A recipient may retain any proceeds generated by the disposal of the donated commodities or procured commodities in accordance with paragraph (g)(1) of this section and must use the retained proceeds for expenses related to the disposal of the donated commodities or procured commodities and for activities specified in the agreement.

(i) A recipient must notify FAS immediately and provide detailed information about the actions taken in accordance with paragraph (g) of this section, including the quantities, values, and dispositions of donated commodities or procured commodities determined to be unfit.

§ 1599.11 Claims for damage to or loss of donated or procured commodities.

(a)(1) FAS will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities prior to the transfer of title to the donated commodities to the recipient. The recipient will be responsible for claims arising out of damage to or loss of a quantity of the donated commodities after the transfer of title to the donated commodities.

(2) The recipient will be responsible for claims arising out of damage to or loss of a quantity of the procured commodities after the transfer of title to the procured commodities from the commodity vendor(s) to the recipient.

(b) If a recipient has title to donated commodities or procured commodities that have been damaged or lost, and the value of the damaged or lost commodities is estimated to be in excess of $20,000, the recipient must:

(1) Notify FAS immediately and provide detailed information about the circumstances surrounding such damage or loss, the quantity of damaged or lost commodities, and the value of the damage or loss;

(2) Promptly upon discovery of the damage or loss, initiate a claim arising out of such damage or loss, including, if appropriate, initiating an action to collect pursuant to a commercial insurance contract;

(3) Take all necessary action to pursue the claim diligently and within any applicable periods of limitations; and

(4) Provide to FAS copies of all documentation relating to the claim.

(c) If a recipient has title to donated commodities or procured commodities that have been damaged or lost, and the value of the damaged or lost commodities is estimated to be $20,000 or less, the recipient must notify FAS in accordance with the agreement and provide detailed information about the damage or loss in the next report required to be filed under § 1599.14(f)(1) or (2).

(d)(1) The value of a claim for lost donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS. The value of a claim for lost procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities.

(2) The value of a claim for damaged donated commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by FAS with respect to such commodities, as well as such costs incurred by the recipient and paid by FAS, less any funds generated if such commodities are sold in accordance with § 1599.10(g)(1). The value of a claim for damaged procured commodities will be determined on the basis of the commodity acquisition, transportation, and related costs incurred by the recipient and paid by FAS with respect to such commodities, less any funds generated if such commodities are sold in accordance with § 1599.10(g)(1).

(e) If FAS determines that a recipient has not initiated a claim or is not exercising due diligence in the pursuit of a claim, FAS may require the recipient to assign its rights to initiate or pursue the claim to FAS. Failure by the recipient to initiate a claim or exercise due diligence in the pursuit of

a claim will be considered by FAS during the review of applications for subsequent food assistance awards.

(f)(1) A recipient may retain any funds obtained as a result of a claims collection action initiated by it in accordance with this section, or recovered pursuant to any insurance policy or other similar form of indemnification, but such funds must be expended in accordance with the agreement or for other purposes approved in advance by FAS.

(2) FAS will retain any funds obtained as a result of a claims collection action initiated by it under this section; provided, however, that if the recipient paid for the transportation of the donated commodities or procured commodities or a portion thereof, FAS will use a portion of such funds to reimburse the recipient for such expense on a prorated basis.

§ 1599.12 Use of donated or procured commodities, sale proceeds, FAS-provided funds, and program income.

(a) A recipient must use the donated commodities or procured commodities, any sale proceeds, FAS-provided funds, interest, and program income in accordance with the agreement.

(b) A recipient must not use donated commodities or procured commodities, sale proceeds, FAS-provided funds, interest, or program income for any activity or any expense incurred by the recipient or a subrecipient prior to the start date of the period of performance of the agreement or after the agreement is suspended or terminated, without the prior written approval of FAS.

(c) A recipient must not permit the distribution, handling, or allocation of donated commodities or procured commodities on the basis of political affiliation, geographic location, or the ethnic, tribal, or religious identity or affiliation of the potential consumers or beneficiaries.

(d) A recipient must not permit the distribution, handling, or allocation of donated commodities or procured commodities by the military forces of any government or insurgent group without the specific authorization of FAS.

(e) A recipient must not use sale proceeds, FAS-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

(f)(1) A recipient may sell or barter donated commodities only if such sale or barter is provided for in the agreement or the recipient is disposing of damaged donated commodities as specified in § 1599.10(g). The recipient must sell donated commodities at a reasonable market price. The recipient must obtain approval of its proposed sale price from FAS before selling donated commodities. The recipient must use any sale proceeds, interest, program income, or goods or services derived from the sale or barter of the donated commodities only as provided in the agreement.

(2) A recipient may sell procured commodities only if the recipient is disposing of damaged procured commodities as specified in § 1599.10(g).

(g) A recipient must deposit and maintain all sale proceeds, FAS-provided funds, and program income in a bank account until they are used for a purpose authorized under the agreement or the FAS-provided funds are returned to FAS in accordance with § 1599.7(f)(6). The account must be insured unless it is in a country where insurance is unavailable. The account must be interest-bearing, unless one of the exceptions in 2 CFR 200.305(b)(8) applies or FAS determines that the requirement in this paragraph (g) would constitute an undue burden. The recipient must comply with the requirements in § 1599.7(f)(7) with regard to the deposit of advance payments by FAS.

(h)(1) Except as provided in paragraph (h)(2) of this section, a recipient may make adjustments within the agreement budget between direct cost line items without further approval, provided that the total amount of adjustments does not exceed the amount specified in the agreement. Adjustments beyond the limits in this paragraph (h) require the prior approval of FAS.

(2) A recipient must not transfer any funds budgeted for participant support costs, as defined in 2 CFR 200.75, to other categories of expense without the prior approval of FAS.

(i) A recipient may use sale proceeds, FAS-provided funds, or program income to purchase real or personal property only if local law permits the recipient to retain title to such property. However, a recipient must not use sale proceeds, FAS-provided funds, or program income to pay for the acquisition, development, construction, alteration or upgrade of real property that is:

(1) Owned or managed by a church or other organization engaged exclusively in religious pursuits; or

(2) Used in whole or in part for sectarian purposes, except that a recipient may use sale proceeds, FAS-provided funds, or program income to pay for repairs to or rehabilitation of a structure located on such real property to the extent necessary to avoid spoilage or loss of donated commodities or procured commodities, but only if the structure is not used in whole or in part for any religious or sectarian purposes while the donated commodities or procured commodities are stored in it. If the use of sale proceeds, FAS-provided funds, or program income to pay for repairs to or rehabilitation of such a structure is not specifically provided for in the agreement, the recipient must not use the sale proceeds, FAS-provided funds, or program income for this purpose until it receives written approval from FAS.

(j) A recipient must comply with 2 CFR 200.321 when procuring goods and services in the United States. When procuring goods and services outside of the United States, a recipient should endeavor to comply with 2 CFR 200.321 where practicable.

(k) A recipient must enter into a written contract with each provider of goods, services, or construction work that is valued at or above the Simplified Acquisition Threshold. Each such contract must require the provider to maintain adequate records to account for all donated commodities, funds, or both furnished to the provider by the recipient and to comply with any other applicable requirements that may be specified by FAS in the agreement. The recipient must submit a copy of each signed contract to FAS, as specified in the agreement.

§ 1599.13 Monitoring and evaluation requirements.

(a) A recipient will be responsible for designing a performance monitoring plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and managing and implementing the plan, unless otherwise specified in the agreement.

(b) A recipient must establish baseline values, annual targets, and life of activity targets for each performance indicator included in the recipient's approved performance monitoring plan, unless otherwise specified in the agreement.

(c) A recipient must inform FAS, in the manner and within the time period specified in the agreement, of any problems, delays, or adverse conditions that materially impair the recipient's ability to meet the objectives of the agreement. This notification must include a statement of any corrective actions taken or contemplated by the recipient, and any additional assistance requested from FAS to resolve the situation.

(d) A recipient will be responsible for designing an evaluation plan for the project, obtaining written approval of the plan from FAS before putting it into effect, and arranging for an independent third party to implement the evaluation, unless otherwise specified in the agreement. This evaluation plan will detail the evaluation purpose and scope, key evaluation questions, evaluation methodology, time frame, evaluation management, and cost. This plan will generally be based upon the evaluation plan that the recipient submitted to FAS as part of its application, pursuant to § 1599.4(b)(6), unless the notice of funding opportunity specified that an evaluation plan was not required to be included in the application. The recipient must ensure that the evaluation plan:

(1) Is designed using the most rigorous methodology that is appropriate and feasible, taking into account available resources, strategy, current knowledge and evaluation practices in the sector, and the implementing environment;

(2) Is designed to inform management, activity implementation, and strategic decision-making;

(3) Utilizes analytical approaches and methodologies, based on the questions to be addressed, project design, budgetary resources available, and level of rigor and evidence required, which may be implemented through methods such as case studies, surveys, quasi-experimental designs, randomized field experiments, cost-effectiveness analyses, implementation reviews, or a combination of methods;

(4) Adheres to generally accepted evaluation standards and principles;

(5) Uses participatory approaches that seek to include the perspectives of diverse parties and all relevant stakeholders; and

(6) Where possible, utilizes local consultants and seeks to build local capacity in evaluation.

(e)(1) Unless otherwise provided in the agreement, a recipient must arrange for evaluations of the project to be conducted by an independent third party that:

(i) Is financially and legally separate from the recipient's organization; and

(ii) Has staff with demonstrated methodological, cultural, and language competencies, and specialized experience in conducting evaluations of international development programs involving agriculture, trade, education, and nutrition, provided that FAS may determine that, for a particular agreement, the staff of the independent third party evaluator is not required to have specialized experience in conducting evaluations of programs involving one or more of these four areas.

(2) A recipient must provide a written certification to FAS that there is no real or apparent conflict of interest on the part of any recipient staff member or third party entity designated or hired to play a substantive role in the evaluation of activities under the agreement.

(f) FAS will be considered a key stakeholder in all evaluations conducted as part of the agreement.

(g)(1) A recipient is responsible for establishing the required financial and human capital resources for monitoring and evaluation of activities under the agreement. The recipient must maintain a separate budget for monitoring and evaluation, with separate budget line items for dedicated recipient monitoring and evaluation staff and independent third party evaluation contracts.

(2) Personnel at the recipient's headquarters offices and field offices with specialized expertise and experience in monitoring and evaluation may be used by the recipient for dedicated monitoring and evaluation. Unless otherwise specified in the agreement or approved evaluation plan, all evaluations must be managed by the recipient's evaluation experts outside of the recipient's line management for the activities.

(h) FAS may independently conduct or commission an evaluation of a single agreement or an evaluation that includes multiple agreements. A recipient must cooperate, and comply with any demands for information or materials made in connection, with any evaluation conducted or commissioned by FAS. Such evaluations may be conducted by FAS internally or by an FAS-hired external evaluation contractor.

§ 1599.14 Reporting and record keeping requirements.

(a) A recipient must comply with the performance and financial monitoring and reporting requirements in the agreement and 2 CFR 200.327 through 200.329.

(b) A recipient must submit financial reports to FAS, by the dates and for the reporting periods specified in the agreement. Such reports must provide an accurate accounting of sale proceeds, FAS-provided funds, interest, program income, and voluntary committed cost sharing or matching contributions.

(c)(1) A recipient must submit performance reports to FAS, by the dates and for the reporting periods specified in the agreement. These reports must include the information required in 2 CFR 200.328(b)(2), including additional pertinent information regarding the recipient's progress, measured against established indicators, baselines, and targets, towards achieving the expected results specified in the agreement. This reporting must include, for each performance indicator, a comparison of actual accomplishments with the baseline and the targets established for the period. When actual accomplishments deviate significantly from targeted goals, the recipient must provide an explanation in the report.

(2) A recipient must ensure the accuracy and reliability of the performance data submitted to FAS in performance reports. At any time during the period of performance of the agreement, FAS may review the recipient's performance data to determine whether it is accurate and reliable. The recipient must comply with all requests made by FAS or an entity designated by FAS in relation to such reviews.

(d) Baseline, interim, and final evaluation reports are required for all agreements, unless otherwise specified in the agreement. The reports must be submitted in accordance with the timeline provided in the FAS-approved evaluation plan. Evaluation reports submitted to FAS may be made public in an effort to increase accountability and transparency and share lessons learned and best practices.

(e)(1) A recipient must, within 30 days after export of all or a portion of the donated commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date that the ocean carrier carrying the donated commodities sails from the final U.S. load port.

(2) A recipient must, if it has obtained procured commodities requiring ocean transportation, within 30 days after export of all or a portion of the procured commodities, submit evidence of such export to FAS, in the manner set forth in the agreement. The evidence may be submitted through an electronic media approved by FAS or by providing the carrier's on board bill of lading. The evidence of export must show the kind and quantity of commodities exported, the date of export, and the country where the commodities will be delivered. The date of export is the date

that the ocean carrier carrying the procured commodities sails from the load port in the target region.

(f)(1) A recipient must submit reports to FAS, using a form prescribed by FAS, covering the receipt, handling, and disposition of the donated commodities or procured commodities. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the donated commodities or procured commodities have been distributed, sold or bartered and such disposition has been reported to FAS.

(2) If the agreement authorizes the sale or barter of donated commodities, the recipient must submit to FAS, using a form prescribed by FAS, reports covering the receipt and use of the sale proceeds when the donated commodities were sold, the goods and services derived from barter when the donated commodities were bartered, and program income. Such reports must be submitted to FAS, by the dates and for the reporting periods specified in the agreement, until all of the sale proceeds and program income have been disbursed and reported to FAS. When reporting financial information, the recipient must include the amounts in U.S. dollars and the exchange rate if proceeds are held in local currency.

(g) If requested by FAS, a recipient must provide to FAS additional information or reports relating to the agreement.

(h) If a recipient requires an extension of a reporting deadline, it must ensure that FAS receives an extension request at least five business days prior to the reporting deadline. FAS may decline to consider a request for an extension that it receives after this time period. FAS will consider requests for reporting deadline extensions on a case by case basis and make a decision based on the merits of each request. FAS will consider factors such as unforeseen or extenuating circumstances and past performance history when evaluating requests for extensions.

(i) A recipient must retain records and permit access to records in accordance with the requirements of 2 CFR 200.333 through 200.337. The date of submission of the final expenditure report, as referenced in 2 CFR 200.333, will be the final date of submission of the reports required by paragraphs (f)(1) and (2) of this section, as prescribed by FAS. The recipient must retain copies of and make available to FAS all sales receipts, contracts, or other documents related to the procurement of qualified commodities, the sale or barter of donated commodities, and any goods or services derived from such barter, as well as records of dispatch received from ocean carriers or overland transportation companies.

§ 1599.15 Subrecipients.

(a) A recipient may utilize the services of a subrecipient to implement activities under the agreement if this is provided for in the agreement. The subrecipient may receive donated commodities or procured commodities, sale proceeds, FAS-provided funds, program income, or other resources from the recipient for this purpose. The recipient must enter into a written subagreement with the subrecipient and comply with the applicable provisions of 2 CFR 200.331. The recipient must provide a copy of such subagreement to FAS, in the manner set forth in the agreement, prior to the transfer of any donated commodities or procured commodities, sale proceeds, FAS-provided funds, or program income to the subrecipient.

(b) A recipient must include the following requirements in a subagreement:

(1) The subrecipient is required to comply with the applicable provisions of this part and 2 CFR parts 200 and 400. The applicable provisions are those that relate specifically to subrecipients, as well as those relating to non-Federal entities that impose requirements that would be reasonable to pass through to a subrecipient because they directly concern the implementation by the subrecipient of one or more activities under the agreement. If there is a question about whether a particular provision is applicable, FAS will make the determination.

(2) The subrecipient is prohibited from using sale proceeds, FAS-provided funds, interest, or program income to acquire goods and services, either directly or indirectly through another party, in a manner that violates a U.S. Government economic sanction program, as specified in the agreement.

(3) The subrecipient must pay to the recipient the value of any donated commodities or procured commodities, sale proceeds, FAS-provided funds, interest, or program income that are not used in accordance with the subagreement, or that are lost, damaged, or misused as a result of the subrecipient's failure to exercise reasonable care.

(4) In accordance with § 1599.19 and 2 CFR 200.501(h), a description of the applicable compliance requirements and the subrecipient's compliance responsibility. Methods to ensure compliance may include pre-award audits, monitoring during the agreement, and post-award audits.

(c) A recipient must monitor the actions of a subrecipient as necessary to ensure that donated commodities or procured commodities, sale proceeds, FAS-provided funds, and program income provided to the subrecipient are used for authorized purposes in compliance with applicable U.S. Federal laws and regulations and the subagreement and that performance indicator targets are achieved for both activities and results under the agreement.

§ 1599.16 Noncompliance with an agreement.

If a recipient fails to comply with a Federal statute or regulation or the terms and conditions of the agreement, and FAS determines that the noncompliance cannot be remedied by imposing additional conditions, FAS may take one or more of the actions set forth in 2 CFR 200.338, including initiating a claim as a remedy. FAS may also initiate a claim against a recipient if the donated commodities or procured commodities are damaged or lost, or the sale proceeds, goods received through barter, FAS-provided funds, interest, or program income are misused or lost, due to an action or omission of the recipient.

§ 1599.17 Suspension and termination of agreements.

(a) An agreement or subagreement may be suspended or terminated in accordance with 2 CFR 200.338 or 200.339. FAS may suspend or terminate an agreement if it determines that:

(1) One of the bases in 2 CFR 200.338 or 200.339 for termination or suspension by FAS has been satisfied;

(2) The continuation of the assistance provided under the agreement is no longer necessary or desirable; or

(3) Storage facilities are inadequate to prevent spoilage or waste, or distribution of the donated commodities or procured commodities will result in substantial disincentive to, or interference with, domestic production or marketing in the target country.

(b) If an agreement is terminated, the recipient:

(1) Is responsible for the security and integrity of any undistributed donated commodities or procured commodities and must dispose of such commodities only as agreed to by FAS;

(2) Is responsible for any sale proceeds, FAS-provided funds, interest, or program income that have not been disbursed and must use or return them only as agreed to by FAS; and

(3) Must comply with any closeout and post-closeout procedures specified in the agreement and 2 CFR 200.343 and 200.344.

§ 1599.18 Opportunities to object and appeals.

(a) FAS will provide an opportunity to a recipient to object to, and provide information and documentation challenging, any action taken by FAS pursuant to § 1599.16. FAS will comply with any requirements for hearings, appeals, or other administrative proceedings to which the recipient is entitled under any other statute or regulation applicable to the action involved. For example, if the action taken by FAS pursuant to § 1599.16 is to initiate suspension or debarment proceedings as authorized under 2 CFR parts 180 and 417, then the requirements in 2 CFR parts 180 and 417 will apply instead of the requirements in this section. In the absence of other applicable statutory or regulatory requirements, the requirements set forth in this section will apply.

(b) The recipient must submit its objection in writing, along with any documentation, to the official specified in the agreement within 30 days after the date of FAS's written notification to the recipient of the FAS action being challenged. This official will endeavor to notify the recipient of his or her determination (the initial determination) within 60 days after the date that FAS received the recipient's written objection.

(c) The recipient may appeal the initial determination to the Administrator, FAS. An appeal must be in writing and be submitted to the Office of the Administrator within 30 days after the date of the initial determination. The recipient may submit additional documentation with its appeal.

(d) The Administrator will base the determination on appeal upon information contained in the administrative record and will endeavor to make a determination within 60 days after the date that FAS received the appeal. The determination of the Administrator will be the final determination of FAS. The recipient must exhaust all administrative remedies contained in this section before pursuing judicial review of a determination by the Administrator.

§ 1599.19 Audit requirements.

(a) The audit requirements in subpart F of 2 CFR part 200 apply to recipients and subrecipients under this part other than those that are for-profit entities, foreign public entities, or foreign organizations.

(b) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total of at least the audit requirement threshold in 2 CFR 200.501 in Federal awards, is required to obtain an audit. Such a recipient or subrecipient has the following two options to satisfy the requirement in this paragraph (b):

(1)(i) A financial audit of the agreement or subagreement, in accordance with the Government Auditing Standards issued by the United States Government Accountability Office (GAO), if the recipient or subrecipient expends Federal awards under only one FAS program during such fiscal year; or

(ii) A financial audit of all Federal awards from FAS, in accordance with GAO's Government Auditing Standards, if the recipient or subrecipient expends Federal awards under multiple FAS programs during such fiscal year; or

(2) An audit that meets the requirements contained in subpart F of 2 CFR part 200.

(c) A recipient or subrecipient that is a for-profit entity or a foreign organization, and that expends, during its fiscal year, a total that is less than the audit requirement threshold in 2 CFR 200.501 in Federal awards, is exempt from requirements under this section for an audit for that year, except as provided in paragraphs (d) and (f) of this section, but it must make records available for review by appropriate officials of Federal agencies.

(d) FAS may require an annual financial audit of an agreement or subagreement when the audit requirement threshold in 2 CFR 200.501 is not met. In that case, FAS must provide funds under the agreement for this purpose, and the recipient or subrecipient, as applicable, must arrange for such audit and submit it to FAS.

(e) When a recipient or subrecipient that is a for-profit entity or a foreign organization is required to obtain a financial audit under this section, it must provide a copy of the audit to FAS within 60 days after the end of its fiscal year.

(f) FAS, the USDA Office of Inspector General, or GAO may conduct or arrange for additional audits of any recipients or subrecipients, including for-profit entities and foreign organizations. Recipients and subrecipients must promptly comply with all requests related to such audits. If FAS conducts or arranges for an additional audit, such as an audit with respect to a particular agreement, FAS will fund the full cost of such an audit, in accordance with 2 CFR 200.503(d).

§ 1599.20 Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and have been assigned OMB control number 0551–0035. A person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Dated: October 29, 2019.

Ken Isley,

Administrator, Foreign Agricultural Service.

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AE84

Company-Run Stress Testing Requirements for FDIC-Supervised State Nonmember Banks and State Savings Associations; Correction

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule; correcting amendments.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is correcting a final rule that appeared in the **Federal Register** on October 24, 2019, regarding Company-Run Stress Testing Requirements for FDIC-Supervised State Nonmember Banks and State Savings Associations. This correction replaces three additional references to ''subpart'' with ''part,'' in order to standardize the language in FDIC regulations.

DATES: Effective November 25, 2019.

FOR FURTHER INFORMATION CONTACT: Ryan Sheller, Section Chief, Division of Risk Management, (202) 412–4861, *RSheller@fdic.gov,* or Benjamin Klein, Counsel, Legal Division, (202) 898–7027, *bklein@fdic.gov,* Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: On October 24, 2019, the FDIC published a final rule, Company-Run Stress Testing Requirements for FDIC-Supervised State Nonmember Banks and State Savings Associations.[1] As discussed in the preamble,[2] the final rule changed references to ''subpart'' to ''this part'' following the redesignation of the FDIC's stress test rule from subpart C of

[1] 84 FR 56929 (Oct. 24, 2019).

[2] 84 FR 56929, 56932.

12 CFR part 325 to occupy all of part 325.[3] The final rule inadvertently omitted corresponding changes from ''subpart'' to ''part'' in three sections of the final rule: §§ 325.1(c)(7), 325.3(a)(1), and 325.7(b). Accordingly, this document is issued to correct those sections of the final rule with the appropriate references to ''part'' 325.

For the reasons set out in the preamble, the FDIC hereby amend 12 CFR part 325 by making the following correcting amendments.

PART 325—STRESS TESTING

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 5365(i)(2), 12 U.S.C. 5412(b)(2)(C), 12 U.S.C. 1818, 12 U.S.C. 1819(a)(Tenth), 12 U.S.C. 1831o, and 12 U.S.C. 1831p–1.

■ 2. Amend § 325.1 by revising paragraph (c)(7) to read as follows:

§ 325.1 Authority, purpose, and reservation of authority.

* * * * *

(c) * * *

(7) Nothing in this part limits the authority of the Corporation under any other provision of law or regulation to take supervisory or enforcement action, including action to address unsafe and unsounds practices or conditions, or violations of law or regulation.

* * * * *

■ 3. Amend § 325.3 by revising paragraph (a)(1) to read as follows:

§ 325.3 Applicability

(a) * * *

(1) A state nonmember bank or state savings association that is a covered bank as of December 31, 2019, is subject to the requirements of this part for the 2020 reporting year.

* * * * *

■ 4. Amend § 325.7 by revising paragraph (b) to read as follows:

§ 325.7 Publication of stress test results.

* * * * *

(b) *Publication method.* The summary required under this section may be published on the covered ban's website or in any other forum that is reasonably accessible to the public. A covered bank that is a consolidated subsidiary of a bank holding company or savings and loan holding company that is required to conduct a company-run stress test under applicable regulations of the Board of Governors of the Federal Reserve System will be deemed to have satisfied the public disclosure requirements under this part if it publishes a summary of its stress test results with its parent bank holding company's or savings and loan holding company's summary of stress test results. Subsidiary covered banks electing to satisfy their public disclosure requirement in this manner must include a summary of changes in regulatory capital ratios of such covered bank over the planning horizon, and an explanation of the most significant causes for the changes in regulatory capital ratios.

* * * * *

Dated on November 18, 2019.

Federal Deposit Insurance Corporation.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–25691 Filed 11–22–19; 8:45 am]

BILLING CODE 6714–01–P

[3] 83 FR 17737 (April 24, 2019).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0667; Product Identifier 2019–NM–085–AD; Amendment 39–19791; AD 2019–22–12]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A320–214, –216, –232, and –233 airplanes. This AD was prompted by a report of undetected contacts between certain harnesses of the common fuel quantity indicating system and the center tank structure. This AD requires modification of the fasteners for certain harness routings, as specified in a European Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 31, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 31, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +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–2019–0667.

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–2019–0667; 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 address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Section, Transport Standards Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3223.

SUPPLEMENTARY INFORMATION:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2018–0155, dated July 20, 2018 (''EASA AD 2018–0155'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A320–214, –216, –232, and –233 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A320–214, –216, –232, and –233 airplanes. The NPRM published in the **Federal Register** on August 30, 2019 (84 FR 45690). The NPRM was prompted by a report of undetected contacts between certain harnesses of the common fuel quantity indicating system and the center tank structure. The NPRM proposed to require modification of the fasteners for certain harness routings.

The FAA is issuing this AD to address undetected contacts between certain harnesses of the common fuel quantity indicating system and the center tank

structure, which could create, in case of a lightning strike with chafing present, an ignition source inside the center fuel tank, possibly resulting in a fuel tank explosion and consequent loss of the airplane. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. United Airlines had no objections to the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. The FAA has determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2018–0155 describes procedures for modification of the fasteners for harness routings 17QT and 18QT.

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.

Costs of Compliance

The FAA estimates that this AD affects 5 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
5 work-hours × $85 per hour = $425	$200	$625	$3,125

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 transport category airplanes and associated appliances to the Director of the System Oversight Division.

Regulatory Findings

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

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

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–22–12 Airbus SAS: Amendment 39–19791; Docket No. FAA–2019–0667; Product Identifier 2019–NM–085–AD.

(a) Effective Date

This AD is effective December 31, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A320–214, –216, –232, and –233 airplanes, certificated in any category, as identified in European Aviation Safety Agency (EASA) AD 2018–0155, dated July 20, 2018 (''EASA AD 2018–0155'').

(d) Subject

Air Transport Association (ATA) of America Code 92, Electrical system installation.

(e) Reason

This AD was prompted by a report of undetected contacts between certain harnesses of the common fuel quantity indicating system and the center tank structure. The FAA is issuing this AD to address undetected contacts between certain harnesses of the common fuel quantity indicating system and the center tank structure, which could create, in case of a lightning strike with chafing present, an ignition source inside the center fuel tank, possibly resulting in a fuel tank 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 2018–0155.

(h) Exceptions to EASA AD 2018–0155

(1) Where EASA AD 2018–0155 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2018–0155 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) 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 2018–0155 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

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; phone and fax: 206–231–3223.

(k) Material Incorporated by Reference

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

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

(i) European Aviation Safety Agency (EASA) AD 2018–0155, dated July 20, 2018.

(ii) [Reserved]

(3) For information about EASA AD 2018–0155, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 89990 6017; email: *ADs@easa.europa.eu;* Internet: *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0667.

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

Issued in Des Moines, Washington, on November 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–25605 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0611; Product Identifier 2019–NM–095–AD; Amendment 39–19793; AD 2019–22–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by the results of a structural analysis, which identified that the upper frame fittings (UFFs) of the forward cargo door surrounding structure have a low fatigue life. This AD requires repetitive inspections of the forward cargo door UFFs and brackets for discrepancies and, depending on the findings, doing applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 31, 2019.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 31, 2019.

ADDRESSES: For the material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 1000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu*. You may find this IBR material on the EASA website at *https://ad.easa.europa.eu*. You may view this IBR material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0611.

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–2019–0611; 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 address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

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:

Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019–0126, dated June 5, 2019 (''EASA AD 2019–0126'') (also referred to as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus SAS Model A350–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on August 30, 2019 (84 FR 45694). The NPRM was prompted by the results of a structural analysis, which identified

that the UFFs of the forward cargo door surrounding structure have a low fatigue life. The NPRM proposed to require repetitive inspections of the forward cargo door UFFs and brackets for discrepancies and, depending on the findings, doing applicable corrective actions.

The FAA is issuing this AD to address low fatigue life of the UFFs of the forward cargo door surrounding structure, which could lead to failure of a forward fuselage cargo door UFF, resulting in reduced structural integrity of the fuselage. See the MCAI for additional background information.

Comments

The FAA gave the public the opportunity to participate in developing this final rule. We have considered the comments received. Kate Johnson and an anonymous commenter indicated support for the NPRM.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this final rule as proposed, except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Related IBR Material Under 1 CFR Part 51

EASA AD 2019–0126 describes procedures for repetitive detailed inspections of the UFFs and brackets of the forward cargo door for discrepancies, including cracking, and applicable corrective actions. Corrective actions include a modification to reinforce the affected UFF brackets, and repair of any discrepancy detected in the area surrounding the UFF 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.

Costs of Compliance

The FAA estimates that this AD affects 13 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
40 work-hours × $85 per hour = $3,400	$0	$3,400	$44,200

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 132 work-hours × $85 per hour = Up to $11,220	Up to $6,940	Up to $18,160.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

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

Regulatory Findings

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

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

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

(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.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2019–22–14 Airbus SAS: Amendment 39–19793; Docket No. FAA–2019–0611; Product Identifier 2019–NM–095–AD.

(a) Effective Date

This AD is effective December 31, 2019.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2019–0126, dated June 5, 2019 (''EASA AD 2019–0126'').

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by the results of a structural analysis that identified that the upper frame fittings (UFFs) of the forward cargo door surrounding structure have a low fatigue life. The FAA is issuing this AD to address low fatigue life of the UFFs of the forward cargo door surrounding structure, which could lead to failure of a forward fuselage cargo door UFF, resulting in reduced structural integrity of the fuselage.

(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 2019–0126.

(h) Exception to EASA AD 2019–0126

The ''Remarks'' section of EASA AD 2019–0126 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) 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 2019–0126 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

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.

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2019–0126, dated June 5, 2019.

(ii) [Reserved]

(3) For information about EASA AD 2019–0126, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 89990 6017; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu*. You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu*.

(4) You may view this material at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0611.

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

Issued in Des Moines, Washington, on November 6, 2019.

Michael Kaszycki,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–25606 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0124; Airspace Docket No. 18–ASO–18]

RIN 2120–AA66

Establishment and Amendment of Area Navigation (RNAV) Routes; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 2 new low altitude RNAV routes T–239 and T–258; and modifies 3 existing RNAV routes T–290, T–292, and T–294 in the southeastern United States. The action expands the availability of RNAV routing in support of transitioning the National Airspace System (NAS) from ground-based to satellite-based navigation.

DATES: Effective date 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *http://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure in the National Airspace System as necessary to preserve the safe and efficient flow of air traffic.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** for Docket No. FAA–2019–0124 (84 FR 9048; March 13, 2019) to establish new low altitude RNAV routes T–239, and T–258, and modify 3 existing RNAV routes T–290, T–292, and T–294 in the southeastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received. The commenter expressed support for the proposal.

Low altitude RNAV T-routes are published in paragraph 6011 of FAA Order 7400.11D dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The T-routes listed in this document will be subsequently published in the Order.

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

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Difference From the NPRM

In the proposed description of route T–239, the ZATEL, MS, Fix was located between the GANTT, MS, WP, and the ICAVY, MS, Fix. This caused a slight bend in the route between the GANTT WP and the ICAVY Fix. The FAA determined that the ZATEL Fix is not required for that segment of T–239. To eliminate the bend, the ZATEL, WP is removed from the route description. This minor adjustment results in a straight route segment between the GANTT WP and the ICAVY Fix.

The Rule

The FAA is amending Title 14 Code of Federal Regulations (14 CFR) part 71 to establish two new low altitude RNAV routes: T–239 and T–258; and to amend three existing routes: T–290, T–292, and T–294, in the southeastern United States. The FAA is taking this action in preparation for the planned decommissioning of the Talladega, AL, VHF Omni-Directional Range/Distance Measuring Equipment (VOR/DME); the Crimson, AL, VHF Omni-Directional Range and Tactical Air Navigation System (VORTAC); the Kewanee, MS, VORTAC; and the Hamilton, AL, VORTAC.

T–239: T–239 is a new route that extends between the Pecan, GA, (PZD) VOR/DME (northwest of Albany, GA), northwestward through the State of Alabama to the GOINS, MS, waypoint (WP) (near the Holly Springs, MS, (HLI) VORTAC). T–239 overlies VOR Federal airway V–159 between the Pecan, GA, VOR/DME and the GOINS, MS, WP.

T–258: T–258 is a new route that extends between the MINIM, AL, fix, (24 NM northeast of the Bigbee, MS, (IGB) VORTAC), eastward across Alabama, to the CANER, GA, fix (approximately 21 NM northeast of Columbus, GA). T–258 overlies airway V–245 from the MINIM, AL, navigation fix eastward to the CRMSN, AL, WP; and it overlies airway V–66 from the CRMSN, AL, WP eastward to the CANER, GA, Fix.

T–290: T–290 is an existing route that extends between the SCAIL, AL, WP, and the JACET, GA, WP. Under this change, the western end of the route begins at the HABJE, MS, Fix (located approximately 15 NM west of the Meridian, MS (MEI), VORTAC. The route then proceeds eastward to the Meridian, MS, (MEI), VORTAC, through the KWANE, MS, WP, and the RABEC, AL, WP to the Montgomery, AL (MGM), VORTAC, and then northeastward to the SCAIL, AL, WP. From the SCAIL, AL, WP, T–290 proceeds to the JACET, GA, WP as currently charted. T–290 overlies VOR Federal airway V–56 between the Meridian, MS, (MEI), VORTAC and the Montgomery, AL, (MGM), VORTAC.

T–292: T–292 is an existing route that extends between the RKMRT, GA, WP, and the JACET, GA, WP. The western end of T–292 is amended to begin at the Semmes, AL, (SJI), VORTAC. From that point, it proceeds northward through the BURIN, AL; the HAZEY, AL; the YARBO, AL; the ANTUH, AL; and the JANES, AL, fixes to the KWANE, MS, WP. The route then turns northeastward through the EUTAW, AL, and the MOVIL, AL, fixes; then through the Brookwood, AL, (OKW), VORTAC; the VLKNN, AL, WP; the HOKES, AL, and the MAYES, AL, fixes; then to the RKMRT, GA, WP, from which point it proceeds as currently charted to the JACET, GA, WP. The amended route overlies a portion of VOR Federal airway V–417 between the MAYES, AL, WP, and the Vulcan, AL, (VUZ), VORTAC; and overlies Federal airway V–209 between the Vulcan, AL, VORTAC and the Semmes, AL, VORTAC.

T–294: T–294 is an existing route that extends between the HEFIN, AL, fix and the GRANT, GA, fix. This action extends the route from the HEFIN, AL, Fix, westward to the HABJE, MS, Fix (located 15 NM west of the Meridian, MS, (MEI), VORTAC. The amended route overlies VOR Federal airway V–18 between the HABJE, MS, fix and the HEFIN, AL, fix.

The existing latitude/longitude coordinates in the descriptions of T–290, T–292, and T–294 are updated to the hundredths of a second place to provide greater accuracy.

Full route descriptions of the above routes are listed in ''The Amendment'' section, below.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial

number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action establishing RNAV routes T–239 and T–258, and modifying RNAV routes T–290, T–292, and T–294, in the southeastern United States, qualifies for categorical exclusion under the National Environmental Policy Act and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures. The applicable categorical exclusion in FAA Order 1050.1F is paragraph 5–6.5g, Establishment of Global Positioning System (GPS), Area Navigation/ Required Navigation Performance (RNAV/RNP), or essentially similar systems that use overlay of existing flight tracks. This action is not expected to cause any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–239 Pecan, GA (PZD) to GOINS, MS [New]

Pecan, GA (PZD)	VOR/DME	(Lat. 31°39′18.74″ N, long. 084°17′35.16″ W)
SHANY, GA	Fix	(Lat. 31°45′05.09″ N, long. 084°33′49.37″ W)
AYUVO, GA	Fix	(Lat. 31°45′50.73″ N, long. 084°35′58.47″ W)
SAWES, GA	Fix	(Lat. 31°50′59.68″ N, long. 084°50′36.02″ W)
AXOSE, GA	Fix	(Lat. 31°53′13.32″ N, long. 084°56′57.43″ W)
Eufaula, AL (EUF)	VORTAC	(Lat. 31°57′00.90″ N, long. 085°07′49.73″ W)
MILER, AL	Fix	(Lat. 32°12′57.74″ N, long. 085°23′50.35″ W)
Tuskegee, AL (TGE)	VOR/DME	(Lat. 32°29′05.53″ N, long. 085°40′09.55″ W)
KENTT, AL	Fix	(Lat. 32°36′42.77″ N, long. 085°47′57.33″ W)
SEMAN, AL	Fix	(Lat. 32°46′20.97″ N, long. 085°57′49.44″ W)
NIXBY, AL	Fix	(Lat. 32°55′34.52″ N, long. 086°07′19.96″ W)
FAYEZ, AL	Fix	(Lat. 33°00′38.93″ N, long. 086°12′34.80″ W)
KYLEE, AL	Fix	(Lat. 33°09′41.04″ N, long. 086°21′57.72″ W)
ADZIN, AL	Fix	(Lat. 33°10′36.99″ N, long. 086°22′56.20″ W)
HANDE, AL	Fix	(Lat. 33°18′44.40″ N, long. 086°31′24.44″ W)
VLKNN, AL	WP	(Lat. 33°40′12.49″ N, long. 086°53′59.42″ W)
NEGEE, AL	Fix	(Lat. 33°48′12.56″ N, long. 087°10′36.89″ W)
CORES, AL	Fix	(Lat. 33°50′07.18″ N, long. 087°14′36.71″ W)
CHOOK, AL	Fix	(Lat. 33°56′04.62″ N, long. 087°27′21.41″ W)
EXIST, AL	Fix	(Lat. 33°59′37.53″ N, long. 087°34′53.35″ W)
FOGUM, AL	Fix	(Lat. 34°06′25.32″ N, long. 087°49′24.16″ W)
SWIKI, AL	WP	(Lat. 34°11′55.87″ N, long. 088°00′42.44″ W)
GANTT, MS	WP	(Lat. 34°26′42.26″ N, long. 088°38′57.39″ W)
ICAVY, MS	Fix	(Lat. 34°29′51.00″ N, long. 088°47′03.66″ W)
GOINS, MS	WP	(Lat. 34°46′12.64″ N, long. 089°29′46.81″ W)

T–258 MINIM, AL to CANER, GA [New]

MINIM, AL	Fix	(Lat. 33°32′31.14″ N, long. 088°02′23.62″ W)
CAYAP, AL	Fix	(Lat. 33°19′27.01″ N, long. 087°39′08.35″ W)
CRMSN, AL	WP	(Lat. 33°15′31.80″ N, long. 087°32′12.70″ W)
ZIVMU, AL	Fix	(Lat. 33°14′58.61″ N, long. 087°23′53.53″ W)
Brookwood, AL (OKW)	VORTAC	(Lat. 33°14′16.31″ N, long. 087°14′59.52″ W)
HEENA, AL	Fix	(Lat. 33°12′24.62″ N, long. 086°52′15.28″ W)
KYLEE, AL	Fix	(Lat. 33°09′41.04″ N, long. 086°21′57.72″ W)
CAMPP, AL	Fix	(Lat. 33°06′10.39″ N, long. 085°44′51.08″ W)
Lagrange, GA (LGC)	VORTAC	(Lat. 33°02′56.83″ N, long. 085°12′22.40″ W)
LANGA, GA	Fix	(Lat. 32°55′34.17″ N, long. 084°56′59.00″ W)
CANER, GA	Fix	(Lat. 32°45′21.48″ N, long. 084°35′51.42″ W)

T–290 HABJE, MS to JACET, GA [Amended]

HABJE, MS	Fix	(Lat. 32°23′32.11″ N, long. 089°05′56.57″ W)
Meridian, MS (MEI)	VORTAC	(Lat. 32°22′42.38″ N, long. 088°48′15.36″ W)
KWANE, MS	WP	(Lat. 32°22′00.47″ N, long. 088°27′29.43″ W)
RABEC, AL	WP	(Lat. 32°16′11.64″ N, long. 086°58′01.67″ W)
Montgomery, AL (MGM)	VORTAC	(Lat. 32°13′20.21″ N, long. 086°19′11.02″ W)
SCAIL, AL	WP	(Lat. 33°02′01.32″ N, long. 085°39′31.56″ W)
BBAIT, GA	WP	(Lat. 33°07′14.23″ N, long. 084°46′13.19″ W)
BBASS, GA	WP	(Lat. 33°11′32.70″ N, long. 083°59′21.10″ W)
BBOAT, GA	WP	(Lat. 33°16′50.57″ N, long. 083°28′10.00″ W)
BOBBR, GA	WP	(Lat. 33°19′57.07″ N, long. 083°08′19.47″ W)
JACET, GA	WP	(Lat. 33°29′41.42″ N, long. 082°06′27.81″ W)

T–292 Semmes, AL (SJI) to JACET, GA [Amended]

Semmes, AL (SJI)	VORTAC	(Lat. 30°43′33.53″ N, long. 088°21′33.46″ W)
BURIN, AL	Fix	(Lat. 30°58′43.51″ N, long. 088°22′47.31″ W)
HAZEY, AL	Fix	(Lat. 31°15′33.23″ N, long. 088°24′09.75″ W)

YARBO, AL	Fix	(Lat. 31°26′30.60″ N, long. 088°25′03.67″ W)
ANTUH, AL	Fix	(Lat. 31°33′10.56″ N, long. 088°25′36.47″ W)
JANES, AL	Fix	(Lat. 31°45′57.15″ N, long. 088°26′06.08″ W)
KWANE, MS	WP	(Lat. 32°22′00.47″ N, long. 088°27′29.43″ W)
EUTAW, AL	Fix	(Lat. 32°49′03.81″ N, long. 087°50′20.52″ W)
MOVIL, AL	Fix	(Lat. 33°01′24.91″ N, long. 087°33′09.96″ W)
Brookwood, AL (OKW)	VORTAC	(Lat. 33°14′16.31″ N, long. 087°14′59.52″ W)
VLKNN, AL	WP	(Lat. 33°40′12.49″ N, long. 086°53′59.42″ W)
HOKES, AL	Fix	(Lat. 33°55′30.08″ N, long. 085°50′33.20″ W)
MAYES, AL	Fix	(Lat. 33°58′20.32″ N, long. 085°49′15.34″ W)
RKMRT, GA	WP	(Lat. 34°03′36.73″ N, long. 085°15′02.63″ W)
POLLL, GA	WP	(Lat. 34°08′57.26″ N, long. 084°46′49.54″ W)
CCATT, GA	WP	(Lat. 34°16′14.97″ N, long. 084°09′05.36″ W)
REELL, GA	WP	(Lat. 34°01′32.51″ N, long. 083°31′44.10″ W)
TRREE, GA	WP	(Lat. 33°47′14.78″ N, long. 082°55′30.22″ W)
JACET, GA	WP	(Lat. 33°29′41.42″ N, long. 082°06′27.81″ W)
T–294 HABJE, MS to GRANT, GA [Amended]		
HABJE, MS	Fix	(Lat. 32°23′32.11″ N, long. 089°05′56.57″ W)
Meridian, MS (MEI)	VORTAC	(Lat. 32°22′42.38″ N, long. 088°48′15.36″ W)
NOSRY, MS	Fix	(Lat. 32°29′06.87″ N, long. 088°39′10.26″ W)
BOYDD, AL	Fix	(Lat. 32°41′52.58″ N, long. 088°20′57.71″ W)
ALICE, AL	Fix	(Lat. 32°59′03.95″ N, long. 087°56′12.06″ W)
CRMSN, AL	WP	(Lat. 33°15′31.80″ N, long. 087°32′12.70″ W)
SITES, AL	Fix	(Lat. 33°24′28.11″ N, long. 087°18′27.10″ W)
OAKGO, AL	Fix	(Lat. 33°27′13.10″ N, long. 087°14′11.79″ W)
WUNET, AL	Fix	(Lat. 33°31′40.47″ N, long. 087°07′17.21″ W)
VLKNN, AL	WP	(Lat. 33°40′12.49″ N, long. 086°53′59.42″ W)
TRUST, AL	Fix	(Lat. 33°38′21.99″ N, long. 086°36′58.83″ W)
JOTAV, AL	Fix	(Lat. 33°36′18.25″ N, long. 086°18′24.59″ W)
NOPVE. AL	Fix	(Lat. 33°35′27.30″ N, long. 086°10′51.81″ W)
DEGAA, AL	WP	(Lat. 33°34′30.58″ N, long. 086°02′32.96″ W)
KOCEY, AL	Fix	(Lat. 33°35′20.40″ N, long. 085°41′02.32″ W)
LAYIN, AL	Fix	(Lat. 33°35′38.39″ N, long. 085°32′50.84″ W)
HEFIN, AL	Fix	(Lat. 33°35′54.75″ N, long. 085°25′10.57″ W)
BBAIT, GA	WP	(Lat. 33°07′14.23″ N, long. 084°46′13.19″ W)
JMPPR, GA	WP	(Lat. 32°57′42.02″ N, long. 084°33′18.56″ W)
GRANT, GA	Fix	(Lat. 32°49′44.96″ N, long. 084°22′36.39″ W)

* * * * *

Issued in Washington, DC, on November 20, 2019.

Rodger A. Dean, Jr.,

Manager, Rules and Regulations Group.

[FR Doc. 2019–25553 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0651; Airspace Docket No. 19–AGL–24]

RIN 2120–AA66

Amendment of Class E Airspace; Tomahawk, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at Tomahawk Regional Airport, Tomahawk, WI. This action is due to an airspace review requested by the Airspace Policy Group. The geographic coordinates of the airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, January 30, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the Class E airspace extending upward from 700 feet above the surface at Tomahawk Regional Airport, Tomahawk, WI, to support instrument flight rule operations at this airport.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 48572; September 16, 2019) for Docket No. FAA–2019–0651 to amend the Class E airspace extending upward from 700 feet above the surface at Tomahawk Regional Airport, Tomahawk, WI. Interested parties were invited to participate in this rulemaking effort by submitting written comments

on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 amends the Class E airspace extending upward from 700 feet above the surface to of the Tomahawk Regional Airport, Tomahawk, WI, by adding an extension 2 miles each side of the 090° bearing from the airport extending from the 6.4-mile radius to 9.4 miles east of the airport; adding an extension 2 miles each side of the 270° bearing from the airport extending from the 6.4-mile radius to 9 miles west of the airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

This action is necessary due to an airspace review requested by the Airspace Policy Group.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures,'' paragraph 5–6.5.a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

AGL WI E5 Tomahawk, WI [Amended]

Tomahawk Regional Airport, WI
(Lat. 45°28′10″ N, long. 89°48′18″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tomahawk Regional Airport, and within 2 miles each side of the 090° bearing from the airport extending from the 6.4-mile radius to 9.4 miles east the airport, and within 2 miles each side of the 270° bearing from the airport extending from the 6.4-mile radius to 9 miles west of the airport.

Issued in Fort Worth, Texas, on November 18, 2019.

Steve Szukala,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–25436 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2019–0045]

RIN 0960–AI45

Extension of Expiration Dates for Five Body System Listings

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Musculoskeletal System, Cardiovascular System, Digestive System, Skin Disorders, and Immune System Disorders. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

DATES: This final rule is effective on November 26, 2019.

FOR FURTHER INFORMATION CONTACT: Cheryl A. Williams, Director, Office of Medical Policy, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the Title II and Title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over,

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following five body systems will no longer be effective as set out in the following chart:

Listing	Current expiration date	Extended expiration date
Musculoskeletal System 1.00 and 101.00	January 27, 2020	February 4, 2022.
Cardiovascular System 4.00 and 104.00	January 27, 2020	February 4, 2022.
Digestive System 5.00 and 105.00	January 27, 2020	February 4, 2022.
Skin Disorders 8.00 and 108.00	January 27, 2020	February 4, 2022.
Immune System Disorders 14.00 and 114.00	January 17, 2020	February 4, 2022.

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the five listings affected by this final rule as necessary based on medical advances as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

Regulatory Procedures

Justification for Final Rule

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the five body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations[3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in the five body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Regulatory Flexibility Act

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Executive Order 13771

This regulation does not impose novel costs on the public and as such is considered an exempt regulatory action under E.O. 13771.

Paperwork Reduction Act

This final rule only extends the date for the medical listings cited above, but does not create any new or affect any existing collections, or otherwise change any content of the currently published rules. Accordingly, it does not impose any burdens under the Paperwork Reduction Act, and does not require further OMB approval.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements, Social Security.

Andrew Saul,

Commissioner of Social Security.

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 2, 5, 6, 9, and 15 of the introductory text before Part A to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

[2] We last extended the expiration dates of four of the body system listings affected by this final rule in December 2017 (82 FR 59514) (Musculoskeletal System, Cardiovascular System. Digestive System, and Skin Disorders) and we revised the Immune System Disorders in December 2016 (81 FR 86915). We proposed rules for evaluating Digestive disorders and Skin disorders in July 2019 (84 FR 35936) and for evaluating Musculoskeletal disorders in May 2018 (83 FR 20646).

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

2. Musculoskeletal System (1.00 and 101.00): February 4, 2022.

* * * * *

5. Cardiovascular System (4.00 and 104.00): February 4, 2022.

6. Digestive System (5.00 and 105.00): February 4, 2022.

* * * * *

9. Skin Disorders (8.00 and 108.00): February 4, 2022.

* * * * *

15. Immune System Disorders (14.00 and 114.00): February 4, 2022.

* * * * *

[FR Doc. 2019–25635 Filed 11–25–19; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[TD 9884]

RIN 1545–B072

Estate and Gift Taxes; Difference in the Basic Exclusion Amount

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations addressing the effect of recent legislative changes to the basic exclusion amount allowable in computing Federal gift and estate taxes. The final regulations will affect donors of gifts made after 2017 and the estates of decedents dying after 2025.

DATES:

Effective Date: These final regulations are effective on and after November 26, 2019.

Applicability Date: For date of applicability, see § 20.2010–1(f)(2).

FOR FURTHER INFORMATION CONTACT: Deborah S. Ryan, (202) 317–6859 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 11061 of the Tax Cuts and Jobs Act, Public Law 115–97, 131 Stat. 2504 (2017) (TCJA) amended section 2010(c)(3) of the Internal Revenue Code (Code) to provide that, for decedents dying and gifts made after December 31, 2017, and before January 1, 2026, the basic exclusion amount (BEA) is increased by $5 million to $10 million as adjusted for inflation (increased BEA). On January 1, 2026, the BEA will revert to $5 million as adjusted for inflation.

This document contains amendments to the Estate Tax Regulations (26 CFR part 20) relating to the BEA described in section 2010(c)(3) of the Code. On November 23, 2018, a notice of proposed rulemaking (proposed regulations) under section 2010 (REG–106706–18) was published in the **Federal Register** (83 FR 59343). No public hearing was requested or held. Written or electronic comments responding to the proposed regulations were received. After consideration of all the comments, this Treasury decision adopts the proposed regulations with certain revisions. Comments and revisions to the proposed regulations are discussed in the Summary of Comments and Explanation of Revisions.

The final regulations adopt the special rule provided in the proposed regulations in cases where the portion of the credit against the estate tax that is based on the BEA is less than the sum of the credit amounts attributable to the BEA allowable in computing gift tax payable within the meaning of section 2001(b)(2). In that case, the rule provides that the portion of the credit against the net tentative estate tax that is attributable to the BEA is based upon the greater of those two credit amounts. The rule thus would ensure that the estate of a decedent is not inappropriately taxed with respect to gifts that were sheltered from gift tax by the increased BEA when made.

Summary of Comments and Explanation of Revisions

1. Overview

Most commenters agreed that the special rule would avoid an unfair situation that otherwise could effectively vitiate the statutory increase in the BEA during the period January 1, 2018, through December 31, 2025 (increased BEA period). These commenters also acknowledged that the special rule would provide important clarification for taxpayers. However, one commenter suggested an alternate approach and two others disputed the regulatory authority to adopt the special rule. Some commenters suggested technical changes. All of the other comments were requests for clarification of the interaction of the special rule with the inflation adjustments to the BEA, the deceased spousal unused exclusion (DSUE) amount, and the generation-skipping transfer (GST) tax, and requests for additional examples. These comments are discussed in this preamble.

2. Inflation Adjustments

Several commenters noted that the example in the proposed regulations does not reflect the annual inflation adjustments to the BEA, and requested clarification of the effect of those adjustments on the application of the special rule. The inflation adjustments were not included in that example for purposes of more simply illustrating the special rule. However, by definition, the term BEA refers to the amount of that exclusion as adjusted for inflation, so the Department of the Treasury (Treasury Department) and the IRS agree that examples including inflation adjustments would be appropriate. Accordingly, the examples in the final regulations reflect hypothetical inflation-adjusted BEA amounts.

One commenter requested confirmation that under the special rule a decedent does not benefit from the increased BEA, including inflation adjustments, to the extent it is in excess of the amount of gifts the decedent actually made, and agreed that this is the appropriate interpretation of the statute. Specifically, the increased BEA as adjusted for inflation is a ''use or lose'' benefit and is available to a decedent who survives the increased BEA period only to the extent the decedent ''used'' it by making gifts during the increased BEA period. The final regulations include *Example 2* in § 20.2010–1(c)(2)(ii) to demonstrate that the application of the special rule is based on gifts actually made, and thus is inapplicable to a decedent who did not make gifts in excess of the date of death BEA as adjusted for inflation.

Commenters also sought confirmation that under the special rule a decedent dying after 2025 will not benefit from post-2025 inflation adjustments to the BEA to the extent the decedent made gifts in an amount sufficient to cause the total BEA allowable in the computation of gift tax payable to exceed the date of death BEA as adjusted for inflation. This is confirmed in *Example 1* of § 20.2010–1(c)(2)(i) of these final regulations. In computing the estate tax, the BEA, in effect, is applied first against the decedent's gifts as taxable gifts were made. To the extent any BEA remains at death, it is applied against the decedent's estate. Therefore, in the case of a decedent who had made gifts in an amount sufficient to cause the total BEA allowable in the computation of gift tax payable to equal or exceed the date of death BEA as adjusted for inflation, there is no remaining BEA available to be applied to reduce the estate tax. The special rule does not change the five-step estate tax computation required under sections 2001 and 2010 of the Code or the fact that, under that computation, only the credit that remains after computing gift tax payable may be applied against the estate tax.

One commenter recommended that, where the BEA allowable in computing gift tax payable exceeds the date of death BEA including inflation adjustments, the special rule should permit the use of a BEA equal to the sum of the BEA allowable in computing gift tax payable and the post-2025 inflation adjustments. For the reasons discussed in the preceding paragraphs, this recommendation is inconsistent with the unified gift and estate tax statutes. If the BEA allowable in computing gift tax payable exceeds the date of death BEA as adjusted for inflation, under the special rule, the inflation adjustments already have been allowable against taxable gifts and it would be inconsistent with the estate tax statute to allow them again against the estate tax.

3. DSUE

Several commenters asked for confirmation that, even if the amount of BEA that is allowable under section 2010(c)(3) of the Code decreases after 2025, a DSUE amount elected during the increased BEA period will not be reduced as a result of the sunset of the increased BEA. Section 2010(c)(4) defines the DSUE amount as the lesser of the BEA or the unused portion of the deceased spouse's applicable exclusion amount (AEA) at death. The regulations in §§ 20.2010–1(d)(4) and 20.2010–2(c)(1) confirm that the reference to BEA is to the BEA in effect at the time of the deceased spouse's death, rather than the BEA in effect at the death of the surviving spouse. A DSUE election made on the deceased spouse's estate tax return allows the surviving spouse to take into account the deceased spouse's DSUE amount as part of the surviving spouse's AEA. Section 2010(c)(5); § 20.2010–2(a). AEA is the sum of the DSUE amount and the BEA. Section 2010(c)(2). A decrease in the BEA after 2025 will reduce the surviving spouse's AEA only to the extent that it is based upon the BEA, but not to the extent that it is based on the DSUE amount. Therefore, the sunset of (or any other decrease in) the increased BEA has no impact on the existing DSUE rules and the existing regulations governing DSUE continue to apply. *Examples 3* and *4* of § 20.2010–1(c)(2)(iii) and (iv), respectively, of these final regulations address this situation. The examples demonstrate that, if a spouse dies during the increased BEA period, and the deceased spouse's executor makes the portability election, the surviving spouse's AEA includes the full amount of the DSUE that is based on the deceased spouse's increased BEA. This DSUE amount is available to offset the surviving spouse's transfer tax liability regardless of when the transfers are made, whether during or after the increased BEA period.

4. BEA Computations

Several commenters raised questions concerning the calculation of the credit amount solely attributable to the BEA in computing gift tax payable where the AEA upon which the credits are based consists of amounts other than the BEA. In response to these comments, the final regulations clarify how to determine the extent to which a credit allowable in computing gift tax payable is based solely on the BEA. First, the credit may not exceed that amount necessary to reduce the gift tax for that calendar period to zero. Second, any DSUE amount available to the decedent for that calendar period is deemed to be applied to the decedent's gifts before any of the decedent's BEA is applied to those gifts. This is consistent with the existing ordering rule concerning the application of DSUE to a given transfer. See §§ 20.2010–3(b) and 25.2505–2(b). Third, in a calendar period in which the AEA allowable with regard to gifts made during that period includes both DSUE and BEA, the allowable BEA may not exceed that necessary to reduce the tentative gift tax to zero after the application of the DSUE amount. Fourth, in a calendar period in which the AEA allowable with regard to gifts made during that period includes both DSUE and BEA, the portion of the credit based solely on the BEA for that period is that which corresponds to the result of dividing the BEA allocable to those gifts by the AEA allocable to those gifts. *Example 4* of § 20.2010–1(c)(2)(iv) of these final regulations addresses the application of the DSUE ordering rule as well as the computation of the credit based solely on the BEA in a calendar period in which the transfer exhausts the remaining DSUE amount with the result that the BEA is also allowable.

A commenter requested an example involving a taxable estate that exceeds the available exclusion amount. Each of *Examples 2, 3,* and *4* of § 20.2010–1(c)(2)(ii), (iii) and (iv), respectively, of these final regulations contemplates that the decedent's estate potentially is taxable, and identifies the exclusion amounts upon which the credit against the tentative estate tax is based.

A commenter suggested that examples be provided regarding the computation of the gift tax on gifts made during the increased BEA period and after the sunset of that period. The computation of the gift tax in both situations was discussed in detail in the preamble to the proposed regulations. See part V.2., *Effect of Increase in BEA on the Gift Tax,* and part V.4., *Effect of Decrease in BEA on the Gift Tax,* in the Background section of the proposed regulations. That discussion concludes that the existing seven-step gift tax computation required under sections 2502 and 2505 of the Code appropriately applies in the case of both increases and decreases in the BEA. Accordingly, there is nothing that needs to be changed in the gift tax computation and thus, no need for gift tax examples.

Some commenters suggested a BEA ordering rule, similar to that for DSUE, under which the increase in the BEA during the increased BEA period over the BEA in effect in 2017 (base BEA) is deemed to be allowable against gifts before the base BEA. They posited that this would allow donors to utilize the increase in the BEA without being deemed to have utilized the base BEA, so that the base BEA would remain available for transfers made after 2025. Specifically, a $5 million gift made during the increased BEA period would use the temporary increase in the BEA and preserve or ''bank'' the base BEA of $5 million so as to be available after 2025 for either gift or estate tax purposes. This suggestion was not adopted for several reasons. First, it is inconsistent with the sunset of the increased BEA in that it, in effect, would extend the availability of the increased BEA beyond 2025. As discussed in section 2 of this Summary of Comments and Explanation of Revisions, *Inflation Adjustments,* the increased BEA is a ''use or lose'' benefit that is available only during the increased BEA period. Second, it is inconsistent with the cumulative structure of the unified transfer tax regime. Under that regime, the BEA in effect for a particular year is the exclusion allowable for cumulative purposes—that is, for all prior taxable gifts and the current gift or taxable estate. In the case of a donor or decedent who made prior gifts in an amount at least equal to the post-2025 exclusion amount in effect in the year of the current gift or death, there is no remaining BEA available to be applied. Finally, as is explained in the preamble to the proposed regulations, the existing seven-step gift tax computation required under sections 2502 and 2505 of the Code appropriately adjusts for gifts made in an earlier period during which the BEA differed from the BEA in effect for a current gift. The suggested BEA ordering rule would create the same sort of problem these final regulations are designed to correct.

5. GST Tax

Several commenters asked for confirmation that, during the increased BEA period, donors may make late allocations of the increase in GST exemption to inter vivos trusts created prior to 2018.[1] An increase in the BEA correspondingly increases the GST tax exemption, which is defined by reference to the BEA. Section 2631(c). The effect of the increased BEA on the GST tax is beyond the scope of this rulemaking.

A commenter requested confirmation and examples showing that allocations of the increased GST exemption made during the increased BEA period (whether to transfers made before or during that period) will not be reduced as a result of the sunset of the increased BEA. There is nothing in the statute that would indicate that the sunset of the increased BEA would have any impact on allocations of the GST exemption available during the increased BEA period. However, this request is beyond the scope of this project.

6. Anti-Abuse Rule

A commenter recommended consideration of an anti-abuse provision to prevent the application of the special rule to transfers made during the increased BEA period that are not true inter vivos transfers, but rather are treated as testamentary transfers for transfer tax purposes. Examples include transfers subject to a retained life estate or other retained powers or interests, and certain transfers within the purview of chapter 14 of subtitle B of the Code. The purpose of the special rule is to ensure that bona fide inter vivos transfers are not subject to inconsistent treatment for estate tax purposes. Arguably, the possibility of inconsistent treatment does not arise with regard to transfers that are treated as part of the gross estate for estate tax purposes, rather than as adjusted taxable gifts. An anti-abuse provision could except from the application of the special rule transfers where value is included in the donor's gross estate at death. Although the Treasury Department and the IRS agree that such a provision is within the scope of the regulatory authority granted in section 2001(g)(2), such an anti-abuse provision would benefit from prior notice and comment. Accordingly, this issue will be reserved to allow further consideration of this comment.

7. Regulatory Authority

Two commenters suggested that the special rule would exceed the scope of the authority granted by Congress. They stated that the impact of the rule is on the estates of decedents dying after the sunset of the increased BEA period. They suggested that the rule would violate the reconciliation rules under which the TCJA was passed because it would increase the impact on the deficit beyond 2025, and therefore could not have been what Congress intended in the grant of regulatory authority. They also suggested that the avoidance of an estate tax that recaptures gift tax on sheltered gifts could not have been what Congress intended because they interpret the TCJA revenue estimates as showing that the recapture of that gift tax was contemplated. In short, these commenters suggested that Congress was concerned with the treatment of transfers made before January 1, 2026, but not with those made after December 31, 2025.

As explained in the following paragraphs, these suggestions are inconsistent with section 2001(g), which addresses the effect of changes in tax rates and exclusion amounts on the computation of the estate tax. Moreover, they are also inconsistent with the plain language of section 2001(g)(2), which addresses circumstances that can occur only after December 31, 2025.

What is now section 2001(g)(1) of the Code was added by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Public Law 111–312, 124 Stat. 3296 (2010) (TRUIRJCA). Section 302(a) of TRUIRJCA raised the exclusion amount to $5 million, as adjusted for inflation, and reduced the maximum tax rate from 45 to 35 percent. Section 302(d)(1)(B) of TRUIRJCA, ''Modifications of Estate and Gift Taxes to Reflect Differences in Credit Resulting From Different Tax Rates,'' added section 2001(g) to the Code. The effect of section 2001(g) is to treat the post-1976 taxable gifts and the taxable estate consistently by applying the same tax rate, regardless of whether the transfer occurred during life or at death. This consistency is achieved by using one tax rate to determine not only the gift and estate tax liabilities, but also the credit against the estate tax and against all prior gift taxes. This is the case regardless of whether rates have increased or decreased.

Section 2001(g)(2) of the Code was added by the TCJA. Section 11061 of the TCJA raised the BEA to $10 million, as adjusted for inflation, for transfers after December 31, 2017, and before January 1, 2026. The TCJA then provided that the BEA reverts to $5 million, as adjusted for inflation, for transfers after December 31, 2025. The addition of section 2001(g)(2) was a conforming amendment to the estate tax. H. Conf. Rept. 115–466, 115th Cong., 1st sess. 316 (Dec. 15, 2017). Under current law, the first change in the BEA to which section 2001(g)(2) could be applicable is the decrease to $5 million, as adjusted for inflation, on January 1, 2026.

As explained in the preamble to the proposed regulations, a decrease in the BEA has the potential to cause the imposition of estate tax on gifts that were sheltered from gift tax by the higher BEA in effect when the gifts were made. Again, under current law, this can occur only after December 31, 2025, when the BEA reverts to $5 million, as adjusted for inflation, as a result of the sunset of the increased BEA.

The impact of the sunset of the increased BEA as of January 1, 2026, was precisely the situation Congress wished to have addressed when it made the explicit grant of regulatory authority under section 2001(g)(2) and, further, the purpose of that grant was to authorize a regulatory rule to ensure that there will be no imposition of estate tax on inter vivos gifts that were sheltered from gift tax by the increased BEA in effect when the gifts were made. Indeed, prior legislative efforts to address the effect of anticipated reductions in the exclusion amount have proposed various approaches to produce the same result. See the Sensible Estate Tax Act of 2011, H.R. 3467, 112th Cong., 1st sess. section 2(c) (2011) (amending section 2001(g) to address a proposed reduction in the exclusion amount from $5 million to $1 million); and the Middle Class Tax Cut Act, S. 3393, 112th Cong., 2nd sess. section 201(b) (2012) (adding section 2001(h) to address a proposed reduction in the exclusion amount from $5 million to $3.5 million). As explained in ''General Explanation of Public Law 115–97'' (TCJA Bluebook),

> Because the increase in the basic exclusion amount does not apply for estates of decedents dying after December 31, 2025, it is expected that this guidance will prevent the estate tax computation under section 2001(g) from recapturing, or ''clawing back,'' all or a portion of the benefit of the increased basic exclusion amount used to offset gift tax for certain decedents who make taxable gifts between January 1, 2018, and December 31, 2025, and die after December 31, 2025.

Joint Comm. on Taxation, JCS–1–18, ''General Explanation of Public Law 115–97,'' 89 (2018). One commenter disputes the TCJA Bluebook explanation as an indication that the grant of

[1] See Joint Comm. on Taxation, JCS–1–18, ''General Explanation of Public Law 115–97,'' 89 (2018), indicating that a late allocation of GST exemption (increased by the increase in the BEA) may be made during the increased BEA period.

regulatory authority was to prevent this ''clawback'' on the basis of the fact that the Bluebook was not published until almost one year after the enactment of the TCJA. The Treasury Department and the IRS consider the TCJA Bluebook's explanation of the grant of regulatory authority to be an accurate reflection of Congressional intent.

Finally, one commenter said that the special rule is based on the ''flawed assumption'' that such ''clawback'' would constitute double taxation. The commenter said that the gift and estate taxes are two different taxes, even though cumulative, and thus subjecting the same inter vivos transfer to both taxes would not be double taxation. The Treasury Department and the IRS disagree with this proposition. The gift and estate taxes are subject to a unified structure that ensures that a transfer is taxed only once, regardless of whether that transfer ultimately is treated as an inter vivos transfer or as a testamentary transfer. Indeed, the way in which the estate tax statute addresses prior gifts included in the gross estate makes it clear that a single transfer is to be taxed only once.

In sum, section 2001(g) is directed to the consequences of changing tax rates and decreasing exclusion amounts on the computation of the estate tax. In the absence of section 2001(g)(1), a change in tax rates could subject post-1976 taxable gifts and the taxable estate to different rates, which could adversely impact the amount of credit available against the estate tax. In the absence of the special rule implementing the directions in section 2001(g)(2), a decrease in the exclusion amount could have the effect of understating the gift tax payable on post-1976 gifts, with the result that estate tax would be imposed on gifts that were sheltered from tax when made by the increased BEA. Under current law, a decrease in the exclusion amount cannot occur until after December 31, 2025. This is the period to which section 2001(g)(2) is directed. Accordingly, the special rule is well within the scope of the regulatory authority and accurately reflects the purpose of that authority.

8. Alternate Approach

Another commenter, although supportive of the goal of the special rule, objected to the special rule, saying that the rule would eliminate the benefit of some post-2025 inflation adjustments. The commenter proposed an alternative rule designed to preserve the availability of those inflation adjustments. Each point will be addressed in turn.

As previously discussed, under the special rule, the post-2025 inflation adjustments provide no additional benefits to the decedent until the post-2025 BEA, as adjusted for inflation, exceeds the amount of the BEA previously allowable to shelter gifts from gift tax. The commenter pointed out that, under current law, inflation adjustments to the BEA that become effective after a gift was made are available against the tax on subsequent gifts or the taxable estate, even if the full amount of the BEA at the time of the prior gift was allowable against the gift tax on that gift. The commenter questioned why this should not continue to be the case after 2025. Although it is true that subsequent inflation adjustments are available to the taxpayer in later years, a reduction in the BEA creates a very different situation that justifies a different result. In that case, which is the focus of the special rule, the statute provides that, on January 1, 2026, the BEA is reset at a reduced amount. While that amount will be subject to annual inflation adjustments, the usual rules will continue to apply. Specifically, exemption that shelters gifts during life is not available on death. Thus, if the amount of BEA allowable during life exceeds the date of death BEA, there is no remaining BEA available to the decedent's estate, even though the BEA at death includes post-2025 inflation adjustments. Thus, the special rule does not eliminate the benefit of the post-2025 inflation adjustments; however, neither does it change the fact that the credit based on the BEA may be applied only once.

The commenter suggested an alternative rule under which the computation of gift tax payable to be applied after 2025 instead would be based on the BEA as if the BEA's temporary increase to $10 million had never been enacted. By treating a portion of the increased BEA period gifts as taxable, the commenter's proposal increases gift tax payable to free up a credit based on the post-2025 inflation adjustments for use against the estate tax. In support of this approach, the commenter cites the language of the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), Public Law 107–16, 115 Stat. 38, 150 (2001). Section 901(b) of EGGTRA provides, in part, that the Code shall be applied after the expiration of the increased exclusion amount as if the increased exclusion amount ''had never been enacted.''

Finally, the commenter questioned the choice of the special rule as being administrable, but acknowledged that the commenter's alternative rule would require changes to the computation of the gift tax as well as the estate tax.

The commenter's alternative rule was not adopted for several reasons. First, the plain language that Congress used in section 2001(g)(2)(B) directs that the BEA to be used in computing gift tax payable is the historical one, the one ''applicable with respect to any gifts made by the decedent.'' Congress did not use the ''had never been enacted'' language in section 2001(g)(2). Second, the suggestion is inconsistent with the treatment of the credit in the unified gift and estate tax regime. The credit is applied first against the gift tax as gifts are made, and then, to the extent any credit remains at death, against the estate tax. To the extent that the credit that sheltered the decedent's gifts from gift tax exceeds the credit available at death, including any post-2025 inflation adjustments, the decedent already has had the benefit of the credit available at death—specifically, an amount equal to the post-2025 inflation adjustments already has been allowed in computing the gift tax. The pre-2026 BEA based credit and the post-2025 BEA based credit are not two separate credits; rather, they are the same credit, whose maximum amount is reduced after 2025. Once the cumulative value of taxable gifts has exceeded a particular amount of credit, that amount of credit has been used and is no longer available. Finally, as a policy matter and in general terms, the statutory estate tax computation is designed to impose a 40 percent tax on the taxable estate of a decedent who has fully exhausted the available credit by gifts made during life. This is true regardless of whether the gifts were sheltered from gift tax by the increased BEA. That result is achieved by the approach of the special rule in these final regulations, but would not be achieved by the approach recommended by the commenter. By treating a portion of the increased BEA period gifts as taxable despite the fact that they were not subjected to tax, the commenter's proposal would overstate gift tax payable. The result would be an understatement of the estate tax.

9. Applicability Date

Sections 7805(b)(1)(A) and (B) of the Code generally provide that no temporary, proposed, or final regulation relating to the internal revenue laws may apply to any taxable period ending before the earliest of (A) the date on which such regulation is filed with the **Federal Register**; or (B) in the case of a final regulation, the date on which a proposed or temporary regulation to which the final regulation relates was

filed with the **Federal Register**. Section 7805(b)(7) provides that the Secretary may provide for any taxpayer to elect to apply any regulation before the dates specified in section 7805(b)(1).

Consistent with section 7805(b)(1)(A), these final regulations apply to estates of decedents dying on and after November 26, 2019. Consistent with section 7805(b)(7), paragraph (e)(3) of these final regulations may be applied by estates of decedents dying after December 31, 2017, and before November 26, 2019. In the interest of clarity, a cross-reference has been added addressing the basic exclusion amount applicable to estates of decedents dying after June 11, 2015, and before January 1, 2018.

Special Analyses

These final regulations are 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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. These final regulations will affect donors of gifts made after 2017 and the estates of decedents dying after 2017, and implement an increase in the amount that is excluded from gift and estate tax. Neither an individual nor the estate of a deceased individual is a small entity within the meaning of 5 U.S.C. 601(6). Accordingly, a regulatory flexibility analysis is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these final regulations is Deborah S. Ryan, Office of the Associate Chief Counsel (Passthroughs and Special Industries). Other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

Notice 2017–15 is published in the Internal Revenue Bulletin and is available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *http://www.irs.gov*.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 20 is amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

■ **Par. 1.** The authority citation for part 20 is amended by revising the entry for § 20.2010–1 to read in part as follows:

Authority: 26 U.S.C. 7805.

* * * * *

Section 20.2010–1 also issued under 26 U.S.C. 2001(g)(2) and 26 U.S.C. 2010(c)(6).

* * * * *

■ **Par. 2.** Section 20.2010–0 is amended by redesignating the entries for § 20.2010–1(c) through (e) as entries (d) through (f), respectively, and adding a new entry for § 20.2010–1(c) to read as follows:

§ 20.2010–0 Table of contents.

* * * * *

§ 20.2010–1 Unified credit against estate tax; in general.

* * * * *

(c) Special rule in the case of a difference between the basic exclusion amount applicable to gifts and that applicable at the donor's date of death.

* * * * *

■ **Par. 3.** Section 20.2010–1 is amended by:

■ 1. In the final sentence of paragraph (a), removing ''paragraph (d)(1)'' and adding ''paragraph (e)(1)'' in its place;

■ 2. Redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively;

■ 3. Adding a new paragraph (c); and

■ 4. Revising newly redesignated paragraphs (e)(3) and (f).

The addition and revisions read as follows:

§ 20.2010–1 Unified credit against estate tax; in general.

* * * * *

(c) *Special rule in the case of a difference between the basic exclusion amount applicable to gifts and that applicable at the donor's date of death.* Changes in the basic exclusion amount that occur between the date of a donor's gift and the date of the donor's death may cause the basic exclusion amount allowable on the date of a gift to exceed that allowable on the date of death. If the total of the amounts allowable as a credit in computing the gift tax payable on the decedent's post-1976 gifts, within the meaning of section 2001(b)(2), to the extent such credits are based solely on the basic exclusion amount as defined and adjusted in section 2010(c)(3), exceeds the credit allowable within the meaning of section 2010(a) in computing the estate tax, again only to the extent such credit is based solely on such basic exclusion amount, in each case by applying the tax rates in effect at the decedent's death, then the portion of the credit allowable in computing the estate tax on the decedent's taxable estate that is attributable to the basic exclusion amount is the sum of the amounts attributable to the basic exclusion amount allowable as a credit in computing the gift tax payable on the decedent's post-1976 gifts.

(1) *Computational rules.* For purposes of this paragraph (c):

(i) In determining the amounts allowable as a credit:

(A) The amount allowable as a credit in computing gift tax payable for any calendar period may not exceed the tentative tax on the gifts made during that period (section 2505(c)); and

(B) The amount allowable as a credit in computing the estate tax may not exceed the net tentative tax on the taxable estate (section 2010(d)).

(ii) In determining the extent to which an amount allowable as a credit in computing gift tax payable is based solely on the basic exclusion amount:

(A) Any deceased spousal unused exclusion (DSUE) amount available to the decedent is deemed to be applied to gifts made by the decedent before the decedent's basic exclusion amount is applied to those gifts (see §§ 20.2010–3(b) and 25.2505–2(b));

(B) In a calendar period in which the applicable exclusion amount allowable with regard to gifts made during that period includes amounts other than the basic exclusion amount, the allowable basic exclusion amount may not exceed that necessary to reduce the tentative gift tax to zero; and

(C) In a calendar period in which the applicable exclusion amount allowable with regard to gifts made during that period includes amounts other than the basic exclusion amount, the portion of the credit based solely on the basic exclusion amount is that which corresponds to the result of dividing the basic exclusion amount allocable to those gifts by the applicable exclusion amount allocable to those gifts.

(iii) In determining the extent to which an amount allowable as a credit in computing the estate tax is based solely on the basic exclusion amount, the credit is computed as if the

applicable exclusion amount were limited to the basic exclusion amount.

(2) *Examples.* All basic exclusion amounts include hypothetical inflation adjustments. Unless otherwise stated, in each example the decedent's date of death is after 2025.

(i) *Example 1.* Individual A (never married) made cumulative post-1976 taxable gifts of $9 million, all of which were sheltered from gift tax by the cumulative total of $11.4 million in basic exclusion amount allowable on the dates of the gifts. The basic exclusion amount on A's date of death is $6.8 million. A was not eligible for any restored exclusion amount pursuant to Notice 2017–15. Because the total of the amounts allowable as a credit in computing the gift tax payable on A's post-1976 gifts (based on the $9 million of basic exclusion amount used to determine those credits) exceeds the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, this paragraph (c) applies, and the credit for purposes of computing A's estate tax is based on a basic exclusion amount of $9 million, the amount used to determine the credits allowable in computing the gift tax payable on A's post-1976 gifts.

(ii) *Example 2.* Assume that the facts are the same as in *Example 1* of paragraph (c)(2)(i) of this section except that A made cumulative post-1976 taxable gifts of $4 million. Because the total of the amounts allowable as a credit in computing the gift tax payable on A's post-1976 gifts is less than the credit based on the $6.8 million basic exclusion amount allowable on A's date of death, this paragraph (c) does not apply. The credit to be applied for purposes of computing A's estate tax is based on the $6.8 million basic exclusion amount as of A's date of death, subject to the limitation of section 2010(d).

(iii) *Example 3.* Individual B's predeceased spouse, C, died before 2026, at a time when the basic exclusion amount was $11.4 million. C had made no taxable gifts and had no taxable estate. C's executor elected, pursuant to § 20.2010–2, to allow B to take into account C's $11.4 million DSUE amount. B made no taxable gifts and did not remarry. The basic exclusion amount on B's date of death is $6.8 million. Because the total of the amounts allowable as a credit in computing the gift tax payable on B's post-1976 gifts attributable to the basic exclusion amount (zero) is less than the credit based on the basic exclusion amount allowable on B's date of death, this paragraph (c) does not apply. The credit to be applied for purposes of computing B's estate tax is based on B's $18.2 million applicable exclusion amount, consisting of the $6.8 million basic exclusion amount on B's date of death plus the $11.4 million DSUE amount, subject to the limitation of section 2010(d).

(iv) *Example 4.* Assume the facts are the same as in *Example 3* of paragraph (c)(2)(iii) of this section except that, after C's death and before 2026, B makes taxable gifts of $14 million in a year when the basic exclusion amount is $12 million. B is considered to apply the DSUE amount to the gifts before applying B's basic exclusion amount. The amount allowable as a credit in computing the gift tax payable on B's post-1976 gifts for that year ($5,545,800) is the tax on $14 million, consisting of $11.4 million in DSUE amount and $2.6 million in basic exclusion amount. This basic exclusion amount is 18.6 percent of the $14 million exclusion amount allocable to those gifts, with the result that $1,031,519 (0.186 × $5,545,800) of the amount allowable as a credit for that year in computing gift tax payable is based solely on the basic exclusion amount. The amount allowable as a credit based solely on the basic exclusion amount for purposes of computing B's estate tax ($2,665,800) is the tax on the $6.8 million basic exclusion amount on B's date of death. Because the portion of the credit allowable in computing the gift tax payable on B's post-1976 gifts based solely on the basic exclusion amount ($1,031,519) is less than the credit based solely on the basic exclusion amount ($2,665,800) allowable on B's date of death, this paragraph (c) does not apply. The credit to be applied for purposes of computing B's estate tax is based on B's $18.2 million applicable exclusion amount, consisting of the $6.8 million basic exclusion amount on B's date of death plus the $11.4 million DSUE amount, subject to the limitation of section 2010(d).

(3) [Reserved]

* * * * *

(e) * * *

(3) *Basic exclusion amount.* Except to the extent provided in paragraph (e)(3)(iii) of this section, the *basic exclusion amount* is the sum of the amounts described in paragraphs (e)(3)(i) and (ii) of this section.

(i) For any decedent dying in calendar year 2011 or thereafter, $5,000,000; and

(ii) For any decedent dying after calendar year 2011 and before calendar year 2018, $5,000,000 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year of the decedent's death by substituting ''calendar year 2010'' for ''calendar year 1992'' in section 1(f)(3)(B) and by rounding to the nearest multiple of $10,000. For any decedent dying after calendar year 2017, $5,000,000 multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year of the decedent's death by substituting ''calendar year 2010'' for ''calendar year 2016'' in section 1(f)(3)(A)(ii) and rounded to the nearest multiple of $10,000.

(iii) For any decedent dying after calendar year 2017, and before calendar year 2026, paragraphs (e)(3)(i) and (ii) of this section will be applied by substituting ''$10,000,000'' for ''$5,000,000.''

* * * * *

(f) *Applicability dates*—(1) *In general.* Except as provided in paragraph (f)(2) of this section, this section applies to the estates of decedents dying after June 11, 2015. For the rules applicable to estates of decedents dying after December 31, 2010, and before June 12, 2015, see § 20.2010–1T, as contained in 26 CFR part 20, revised as of April 1, 2015.

(2) *Exceptions.* Paragraphs (c) and (e)(3) of this section apply to estates of decedents dying on and after November 26, 2019. However, paragraph (e)(3) of this section may be applied by estates of decedents dying after December 31, 2017, and before November 26, 2019. For the explanation of the basic exclusion amount applicable to estates of decedents dying after June 11, 2015, and before January 1, 2018, see § 20.2010–1(d)(3), as contained in 26 CFR part 20, revised as of April 1, 2019.

§ 20.2010–3 [Amended]

■ **Par. 4.** Section 20.2010–3 is amended by removing ''§ 20.2010–1(d)(5)'' wherever it appears and adding in its place ''§ 20.2010–1(e)(5)''.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: November 12, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2019–25601 Filed 11–22–19; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 674, 682, and 685

RIN 1840–AD48

[Docket ID ED–2019–FSA–0115]

Total and Permanent Disability Discharge of Loans Under Title IV of the Higher Education Act

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final regulations.

SUMMARY: The Department of Education (Department) issues these interim final regulations to amend and update the regulations for total and permanent disability student loan discharge for veterans by removing administrative burdens that may have prevented at least 20,000 totally and permanently disabled veterans from obtaining discharges of their student loans, as the law provides. These barriers create significant and unnecessary hardship for these veterans. Removing these barriers is a matter of pressing national concern. Although the Department construes its interim final rulemaking power narrowly, under these circumstances the Department finds

good cause to implement the rule immediately.

DATES: These regulations are effective July 1, 2020.

Implementation date: For the implementation date of these regulatory changes, see the Implementation Date of These Regulations section of this document.

We must receive your comments on or before January 27, 2020.

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

If you are submitting comments electronically, we strongly encourage you to submit any comments or attachments in Microsoft Word format. If you must submit a comment in Adobe Portable Document Format (PDF), we strongly encourage you to convert the PDF to print-to-PDF format or to use some other commonly used searchable text format. Please do not submit the PDF in a scanned format. Using a print-to-PDF format allows the Department to electronically search and copy certain portions of your submissions.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* The Department strongly encourages commenters to submit their comments electronically. However, if you mail or deliver your comments, address them to Robert King, U.S. Department of Education, 400 Maryland Ave. SW, Washington, DC 20202.

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

FOR FURTHER INFORMATION CONTACT: Robert King, U.S. Department of Education, Office of Postsecondary Education, 400 Maryland Avenue SW, Washington, DC 20202–2241. Telephone: (202) 453–6914. Email: *robert.king@ed.gov*.

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

Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Implementation Date of These Regulations: These regulations are effective on July 1, 2020. Section 482(c) of the HEA requires that regulations affecting programs under title IV of the HEA be published in final form by November 1, prior to the start of the award year (July 1) to which they apply. However, that section also permits the Secretary to designate any regulation as one that an entity subject to the regulations may choose to implement earlier, as well as the conditions for early implementation.

The Secretary is exercising her authority under section 482(c) of the HEA to designate the regulatory changes to parts 674, 682, and section 685.213 of the Code of Federal Regulations, included in this document, for early implementation effective immediately for the reasons set forth in the Summary, Background, and Need for Regulatory Action sections included in this document. Under this rule, eligible veterans who do not opt out of receiving a discharge will receive one.

Invitation to Comment:

Although the Secretary has decided to issue these final regulations without first publishing proposed regulations for public comment, we are interested in whether you think we should make any changes in these regulations. We invite your comments. We will consider these comments in determining whether to revise the regulations.

To ensure that your comment has maximum effect, we urge you to clearly identify the specific section or sections of the proposed regulations that your comment addresses, and provide relevant information and data whenever possible, even when there is no specific solicitation of data and other supporting materials in the request for comment. We also urge you to arrange your comments in the same order as the regulations. Please do not submit a comment that is outside the scope of this notice of interim final regulations (IFR).

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these regulations. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the Department's programs and activities.

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

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

Background:

Congress has authorized the discharge of student loans made pursuant to Title IV of the Higher Education Act of 1965, as amended (HEA), due to the borrower's total and permanent disability. 20 U.S.C. 1087(a), 1087e(a)(1), and 1087dd(c)(1)(F).

For veterans, Congress has specifically authorized total and permanent disability discharge if the Department of Veterans Affairs (VA) has determined that the veteran is unemployable due to a service-connected disability. 20 U.S.C. 1087(a)(2), 1087e(a)(1), and 1087dd(c)(1)(F)(iv). The Secretary has promulgated regulations governing the total and permanent disability discharge process for veterans. See 34 CFR 674.61(c), 682.402(c)(9), and 685.213(c). At the time these regulations were promulgated, the Department did not obtain information directly from the VA, and therefore required the eligible veteran to submit an application and supporting documentation from the VA to receive student loan discharge. However, in 2018 the Department enter into a data sharing agreement with the VA to retrieve the necessary information directly from the VA. As such, the application is an unnecessary administrative barrier, which the

Department believes may have prevented more than 20,000 disabled veterans from obtaining the student loan discharge that they are by law entitled to receive.

Despite streamlining the application process, it continues to be a barrier that creates significant and unnecessary hardship for our disabled veterans. Consequently, removing these barriers is a pressing problem of national concern. For example, Congress directed the Secretary to take additional actions to automate the total and permanent disability discharge application process for eligible veterans. S. Rep. No. 115–150, at 182 (2017). The Attorneys General of more than 50 States and territories wrote to encourage the Department to remove administrative barriers so that veterans are able to receive loan discharge. Letter from National Association of Attorneys General to the Honorable Betsy DeVos, U.S. Secretary of Education (May 24, 2019). Finally, the President has directed the Secretary to facilitate the discharge of student loans for totally and permanently disabled veterans in a manner that is quick, efficient, and minimally burdensome. Presidential Memorandum of August 21, 2019, Discharging the Federal Student Loan Debt of Totally and Permanently Disabled Veterans, 84 FR 44677.

Significant Regulations

The following is a discussion of the significant regulations.

Statute: Pursuant to 20 U.S.C. 1087(a)(2), 1087e(a)(1), and 1087dd(c)(1)(F)(iv), the Secretary is directed to discharge the loans under the Federal Direct Loan Program, the Federal Family Education Loan Program, and the Federal Perkins Loan Program of borrowers who have become permanently and totally disabled if the Secretary of Veterans Affairs has determined the borrower unemployable due to a service-connected condition and the borrower provides that documentation to the Secretary.

Current Regulations: Under 34 CFR 674.61(c), 682.402(c)(9), and 685.213(c), if a veteran who is also a student loan borrower is determined to be unemployable by the Secretary of Veterans Affairs due to a service-connected disability, the borrower must apply to the Secretary of Education for a discharge of his or her student loans. This application must include documentation of the Secretary of Veterans Affairs determination.

New Regulations: Under 34 CFR 674.61(c)(2)(x), 682.402(c)(9)(xiii), and 685.213(c)(1)(v), the Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is ''totally and permanently disabled'' to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

Reasons: The Secretary is amending the regulations for the Federal Direct Loan Program, the Federal Family Education Loan Program, and the Federal Perkins Loan Program to remove administrative barriers for veterans who are entitled to student loan discharge due to a service-related total and permanent disability.

Due to concerns that unnecessary bureaucratic burdens prevented eligible veterans from obtaining loan discharges guaranteed by law, in 2018 the Departments of Education and Veterans Affairs entered into a data sharing agreement to enable the Department of Education to identify eligible totally and permanently disabled veterans. Approximately 50,000 eligible veterans were identified as the result of this agreement. However, due to a burdensome administrative process, more than 20,000 eligible veterans have failed to receive relief.

Consequently, to help veterans receive the relief to which they are entitled, the Secretary is amending the regulations to eliminate the need for a separate application from each borrower. Instead, the Secretary will consider a borrower to be eligible for a loan discharge when the Secretary has received information from the Department of Veterans Affairs showing that the borrower has a total and permanent disability. After determining that this information demonstrates the borrower meets statutory criteria and is eligible for a loan discharge, the Secretary will notify the borrower that his or her loan is being discharged. The borrower may reject the discharge within the number of days specified in the notification. In that case, the borrower will be liable for the full amount of the principal and interest on the loan, as well as any other fees and costs that may be legally assessed.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

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

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

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

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

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

This IFR is an economically significant action and will have an annual effect on the economy of more than $100 million because the proposed changes to an opt-out process for veterans are expected to increase transfers from the federal government to qualifying veterans by $138.7 million when annualized at a 7 percent discount rate. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as a ''major rule,'' as defined by 5 U.S.C. 804(2).

Under Executive Order 13771, for each new regulation that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866 and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2019, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. These regulations are expected to reduce burden on qualifying veterans by eliminating the application for discharge. We estimate that this rule will generate approximately $0.11 million in annualized net PRA savings at a 7 percent discount rate, discounted to a 2016 equivalent, over a perpetual time horizon. This regulation is a deregulatory action under Executive Order 13771 and therefore the requirements of Executive Order 13771 do not apply.

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

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

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

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

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

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

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

The Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action, and we are issuing this IFR in response to the pressing need for, and manifest public interest in, deregulatory relief from bureaucratic burdens that have denied tens of thousands of veterans who are totally and permanently disabled due to service-related injuries their statutory right to student loan discharges. The harm caused to our veterans and to the public interest by the unnecessary bureaucratic burdens targeted for deregulatory action here is significant and widely recognized. See Presidential Memorandum at 44677; S. Rep. No. 115–150, at 182. Based on this analysis and the reasons stated in the preamble, the Department believes that this IFR is consistent with the principles in Executive Order 13563.

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

Need for Regulatory Action

The Higher Education Act of 1965 as amended, provides that veterans who are totally and permanently disabled are eligible to have their Federal student loans discharged. Once determined by the Secretary of Veterans Affairs to be totally and permanently disabled due to a service-connected condition, under the current regulations the veteran must obtain documentation of that status from the Department of Veterans Affairs and provide it to the Secretary of Education, along with an application for total and permanent disability discharge, to receive the discharge of a student loan. However, now that the Department has a data sharing agreement with the VA in place, the Department obtains all of the information it needs to discharge loans directly from the VA. This makes the application an unnecessary and burdensome step. Consequently, the President and Congress have asked the Department to ensure our veterans receive all benefits the law allows. Veterans would only need to contact the Department if they choose not to accept the discharge, in which case they would be responsible for full payment on the loan.

The Department of Education has been working with the Department of Veterans Affairs since 2018 to facilitate a more expedited process and about 22,000 veterans have received approximately $650 million in discharges. However, thousands more have not applied for the discharge for which they were eligible.

The amendments in this rule should result in a quicker, more efficient process and many more qualified veterans receiving the discharge to which they are legally entitled. Based on available data, this regulatory action would be significant and the initial annual impact on the economy would be estimated at over $100 million.

In the past, loan discharge amounts were subject to Federal and in some geographies State tax, which may have dissuaded some veterans who could otherwise navigate the bureaucratic process from seeking a discharge. However, under the Tax Cuts and Jobs Act of 2017 (Pub. L. 115–97), all Federal tax was eliminated on loan discharges of borrowers based on death or total and permanent disability. Some small percentage of these eligible veterans may opt out due to concerns over State tax treatment that was not affected by the 2017 Federal tax law.

In addition, veterans who are enrolled at the time of the disability determination, or who plan to enroll in postsecondary education in the future, may opt to forego loan forgiveness so that they can continue to receive new Federal student loans in the future. Although a veteran who accepts loan forgiveness may still be able to borrow in the future, the Department requires such a borrower to obtain a certification from a physician that the borrower is able to engage in substantial gainful employment and must sign a statement acknowledging that neither the new Direct Loan the borrower receives cannot be discharge in the future on the basis of any impairment present when the new loan is made, unless that impairment substantially deteriorates. Some veterans may elect to simply forego loan forgiveness to preserve future borrowing opportunities or the need to obtain medical certification.

Nevertheless, this new deregulatory approach should remove unnecessary bureaucratic barriers and allow many more qualified veterans to receive the discharge to which they are entitled.

Costs, Benefits and Transfers

The primary parties affected by these regulations will be the veterans who qualify for the discharge and the taxpayers, through the transfers from the Federal Government to the qualifying veterans. Qualifying veterans and their families will be relieved of a financial burden related to Federal student loans, including the stress associated with repayment or potential defaults and collections. The Department of Veteran's Affairs estimates that approximately 150,000 veterans a year will reach a qualifying disability rating over the next ten years, of which approximately 18 percent will be 50 years old or under and around 20 percent will have at least some postsecondary education at the time of their separation from the armed services. Many more likely use education benefits and loans to pursue postsecondary credentials after separation. Therefore, it makes sense that thousands of current and future veterans will benefit from the change to the opt-out approach.

As described in the Paperwork Reduction Act section of this preamble, the elimination of the application will reduce the burden on veterans who qualify for the discharge. The elimination of the application is a reduction in burden of [5,000] hours and $140,900 calculated at a wage rate of $28.18.[1]

[1] Bureau of Labor Statistics, Economic News Release Table B–3. Average hourly and weekly earnings of all employees on private nonfarm

Continued

The increase in transfers will affect taxpayers, through the Federal government, as more veterans receive the loan discharge for which they qualify. This effect is described in the Net Budget Impacts section of this preamble. Estimated annualized transfers are $138.7 million at a 7 percent discount rate.

Net Budget Impact

We estimate that these final regulations will have a net Federal budget impact over the 2020–2029 loan cohorts of $787 million in outlays and a modification to past cohorts of $543.8 million, for a total net impact of $1.3 billion. A cohort reflects all loans originated in a given fiscal year. Consistent with the requirements of the Credit Reform Act of 1990, budget cost estimates for the student loan programs reflect the estimated net present value of all future non-administrative Federal costs associated with a cohort of loans. The Net Budget Impact is compared to the 2020 President's Budget baseline, as estimated for Mid-Session Review (PB2020).

As discussed throughout this preamble, these regulations will make the discharge process of loans for veterans with a service-related disability an opt-out process instead of the opt-in process associated with the current match between the Department and the Department of Veterans Affairs. While the existing match has been processed since 2018 and the Department has accepted Department of Veterans' Affairs determinations of disability status without additional medical information since 2013, a significant percentage of veterans who would qualify for the discharge do not submit applications. Of approximately 58,000 likely qualifying veterans identified in the match process, only about 22,000 veterans have received approximately $650 million in discharges. According to Federal Student Aid, approximately 4,000 additional veterans are identified in each quarterly match.

To estimate the effect of the opt-out procedure, the Department adjusted the disability component of its Death, Disability, and Bankruptcy assumption (DDB), which also includes closed school and borrower defense discharges that have been the subject of recent regulations. To calculate the effect on past cohorts from borrowers currently eligible for the discharge who have no record of receiving one, the Department summarized the balances, collections, and payments associated with veterans identified in the August 2018 match who had not received a disability or death discharge by the end of FY 2019. These potential claims were grouped by population identification (non-consolidated, consolidated not-from-default, and consolidated from default), and offset between the fiscal year of loan origination and fiscal year of disability. Baseline disability claims were also summarized by these factors and an adjustment factor for the increase represented by the potential claims was calculated. For example, for the 2010 cohort for consolidated loans, potential claims were approximately 5 percent of baseline disability claims, so the adjustment factor was 1.05 percent.

This adjustment accounts for the potential increase in claims from former borrowers with an existing qualifying disability rating. The change to the opt-out approach will increase the level of disability discharges going forward, but not to the same degree as the significant adjustment in FY2020 that captures the build-up of years from those who did not submit applications. To estimate the adjustment for future claims, the Department focused on those newly identified as disabled in 2018 and calculated an adjustment factor based on those who received a discharge versus those potential discharges who were in the match but did not submit applications. This adjustment was applied to future cohorts and future disability determinations for borrowers in past cohorts.

The Department incorporated this increase into the DDB assumption estimated for PB2020 and this generated the $1.3 billion in costs associated with the regulations.

A number of factors may affect the estimated cost of these regulations. Some borrowers may have lacked awareness of the potential discharge or found the application process difficult. To the extent existing borrowers choose to not apply for tax reasons, the tax provision granting that relief is currently scheduled to expire on December 31, 2025. While it may be renewed, the opt-out rate for future discharges occurring in 2026 and later could increase. In estimating the net budget impact of these interim final regulations, the Department reduced the adjustment factor for 2026 and later by 15 percent to account for this. If that provision is extended or if more of the unfiled applications were for process reasons and did not reflect deliberate tax planning, the opt-out rate may decrease and the costs could go up.

Another issue is the assumption that the non-applicants and future qualifying veterans will have a similar profile to applicants in terms of the amount of loans, repayment profiles, and the timing of their qualifying disability. It is possible that those who applied for a discharge as the result of the match had higher balances and thus more incentive to file, especially once the federal tax consequences were removed. Applicants and non-applicants could vary by debt level, educational attainment, nature of their disability, availability of support or other factors that could result in the discharges granted through the opt-out provision having a different average amount or subsidy cost for the Department.

Another challenge is predicting the effect on future loan cohorts. We assume the level and timing of service-related disabilities will remain similar to that for existing borrowers. Clearly, geopolitical factors that the Department of Education does not predict could affect the number of veterans who qualify for the discharge. Additionally, student loan borrowing among those who may serve in the military and eventually qualify for a discharge could increase depending upon recruitment patterns and further education pursued by those serving in the military. However, it is possible that the relatively generous provisions of the Post 9/11 GI bill will reduce borrowing by more recent and future cohorts of veterans relative to past cohorts. An analysis done by Veterans Education Success of National Postsecondary Student Aid Survey data for the most recent three survey cycles (NPSAS:08, NPSAS:12 and NPSAS:16) indicated that the percentage of veterans borrowing at proprietary schools decreased from 78 percent in NPSAS:08 to 42 percent in NPSAS:16 and the average annual amount borrowed decreased slightly from $8,680 to $8,630 in 2015 dollars.[2] The percent of veterans borrowing declined slightly in other sectors (38 percent to 32 percent for public 4-year institutions) and the average amounts borrowed also declined ($10,410 for 4-year private non-profit in NPSAS:08 to $8,980 in NPSAS:16).[3]

Medical or technical advances that affect the classification of disability could potentially be a factor reducing the estimated costs associated with

payrolls by industry sector, seasonally adjusted. Applying average hourly wage rate for October 2019 for total private industry. Available at *https://www.bls.gov/news.release/empsit.t19.htm.*

[2] Walter Ochinko and Kathy Payea, Veterans Education Success, *Veteran Student Loan Debt: Data from NPSAS:08,12,16,* January 2019, Figure 1, p.4. Available at *https://vetsedsuccess.org/veteran-student-loan-debt-7-years-after-implementation-of-the-post-9-11-gi-bill/.*

[3] *Id.*

future loan cohorts. For estimation purposes, we assume future cohorts will look like existing cohorts but acknowledge that a number of factors could shift the estimated costs in either direction.

Accounting Statement

As required by OMB Circular A–4 (available at *www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf*), in the following table we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these final regulations. This table provides our best estimate of the changes in annual monetized transfers as a result of these final regulations. Expenditures are classified as transfers from the Federal Government to veterans who qualify for a total and permanent disability discharge.[4]

TABLE 6—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[in millions]

Category	Benefits	
Increased share of qualifying veterans who receive a total and permanent disability discharge	Not Quantified	
	Not Quantified	
Reduced paperwork burden on Veterans who qualify for a TPD discharge	7% $ – .141	3% $$ – .141
Category	Transfers	
Increased loan discharges for veterans with a qualifying total and permanent disability status	7% $138.7	3% $130.2

Waiver of Notice and Comment Rulemaking, Negotiated Rulemaking, and Delayed Effective Date Under the Administrative Procedure Act

The Department believes its interim final rulemaking authority must be narrowly construed and exercised only when there is a sound basis for doing so. However, Congress has directed the Department to remove unnecessary bureaucratic barriers that constructively deny lawful benefits to veterans who are totally and permanently disabled because of service-connected injuries and has left the Department no discretion in the matter. Consequently, given the uniquely specific facts of this case, the critical public need for the Federal Government to support disabled veterans, and the nature of this deregulatory action, the Department has determined that there is good cause for interim final rulemaking and that such action is in the public interest.

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, the APA provides that an agency is not required to conduct notice and comment rulemaking when the agency, for good cause, finds that notice and public comment thereon are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(B)).

Section 437(a)(2) of the HEA provides that ''[a] borrower who has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected condition and who provides documentation of such determination to the Secretary of Education, shall be considered permanently and totally disabled for the purpose of discharging such borrower's loans under this subsection, *and such borrower shall not be required to present additional documentation* for purposes of this subsection.'' (emphasis added). The Senate Appropriations Committee Report (S. Rep. No. 115–150, at 182 (2017)) directed ''the Secretary of Education to enter into a Memorandum of Understanding with the Secretaries of Defense and Veterans Affairs to automate the application of loan benefits to eligible servicemembers and veterans using information in existing Federal databases in a timely manner so that servicemembers and veterans can receive the benefits due under law.'' To effectuate this automation, the Departments of Education and Veterans Affairs entered into a data sharing agreement to enable the Department of Education to identify eligible totally and permanently disabled veterans. As this automation through the data sharing agreement will fulfill the statutory requirement of providing documentation from the Secretary of Veterans Affairs of a borrower's unemployability due to a service-connected condition, borrowers will not be required to submit additional documentation to the Secretary. As a result of this automated process and the requirements of section 437(a)(2), which specifically states no additional documentation is to be required, there will no longer be a need for, nor will the Department have the discretion to require, a separate application from identified borrowers. We are revising the regulations accordingly.

As the Court found in *Metzenbaum* v. *Federal Energy Regulatory Commission,* 675 F.2d 1282, 1291 (D.C. Cir. 1982), the opportunity for notice and comment where there is no discretion is ''unnecessary.'' *Id.* (quoting 5 U.S.C. 553(b)(B)). The Court further stated that notice and comment for such a nondiscretionary action ''might even have been 'contrary to the public interest,' given the expense that would have been involved in a futile gesture.'' *Id.* See also *Lake Carriers' Ass'n* v. *E.P.A.,* 652 F.3d 1, 10 (D.C. Cir. 2011) (notice and comment rulemaking ''would have served no purpose'' where EPA lacked the authority to amend or

[4] An indirect cost of the interim final rule is the increased distortions in the nationwide labor market and other markets taxed to pay for the loan discharge program. Such distortions are sometimes referred to as marginal excess tax burden (METB), and Circular A–94—OMB's guidance on cost-benefit analysis of federal programs, available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A94/a094.pdf*—suggests that METB may be valued at roughly 25 percent of the estimated transfer attributed to a policy change; the Circular goes on to direct the inclusion of estimated METB change in supplementary analyses. If secondary costs—such as increased marginal excess tax burden is, in the case of this IFR—are included in regulatory impact analyses, then secondary benefits must be as well, in order to avoid inappropriately skewing the net benefits results, and including METB only in supplementary analyses provides some acknowledgement of this potential imbalance.

reject the conditions at issue). Therefore, there is good cause to waive notice and comment rulemaking for these interim final regulations.

In addition, under section 492 of the HEA (20 U.S.C. 1098a), all regulations proposed by the Department for programs authorized under title IV of the HEA are subject to negotiated rulemaking requirements. Section 492(b)(2) of the HEA provides that negotiated rulemaking may be waived for good cause when doing so would be ''impracticable, unnecessary, or contrary to the public interest.'' Section 492(b)(2) of the HEA also requires the Secretary to publish the basis for waiving negotiations in the **Federal Register** at the same time as the regulations in question are first published. There is likewise good cause to waive the negotiated rulemaking requirement in this case, since, as explained above, notice and comment rulemaking is unnecessary in this case.

The APA also generally requires that regulations be published at least 30 days before their effective date, but excepts from that requirement rules which grant or recognize an exemption or relieve a restriction (5 U.S.C. 553(d)(1)). Because these regulations relieve restrictions on veterans by removing unintended administrative burdens, this exception to the delayed effective date under the APA applies. The CRA requires a major rule may take effect no sooner than 60 calendar days after an agency submits a CRA report to Congress or the rule is published in the **Federal Register**, whichever is later. 5 U.S.C. 801(a)(3)(A). However, the CRA creates limited exceptions to this requirement. See id. § 801(c); § 808. An agency may invoke the ''good cause'' exception under § 808(2) in the case of rules for which the agency has found ''good cause'' under the APA, § 553(b)(3)(B), to issue the rule without providing the public with an advance opportunity to comment. As stated above the Department has found good cause to issue this rule without notice and comment rulemaking and thus we are not including the 60-day delayed effective date in this rule.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define ''small entities'' as for-profit or nonprofit institutions with total annual revenue below $7,000,000 or, if they are institutions controlled by small governmental jurisdictions (that are comprised of cities, counties, towns, townships, villages, school districts, or special districts), with a population of less than 50,000.

This regulation would not affect any small entities. Small entities do not qualify as borrowers under these Federal loan programs, nor do small entities provide or fund Federal loans or their discharge.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents 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.

Sections 674.61, 682.402, and 685.213 of this interim final rule contain information collection requirements. Under the PRA, the Department has submitted a copy of these sections and an Information Collections Request to the Office of Management and Budget (OMB) for its review. This interim final rule does not impose any new information collection burden. OMB previously approved the information collection requirements under OMB control number 1845–0065. The forms that are part of this information collection do not change as a result of this interim final rule.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

Sections 674.61(c), 682.402(c)(9), and 685.213(c)

Discussion: Currently the regulations pertain to a veteran's cancellation or discharge of a Federal Perkins Loan Program, Federal Family Education Loan Program, or Federal Direct Loan Program loan based on total and permanent disability as certified by the U.S. Department of Veterans Affairs (VA). This information has been collected under OMB approved form control number 1845–0065. The current regulations required a veteran to submit a separate application with documentation from the VA. These regulatory changes eliminate the application requirement where appropriate.

Requirements: These changes allow the Secretary to offer a Federal student loan borrower who is identified from VA documentation as being totally and permanently disabled a discharge of his or her loans without submitting a separate application. The veteran may elect to reject the discharge and continue to repay the loans.

Burden Calculation: These changes eliminate burden on the veteran. The currently approved form, 1845–0065, estimates 30 minutes (.50 hours) to read, gather documentation, and complete the discharge application. We estimate that annually approximately 10,000 veterans would have submitted the application for discharge due to total permanent disability. This regulatory change reduces the burden assessed on the approved form by 5,000 hours (10,000 applicants × .50 hours = 5,000 hours). This would be a one-time reduction in burden. We do not anticipate changing the Discharge Application currently in renewal to remove the section applicable to a veteran's request for such a discharge.

1845–0065 DISCHARGE APPLICATION—TOTAL AND PERMANENT DISABILITY

Entity	Number of respondents	Number of responses	Burden per response	Total burden hours
Individual (Veteran)	−10,000	−10,000	.50 hours	−5,000

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have a practical use;
- Evaluating the accuracy of our estimate of burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

OMB is required to make a decision concerning the collection of information contained in this interim final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments by December 26, 2019.

Intergovernmental Review

This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Assessment of Educational Impact

Based on our own review, we have determined that this IFR does not require transmission of information that any other agency or authority of the United States gathers or makes available.

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

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

List of Subjects

34 CFR Part 674

Loan programs-education, Reporting and recordkeeping, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and Universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

34 CFR Part 685

Administrative practice and procedure, Colleges and Universities, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: November 22, 2019.

Betsy DeVos,

Secretary of Education.

For the reasons discussed in the preamble, the Secretary amends parts 674, 682, and 685 of title 34 of the Code of Federal Regulations as follows:

PART 674—FEDERAL PERKINS LOAN PROGRAM

■ 1. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1070g, 1087aa–1087hh; Pub. L. 111–256, 124 Stat. 2643; unless otherwise noted.

■ 2. Section 674.61 is amended by adding paragraph (c)(2)(x) to read as follows:

§ 674.61 Discharge for death or disability.

* * * * *

(c) * * *

(2) * * *

(x) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower has a total and permanent disability as defined in § 674.51(aa)(2) to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM (FFEL)

■ 3. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071–1087–4, unless otherwise noted.

■ 4. Section 682.402 is amended by adding paragraph (c)(9)(xiii) to read as follows:

§ 682.402 Death, disability, closed school, false certification, unpaid refunds, and bankruptcy payments.

* * * * *

(c) * * *

(9) * * *

(xiii) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is ''totally and permanently disabled'' as defined in paragraph (2) of the definition of that term in § 682.200(b)(2) to be eligible for discharge) and will not require additional documentation to discharge the borrower's loans.

* * * * *

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

■ 5. The authority citation for part 685 continues to read as follows:

Authority: 20 U.S.C 1070g, 1087a, *et seq.,* unless otherwise noted.

■ 6. Section 685.213 is amended by adding paragraph (c)(1)(v) to read as follows:

§ 685.213 Total and permanent disability discharge.

* * * * *

(c) * * *

(1) * * *

(v) The Secretary will consider a borrower for whom data is obtained from the Department of Veterans Affairs showing that the borrower is ''totally and permanently disabled'' as defined in paragraph (2) of the definition of that term in § 685.102(b) to be eligible for discharge and will not require additional documentation to discharge the borrower's loans.

* * * * *

[FR Doc. 2019–25813 Filed 11–22–19; 4:15 pm]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0348; FRL–10002–42–Region 1]

Air Plan Approval; Connecticut; Regional Haze Five Year Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Connecticut Regional Haze 5-Year Progress Report submitted as a State Implementation Plan (SIP) revision on June 30, 2015. This revision addresses the requirements of the Clean Air Act and its implementing regulations that States submit periodic reports describing progress toward reasonable progress goals established for regional haze and a determination of adequacy of the State's existing regional haze SIP.

Connecticut's progress report notes that Connecticut has made substantial progress toward the emissions reduction expected for the first regional planning period and that visibility in the Federal Class I areas affected by emission from Connecticut is improving and has already met the applicable reasonable progress goals for 2018. The EPA is approving Connecticut's determination that the State's regional haze SIP is adequate to meet these reasonable progress goals for the first implementation period, which extends through 2018, and requires no substantive revision at this time.

DATES: This rule is effective on December 26, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2019–0348. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Anne K. McWilliams, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1697, email *mcwilliams.anne@epa.gov*.

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

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I. Background and Purpose
II. Final Action
II. Statutory and Executive Order Reviews

I. Background and Purpose

On September 25, 2019 (84 FR 50363), EPA published a notice of proposed rulemaking (NPRM) for the State of Connecticut proposing approval of the Regional Haze 5-Year Progress Report and a determination of adequacy of the regional haze plan for the first planning period. The formal SIP revision was submitted by Connecticut on June 30, 2015.

The rationale for EPA's proposed action is explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

II. Final Action

EPA is approving Connecticut's June 30, 2015 Regional Haze 5-Year Progress Report SIP submittal and determination of adequacy of the regional haze plan for the first planning period as meeting the requirements of 40 CFR 51.308(g) and (h).

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 27, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Regional haze, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 19, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart H—Connecticut

■ 2. Section 52.370 is amended by adding paragraph (c)(121) to read as follows:

§ 52.370 Identification of plan.

* * * * *

(c) * * *

(121) Revisions to the State Implementation Plan submitted by the Connecticut Department of Energy and Environmental Protection on June 30, 2015.

(i) [Reserved]

(ii) *Additional materials.* (A) The Connecticut Department of Energy and Environmental Protection document ''Regional Haze 5-Year Progress Report,'' Final July 8, 2015.

(B) [Reserved]

[FR Doc. 2019–25595 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2019–0221; FRL–10002–16–Region 1]

Air Plan Approval; Vermont; Reasonably Available Control Technology for the 2008 and 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Vermont. The SIP revision consists of a demonstration that Vermont meets the requirements of reasonably available control technology (RACT) for the two precursors for ground-level ozone, oxides of nitrogen (NO_X) and volatile organic compounds (VOCs), set forth by the Clean Air Act (CAA or Act) with respect to the 2008 and 2015 ozone National Ambient Air Quality Standards (NAAQSs or standards). This action is being taken under the Clean Air Act.

DATES: This rule is effective on December 26, 2019.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2019–0221. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: David L. Mackintosh, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. 617–918–1584, email *Mackintosh.David@epa.gov*.

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

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I. Background and Purpose
II. Response to Comments
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

On August 2, 2019 (84 FR 37812), EPA issued a notice of proposed rulemaking (NPRM) for the State of Vermont. In the NPRM, EPA proposed approval of a SIP revision submitted by Vermont on September 6, 2018. Vermont's SIP revision contains: A certification that Vermont has met all RACT requirements for the 2008 and 2015 8-hour ozone NAAQS with negative declarations for 29 Control Techniques Guideline (CTG) categories; the addition of Vermont Air Pollution Control Regulation (APCR) Sections 5–253.8 Industrial Adhesives, 5–253.9 Offset Lithographic and Letterpress Printing, and 5–253.17 Industrial Solvent Cleaning to the Vermont SIP; revisions to Sections 5–253.12 Coating of Flat Wood Paneling and 5–253.13 Coating of Miscellaneous Metal and Plastic; revisions to single-source requirements for ''Isovolta Inc. (Formerly U.S. Samica, Inc.) Operating Permit RACT provisions'', ''Killington/Pico Ski Resort Partners, LLC. Operating Permit RACT provisions,'' and ''Okemo Limited Liability Company Operating Permit RACT provisions''; and withdrawal of the single-source requirements for ''Churchill Coatings Corporation Operating Permit RACT conditions'' and ''H.B.H Prestain, Inc.''

The NPRM provides the rationale for EPA's proposed approval, which will not be restated here. EPA received one comment on the NPRM.

II. Response to Comments

Comment: The anonymous comment stated ''EPA should review the NO_X RACT evaluation for the five sources'' to (1) ''review the most recent stack testing or CEMS reports to evaluate the particular emission limits applicable;'' (2) ''evaluate minor changes to a source's operating scenarios such as evaluating if a source can change fuel sources from natural gas and Number 6 fuel oil to using only natural gas and limiting fuel oil;'' and (3) ''consider simple cost effective measures that don't require installation of new and innovative technologies.''

Response: As explained in the proposal and in Vermont's SIP, three of the five major NO_X sources in Vermont are subject to New Source Review (NSR) most stringent emission rate (MSER). Joseph C. McNeil Generating Station, OMYA, Inc. Vermont Marble Power Division, and Ryegate Power Station, are each subject to major new source review permitting under Vermont Air Pollution Control Regulation 5–502, ''Major Stationary Sources and Major Modifications'' and are subject to emission rates, which are no less stringent than RACT. Specifically, the nitrous oxide emissions from combustion turbines at OMYA, Inc. Vermont Marble Power Division are consistent with EPA's ''Alternative Control Techniques Document—NO_X Emissions from Process Heaters'', established in September 1993 (EPA–453/R–93–034 1993/09), and the Joseph C. McNeil Generating Station and Ryegate Power Station wood-fired boilers with selective catalytic

combustion (SCR) and selective non-catalytic combustion (SNCR) controls exceed the EPA RACT requirements for wood-fired boilers described in the ''Alternative Control Techniques Document—NO_X Emissions from Industrial, Commercial & Institutional Boilers'', of March 1994 (EPA–453/R–94–022 1994/03).

The remaining two NO_X sources, Killington/Pico Ski Resort Partners, LLC and Okemo Limited Liability Company, are now restricted by permit, approved into the Vermont SIP by EPA on July 19, 2011 (76 FR 42560), to emit significantly less than the Vermont NO_X major source threshold. Since their emissions are restricted to below the major source threshold, there are no applicable RACT requirements for the 2008 and 2015 ozone standards. These two facilities remain subject to RACT levels of control per EPA's previous VT RACT approval published July 19, 2011 (76 FR 42560). Therefore, EPA disagrees with the commenter that the NO_X RACT analysis for these sources is insufficient.

III. Final Action

EPA is approving Vermont's SIP revision as meeting the State's RACT obligations for the 2008 and 2015 8-hour ozone NAAQSs as set forth by sections 182(b) and 184(b)(2) of the CAA, and adding ''State Implementation Plan Revision Supporting Compliance with Requirements for Reasonably Available Control Technology (RACT) Under the 2008 and 2015 8-Hour ozone National Ambient Air Quality Standards, Final Submittal, September 6, 2018'' to the Vermont SIP. EPA is approving the addition of Vermont APCR Sections 5–253.8 Industrial Adhesives, 5–253.9 Offset Lithographic and Letterpress Printing, and 5–253.17 Industrial Solvent Cleaning in to the Vermont SIP. EPA is approving the revision of APCR Sections 5–253.12 Coating of Flat Wood Paneling and 5–253.13 Coating of Miscellaneous Metal and Plastic Parts currently in the Vermont SIP. EPA is also approving the revision of single-source requirements for ''Isovolta Inc. (Formerly U.S. Samica, Inc.) Operating Permit RACT provisions'', ''Killington/Pico Ski Resort Partners, LLC. Operating Permit RACT provisions,'' and ''Okemo Limited Liability Company Operating Permit RACT provisions'' currently in the Vermont SIP. EPA is withdrawing single-source requirements for ''Churchill Coatings Corporation Operating Permit RACT conditions'' and ''H.B.H Prestain, Inc. Operating Permit RACT provisions'' from the Vermont SIP. Lastly, EPA is converting our previous conditional approval of RACT with respect to the 1997 ozone standard to a full approval because the proposed addition of APCR Section 5–253.12 Coating of Flat Wood Paneling will constitute RACT in lieu of the previous source-specific RACT conditions for Churchill Coatings Corporation and H.B.H Prestain, Inc.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Vermont APCR described in the amendments to 40 CFR part 52 set forth below. EPA is also revising and removing provisions of the EPA-approved Vermont source specific requirements at 40 CFR 52.2370(d), ''EPA-approved State Source specific requirements'' in the Vermont State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

V. Statutory and Executive Order Reviews

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

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

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

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

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

the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 27, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 19, 2019.

Dennis Deziel,

Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart UU—Vermont

■ 2. Section 52.2370 is amended by:

■ a. In the table in paragraph (c):

■ i. Adding entries for ''Section 5–253.8 Industrial Adhesives'' and ''Section 5–253.9 Offset Lithographic and Letterpress Printing'' in numerical order;

■ ii. Revising entries for ''Section 5–253.12 Coating of Flat Wood Paneling'' and ''Section 5–253.13 Coating of Miscellaneous Metal and Plastic Parts''; and

■ ii. Adding an entry for ''Section 5–253.17 Industrial Solvent Cleaning'' in numerical order;

■ b. In the table in paragraph (d):

■ i. Revising the entries for ''Isovolta Inc. (Formerly U.S. Samica, Inc.) Operating Permit RACT provisions'';

■ ii. Removing the entry for ''Churchill Coatings Corporation Operating Permit RACT conditions'';

■ iii. Revising the entries for ''Killington/Pico Ski Resort Partners, LLC. Operating Permit RACT provisions'' and ''Okemo Limited Liability Company Operating Permit RACT provisions''; and

■ iv. Removing the entry for ''H.B.H Prestain, Inc. Operating Permit RACT provisions''; and

■ c. In the table in paragraph (e):

■ i. Revising the entry for ''Reasonably Available Control Technology State Implementation Plan (SIP)/certification for the 1997 8-hour Ozone National Ambient Air Quality Standard''; and

■ ii. Adding an entry at the end of the table for ''Reasonably Available Control Technology (RACT) Under the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards.''

The revisions and additions read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* *	*	*	* *	*
Section 5–253.8	Industrial Adhesives	9/15/2018	11/26/2019 [Insert **Federal Register** citation].	
Section 5–253.9	Offset Lithographic and Letterpress Printing.	9/15/2018	11/26/2019 [Insert **Federal Register** citation].	
* *	*	*	* *	*
Section 5–253.12	Coating of Flat Wood Paneling	9/15/2018	11/26/2019 [Insert **Federal Register** citation].	
Section 5–253.13	Coating of Miscellaneous Metal and Plastic Parts.	9/15/2018	11/26/2019 [Insert **Federal Register** citation].	
* *	*	*	* *	*
Section 5–253.17	Industrial Solvent Cleaning	9/15/2018	11/26/2019 [Insert **Federal Register** citation].	
* *	*	*	* *	*

(d) * * *

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS

Name of source	Permit No.	State effective date	EPA approval date	Explanations
Isovolta Inc. (Formerly U.S. Samica, Inc.) Operating Permit RACT provisions.	AOP–14–037	9/30/2017	11/26/2019 [Insert **Federal Register** citation].	
Killington/Pico Ski Resort Partners, LLC. Operating Permit RACT provisions.	AOP–14–003	2/15/2018	11/26/2019 [Insert **Federal Register** citation].	
Okemo Limited Liability Company Operating Permit RACT provisions.	AOP–14–034	2/15/2018	11/26/2019 [Insert **Federal Register** citation].	

EPA-APPROVED VERMONT SOURCE SPECIFIC REQUIREMENTS—Continued

Name of source	Permit No.	State effective date	EPA approval date	Explanations
* *	*	*	*	* *

(e) * * *

VERMONT NON-REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanation
* *	*	*	*	* *
Reasonably Available Control Technology State Implementation Plan (SIP)/certification for the 1997 8-hour Ozone National Ambient Air Quality Standard.	Statewide	Submitted 11/14/2008	11/26/2019 [Insert **Federal Register** citation].	Certain aspects relating to Coating of Flat Wood Paneling which were conditionally approved on July 19, 2011 are now fully approved.
* *	*	*	*	* *
Reasonably Available Control Technology (RACT) Under the 2008 and 2015 8-Hour Ozone National Ambient Air Quality Standards.	Statewide	Submitted 9/6/2018 ...	11/26/2019 [Insert **Federal Register** citation].	

[FR Doc. 2019–25597 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 1302

[Docket No.: HHS–ACF–2019–0006]

RIN 0970–AC78

Head Start Program

AGENCY: Office of Head Start (OHS), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTIONS: Final rule; delay compliance date and request for information.

SUMMARY: The Office of Head Start will further delay the compliance date for programs to meet the new comprehensive background checks requirements and to participate in their state or local Quality Rating and Improvement Systems (QRIS). We are delaying the compliance date for these standards, based on concerns states still will not have systems developed that can accommodate Head Start programs by the current compliance date. Head Start programs are still encouraged to conduct comprehensive background checks where state systems support Head Start requests and are required to meet the background check requirements in section 648A of the Head Start Act that requires them to obtain a State, tribal, or Federal criminal record check for all staff members prior to employment. The Office of Head Start also requests comments on the issues set out in this final rule.

DATES: The date for programs to comply with background checks procedures as described in 45 CFR 1302.90(b) and to participate in QRIS as described in 45 CFR 1302.53(b)(2), delayed September 28, 2017 (82 FR 45205) and September 26, 2018 (83 FR 48558), is further delayed until September 30, 2021. Comments are due December 26, 2019.

ADDRESSES: You may send comments, identified by HHS–ACF–2019–0006 and/or RIN 0970–AC78, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow instructions for sending comments. We prefer to receive comments via this method.
- *Mail:* Office of Head Start, Attention: Colleen Rathgeb, Director, Division of Planning, Oversight and Policy, 330 C Street SW, Washington, DC 20024.

Instructions: All submissions received must include our agency name and the docket number or Regulatory Information Number (RIN) for this notice. All comments will be posted without change to *https://www.regulations.gov,* including any personal information provided. We accept anonymous comments. If you wish to remain anonymous, enter ''N/A'' in the required fields.

FOR FURTHER INFORMATION CONTACT: Colleen Rathgeb, Office of Head Start, Planning, Oversight, and Policy Division Director, (202) 358–3263, *OHS_NPRM@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

Background

Head Start programs must comply with background check requirements and participate in their States' QRIS by September 30, 2019. We have already delayed the compliance date for background check requirements, through documents published in the **Federal Register** on September 28, 2017 (82 FR 45205) and on September 26, 2018 (83 FR 48558). We issued the first notice to align our compliance date for background checks with the background check requirements deadline in the Child Care Development Block Grant (CCDBG) Act of 2014, Public Law 113–186. We issued the second notice to accommodate and reduce burden on

States that received waivers to comply with CCDBG requirements.

We took that approach because States that receive CCDBG funds are required to establish systems that implement the same set of comprehensive background checks for all child care teachers and staff. These systems will enable Head Start programs to meet the more comprehensive background checks requirements in the final rule at 45 CFR XIII subpart B. We also extended the compliance date for programs to participate in QRIS in those notices to allow States more time to develop systems that could allow Head Start programs to participate. We are still concerned programs will not be able to implement fully either of these requirements by September 30, 2019, without unintended regulatory and administrative burdens. While States and Head Start programs are making significant progress in implementing the new requirements, very few States are fully compliant with the CCDBG Act requirements. In order for Head Start programs to comply with the comprehensive background check requirement in the Head Start regulations at 45 CFR 1302.90(b), it is necessary for the State background check systems to be operational.

Background Check Procedures in the Regulation

Our standards at 45 CFR 1302.90(b) require that, before a person is hired at a Head Start facility, programs must conduct comprehensive background checks on such prospective employees that consist of (1) a sex offender registry check, (2) State or tribal criminal history records check (including fingerprint check), and Federal Bureau of Investigation criminal history records check (including fingerprint check), and (3) a child abuse and neglect State registry check, if available. We also require programs to conduct comprehensive background checks for each employee at least once every five years.

The Improving Head Start for School Readiness Act of 2007 (Act) sets forth standard background checks requirements for Head Start programs. We added more comprehensive background check requirements in the Head Start Program Performance Standards final rule by adding fingerprint checks and other components, which align with background check requirements in the CCDBG. To date, only two States have developed systems that fully meet CCDBG background check requirements. We understand that States may request time-limited waivers, in one year increments (*i.e.,* potentially through September 30, 2020), to design systems that can accommodate these background check requests. Nearly two-thirds of States have met critical milestones in complying with CCDBG Act background check requirements, but these States need this additional time to fully comply.

Therefore, we will extend the compliance date for 45 CFR 1302.90(b) to September 30, 2021. If we do not delay the compliance date for comprehensive background checks, Head Start programs, States, tribes, territories, and State and local law enforcement agencies would experience unintended burden. Many States are experiencing serious backlog in completing child care background check requests already in the queue and Head Start background check requests would add to this backlog. If expanded Head Start background checks went into effect before State systems were fully operational, many programs would not be able to complete all of the necessary components to comply with the regulation. This would likely result in programs leaving vacancies unfilled, not be able to provide adequate staffing for classrooms and other critical functions, and children going unserved.

Until all Head Start programs have systems in place that fully comply with 45 CFR 1302.90(b), we require them to continue to adhere to the criminal record check requirements in section 648A of the Head Start Act, as amended by the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, which states Head Start agencies must ''obtain—(A) a State, tribal, or Federal criminal record check covering all jurisdictions where the grantee provides Head Start services to children; (B) a State, tribal, or Federal criminal record check as required by the law of the jurisdiction where the grantee provides Head Start services; or (C) a criminal record check as otherwise required by Federal law.''

QRIS Requirement in the Regulation

We require programs that meet certain conditions, except for American Indian and Alaska Native programs, to participate in State or local QRIS, as prescribed at 45 CFR 1302.53(b)(2). A QRIS is a systematic approach to assess, improve, and communicate the level of quality in early and school-age care and education programs within a state or locality. The criteria Head Start programs must meet to enter the QRIS and maintain participation vary greatly by State. We recognize some Head Start programs were already participating in their State and local quality improvement efforts before we introduced this standard in the regulation. Now that we have included this standard in the regulation, we understand programs have taken steps to participate in QRIS and that many States are assessing their QRIS with new Head Start QRIS participation policies. However, programs and States need additional time to align these systems. We want to minimize any unintended burden on States that choose to adapt their systems to allow Head Start programs to participate in QRIS, as well as alleviate programs' concerns about meeting the current compliance date. To avoid duplication efforts between Head Start and QRIS monitoring systems, as well as to eliminate undue burden on Head Start programs and States as they work to align these systems, we will delay the compliance date for this standard until September 30, 2021.

Request for Information

We are seeking comment from the public to gain more information about the problems Head Start programs are encountering as they attempt to come into compliance with the comprehensive background checks. Specifically, we invite the public to share with us:

1. How feasible is it for programs and other stakeholders to conduct comprehensive background checks by September 30, 2021?
2. What obstacles are programs facing today as they attempt to comply with these performance standards?
3. What steps, if any, can ACF take to help programs and other stakeholders comply with these performance standards by September 30 2021?

Conclusion

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The Secretary finds good cause to waive public comment under section 553(b) of the APA because it is unnecessary and contrary to the public interest to provide for public comment in this instance.

State, localities, and Head Start grantees will likely be subjected to

undue and unnecessary administrative burdens as they expend time trying to find ways to implement these standards without support from local and State law enforcement agencies and without QRIS systems that can accommodate Head Start programs. A period for public comment would only extend programs' concerns as they attempt to meet these standards by the compliance dates. Head Start programs are still required to comply with statutory background check requirements in the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, until they can develop systems that will enable them to conduct complete background checks with fingerprints. Therefore, if we delay compliance dates, we will pose no harm or burden to programs or the public. Moreover, programs that already have systems in place to meet background check standards at 45 CFR 1302.90(b) and to participate in their States' QRIS at 45 CFR 1302.53(b)(2) may voluntarily come into compliance by the current compliance date. However, programs that do not have systems in place will have until September 30, 2021, the new compliance date, to comply.

Dated: October 8, 2019.

Lynn A. Johnson,

Assistant Secretary for Children and Families.

Approved: November 19, 2019.

Alex M. Azar II,

Secretary.

[FR Doc. 2019–25634 Filed 11–25–19; 8:45 am]

BILLING CODE 4184–40–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[WC Docket Nos. 18–276, 17–308; FCC No. 19–107; FR ID 16252]

Reform of Certain Tariff Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission amends its tariff publication rules to allow carriers to cross-reference their own tariffs and the tariffs of their affiliates, and to eliminate the short form tariff review plan filed by price cap incumbent local exchange carriers 90 days before the effective date of their annual access tariff filings. These changes will bring the Commission's tariff publication rules in line with the reality of the increased ease of access to tariff filings, and will reduce the regulatory burdens on filers and the Commission's own tariff review staff.

DATES: The amendments set forth in this Report and Order will become effective December 26, 2019.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robin Cohn, Wireline Competition Bureau, Pricing Policy Division at 202–418–1540 or via email at *Robin.Cohn@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order released October 30, 2019. A full-text copy can be obtained at the following internet Address: *https://docs.fcc.gov/public/attachments/FCC-19-107A1.pdf*.

Background

1. Many of the Commission's rules governing tariff filings were adopted when paper tariffs were filed at the Commission and interested parties had to visit the Commission to review physical copies of those filings. Not surprisingly, technological advances that allow carriers and interested parties to submit and view information electronically have obviated the need for certain longstanding tariff rules that were predicated on the need for paper filings and protracted review periods. Last year, the Commission proposed to amend two such sets of rules—those that prohibit a carrier from cross-referencing its tariffs and those of its affiliates, and the rule that requires price cap local exchange carriers (LECs) to file short form tariff review plans well in advance of their annual tariff filings.

2. *Cross-referencing.* When the Commission's cross-referencing rules were adopted more than 75 years ago, tariffs were often quite voluminous and were filed in hard copy, making it cumbersome to obtain and follow a cross-reference from one tariff to another tariff. To ensure that someone reviewing a paper copy of a tariff would have ready access to all of the terms of the tariff, the Commission adopted § 61.74, which, with certain exceptions, prohibits one tariff from cross-referencing another tariff, and § 61.54, which also has been interpreted as prohibiting cross-referencing between tariffs.

3. Today, by contrast, carriers are required to file tariffs electronically using the Electronic Tariff Filing System (ETFS), and it only takes ''a few seconds and a few clicks'' to find a cross-referenced tariff. As a result, interested parties can now access tariffs through the ETFS via an internet connection anywhere and electronically review and search the tariffs they are looking for.

4. The Commission's current rules allow carriers to seek special permission to cross-reference their own tariffs and those of their affiliates, and carriers do so when, for example, they offer discount plans that cross different operating territories. The Wireline Competition Bureau (Bureau) has routinely granted requests for special permission to allow a carrier to cross-reference its own tariffs and those of its affiliates. In the notice of proposed rulemaking (*NPRM*) (83 FR 58510, Nov. 20, 2018), the Commission proposed to amend the rules to allow a carrier's tariffs to refer to its own tariffs and those of its affiliates, and provided an interim waiver of § 61.74(a) to all carriers to allow carriers' tariffs to reference their other tariffs, and those of their affiliates, pending resolution of the issues addressed in the *NPRM*.

5. *Short form tariff review plans.* Prior to 1997, annual interstate access tariffs were filed 90 days before the effective date of such tariffs, thereby allowing a significant amount of time for the Commission and interested parties to review the filings and associated cost support. In 1997, when the Commission modified its rules to permit price cap carriers to file tariffs on either 7 days' notice (for rate reductions) or 15 days' notice (for rate increases), it also adopted a requirement that price cap carriers submit supporting information, without rate data, 90 days prior to the annual access tariff filing effective date. This filing, known as the ''short form tariff review plan,'' consists of a standardized spreadsheet showing data regarding exogenous cost adjustments that price cap carriers seek to make to their price cap indices. Exogenous cost adjustments are made, for example, to the following cost input categories: (1) Regulatory fees; (2) Telecommunications Relay Services (TRS) expenses; (3) excess deferred taxes; and (4) North American Numbering Plan Administration (NANPA) expenses.

6. In the years following adoption of the short form tariff review plan filing requirement, the Bureau often granted waivers of the filing deadline and of the requirement to provide certain data in advance of the annual access tariff filing. In 2014, at USTelecom's request, the Bureau granted a waiver that reduced the 90-day filing deadline for the short form tariff review plan to approximately 45 days before the annual access tariff effective date.

7. In 2017, the Bureau waived the short form tariff review plan filing requirement in its entirety, finding that

the ''factors needed to calculate three of the most common exogenous cost adjustments—regulatory fees, TRS fees, and NANPA expenses—will not be available prior to the short form filing deadline,'' so the short form tariff review plan would be of little value to the Commission. The Bureau found multiple reasons to waive the short form tariff review plan requirement again in 2018 and 2019, including that: (1) It was unlikely that the necessary information would be available by the required filing date; and (2) exogenous cost data contained in the short form tariff review plan would be included with the information filed directly prior to the annual filing effective date (assuming the availability of such data), at which time the information could be reviewed by the Commission and interested parties.

8. In the *NPRM,* the Commission recognized that the value of the short form tariff review plan has declined because the complexity and number of interstate access tariff filings has decreased over the last decade as the scope of services subject to price cap regulation has narrowed. In light of the Commission's experience that waiving the short form tariff review plan requirement had not negatively affected the ability of interested parties and staff to review tariffs in a timely fashion, the Commission proposed to eliminate it as unnecessary and unduly burdensome.

I. Discussion

9. The Commission received no opposition to the proposals set forth in the *NPRM.* Instead, commenters all agree that, in their experience, the ease of making and reviewing electronic tariff filings obviates the need for the prohibition on carriers' cross-referencing their own or their affiliates' tariffs and the need for the short form tariff review plan. The Commission therefore amends its rules to reduce unnecessary filing burdens and to allow stakeholders to benefit from current technology. (AT&T filed a Motion for Acceptance of Late-Filed Comments. The Commission treats AT&T's filing as *Ex Parte* Comments, and dismisses AT&T's Motion as moot.)

A. Updating and Amending Tariff Cross-Referencing Rules

10. First, the Commission amends its tariffing rules to allow carriers to cross-reference their own and their affiliates' tariffs. Comments in the record unanimously support amending § 61.74 of the Commission's rules to permit carriers to cross-reference their own and their affiliates' tariff filings. The Commission agrees with the commenters that this modification is justified because the prohibition on a carrier's tariff cross-referencing that carrier's tariffs and those of its affiliates no longer serves a functional purpose, in light of the ease with which the public can now access and search tariffs.

11. Moreover, as commenters explain, the current obligation to seek and receive special permission to cross-reference a carrier's own tariffs imposes unnecessary costs on the carriers that file those requests and on the Commission staff that consider and act on those requests. The need to request special permission also harms competition by ''impinging the carriers' ability to quickly respond to customers' demands,'' and by forcing carriers to ''telegraph a planned tariff filing.'' Furthermore, there is no record of any negative consequences arising from previous grants of special permission.

12. The Commission therefore amends § 61.74 as proposed in the *NPRM* to expressly allow a carrier to reference other tariffs issued by the carrier or any of its affiliates. The new § 61.74(b) states: ''Tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.'' To further effectuate the Commission's decision to allow carriers to cross-reference their own and their affiliates' tariffs, the Commission also amends § 61.54 of its rules, which applies to the composition of tariffs, and has been interpreted as prohibiting a carrier's tariff from referring to rates in other tariffs. To effectuate this decision to allow carriers to cross-reference their own and their affiliates' tariffs, the Commission also amends § 61.54, which applies to the composition of tariffs and has been interpreted as prohibiting a carrier's tariff from referring to rates in other tariffs. Paragraph (k) is added, which specifies that ''[n]otwithstanding any other provisions in [that] section, tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.''

13. The rationale for amending § 61.54 is identical to the rationale for amending § 61.74: There are clear benefits, and no drawbacks, to allowing a carrier's tariff to refer to other tariffs filed by that carrier and its affiliates. The Commission's amendment to § 61.54 is necessary to ensure consistency between the rules that govern tariff filings. Given that all parties to this proceeding that commented on the cross-referencing issue support the Commission's decision to allow carriers to cross-reference their own and their affiliates' tariffs, it follows that the record supports the Commission's decision to amend § 61.54 to achieve the desired result.

B. Eliminating Advanced Filing of Materials That Support Interstate Access Tariffs for Price Cap LECs

14. As proposed in the *NPRM,* and supported by the record, the Commission also eliminates the requirement that price cap LECs file short form tariff review plans 90 days before their annual interstate access tariff filings are effective. Consistent with the view of all parties that commented on this issue, the Commission finds that the filing of short form tariff review plans is no longer necessary and is unduly burdensome.

15. As Verizon explains, the decreased complexity of the annual filings obviates the need for early notice of the information contained in the short form tariff review plan. AT&T also points out that, even when the required data are available by the filing deadline, some of the information may later change, forcing carriers to redo their calculations before they submit their annual access tariff filings. Both AT&T and Frontier argue that the lack of data and/or use of temporary or preliminary factors render the short form tariff review plan of little practical value.

16. Notably, commenters agree that there have been no adverse consequences from the suspension of the requirement in recent years to prepare and file a short form tariff review plan. As Verizon, for example, explains, the waivers of the entire filing requirement ''did not impede parties' ability to review the annual filings.'' Frontier agrees that there is no evidence that the Bureau's previous waivers of the filing requirement caused any harm.

17. Although the short form tariff review plan filing serves little, if any, useful purpose, it requires effort from the filing carriers. Parties estimate that the time required to prepare and file the short form tariff review plan can range from 40 to 160 hours. Also, as CenturyLink explains, the timing of the short form tariff review plan is inconvenient, requiring that carriers and the Commission expend resources completing and reviewing the short form tariff review plan at a time ''when the larger [a]nnual [f]iling needs the greater attention.'' Thus, the current rule requiring price cap carriers to file short form tariff review plans is burdensome and provides little benefit, if any, especially given that the remaining annual filing notice requirements ''will provide adequate time for the Commission and the industry to review carrier tariff filings.'' As Frontier aptly

explains, eliminating the short form tariff review plan ''will free up valuable carrier resources with no discernable downside for Commission staff.''

C. Effective Date and Sunsetting of Interim Waiver of the Prohibition on Referencing Other Tariffs

18. Because both the prohibition on a carrier cross-referencing its own tariffs and those of its affiliates and the short form tariff review plan requirement no longer serve any useful purpose, the Commission sees no reason to delay the effective date of the rule changes. In the *NPRM,* the Commission proposed that the rule changes would take effect 30 days after **Federal Register** publication of a summary of this Report and Order. No commenters opposed this proposal, which the Commission now adopts.

19. Finally, the interim waiver the Commission granted to all carriers of the prohibition on cross-referencing their own tariffs and those of their affiliates will end 30 days after **Federal Register** publication of a summary of this Report and Order, when the revised rules become effective.

II. Procedural Issues

20. *Paperwork Reduction Act.* This document eliminates certain information collection requirements but does not contain any new or modified information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198.

21. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one 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 (SBA).

22. The Commission included an Initial Regulatory Flexibility Certification in the NPRM, and received no comments addressing this issue.

23. In this Report and Order, the Commission amends two of the its tariff rules by adding §§ 61.54(k) and 61.74(b), and eliminates one tariff rule, § 61.49(k), to minimize burdens associated with filing tariffs, as part of the Commission's efforts to reduce unnecessary regulations that no longer serve the public interest. The addition of §§ 61.54(k) and 61.74(b) is procedural in nature, and the impact is minor. These revisions impact large and small telephone companies. The elimination of § 61.49(k) impacts only price cap LECs for services that continue to be subject to price cap regulation, and any impact of this rule change is minor. Price cap LECs are some of the largest telephone companies. Therefore, the Commission certifies that the rule amendments will not have a significant economic impact on a substantial number of small entities.

24. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the **Federal Register**.

25. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are ''non-major'' under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

III. Ordering Clauses

26. Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i)–(j), and 201–203 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201–203, this *Report and Order is adopted.*

27. *It is further ordered* that this Report and Order *shall be effective* thirty (30) days after publication of a summary in the **Federal Register**.

28. *It is further ordered* that part 61 of the Commission's rules, 47 CFR part 61, *is amended* as set forth in the Final Rules, and such rule amendments *shall be effective* thirty (30) days after publication of a summary of the *Report and Order* in the **Federal Register**.

29. *It is further ordered* that the interim waiver of the prohibition on a carrier's tariff referencing the carrier's other tariff publications and tariffs of its affiliates, as adopted in the *NPRM, will end* thirty (30) days after a summary of this *Report and Order* is published in the **Federal Register**.

30. *It is further ordered* that the Motion for Acceptance of Late-Filed Comments filed by AT&T *is dismissed as moot.*

31. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

Marlene Dortch,

Secretary.

List of Subjects in 47 CFR Part 61

Communications common carriers, Reporting and recordkeeping requirements, Telephones.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 61 as follows:

PART 61—TARIFFS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, unless otherwise noted.

§ 61.49 [Amended]

■ 2. Amend § 61.49 by removing and reserving paragraph (k).

■ 3. Amend § 61.54 by adding paragraph (k) to read as follows:

§ 61.54 Composition of tariffs.

* * * * *

(k) *References to other tariffs.* Notwithstanding any other provisions in this section, tariff publications filed by a carrier may reference other tariff publications filed by that carrier or its affiliates.

■ 4. Amend § 61.74 by redesignating paragraphs (b) through (e) as paragraphs (c) through (f) and adding new paragraph (b) to read as follows:

§ 61.74 References to other instruments.

* * * * *

(b) Tariff publications filed by a carrier may reference other tariff

publications filed by that carrier or its affiliates.

* * * * *

[FR Doc. 2019–25570 Filed 11–25–19; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 580

[Docket No. NHTSA–2019–0127]

RIN 2127–AL39

Odometer Disclosure Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This document responds to petitions for reconsideration regarding NHTSA's October 2, 2019, final rule amending NHTSA's odometer disclosure requirements to allow States to adopt electronic odometer disclosure systems and changing the time when vehicles become exempt from federal odometer disclosure requirements from ten years to twenty years. NHTSA received petitions for reconsideration from the America Association of Motor Vehicle Administrators (AAMVA) and the State of Delaware Department of Transportation requesting that the agency delay the effective date of the changes to the exemption from odometer disclosure requirements for one year. After consideration of the petitions, NHTSA has decided to grant the petition. The change to the exemption from the odometer disclosure requirements will take effect on January 1, 2021 and will apply to model year 2011 and newer vehicles. The amendments in the October 2, 2019, final rule allowing States to adopt electronic odometer disclosure systems will still take effect as scheduled on December 31, 2019.

DATES: Effective December 31, 2019.

Petitions for reconsideration of this final action must be received not later than January 10, 2020.

ADDRESSES: Correspondence related to this rule including petitions for reconsideration and comments should refer to the docket number in the heading of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For policy and technical issues: Mr. David Sparks, Director, Office of Odometer Fraud, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–5953. Email: *David.Sparks@dot.gov*.

For legal issues: Mr. Thomas Healy, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–7161. Email *Thomas.Healy@dot.gov*.

SUPPLEMENTARY INFORMATION: On October 2, 2019, NHTSA issued a final rule amending 49 CFR part 580 to allow States to adopt electronic odometer disclosure without prior approval from NHTSA. The final rule also amended the exemption in § 580.17 exempting vehicles greater than ten model years old at the time of transfer from odometer disclosure. Under the final rule, starting with the 2010 model year, a vehicle does not become exempt until it is twenty model years old at the time of transfer. The amendments to the exemption period in the October 2, 2019 final rule were scheduled to go in to effect on December 31, 2019 and would have applied to model year 2010 vehicles (which would otherwise be exempt from odometer disclosure beginning January 1, 2020).

On November 8, 2019, AAMVA submitted a petition for reconsideration requesting that NHTSA delay the changes to the exemption period in section 580.17 for one year. AAMVA stated that the 90-day lead time in the final rule was insufficient for member State departments of motor vehicles to implement the changes in information technology systems, order forms and coordinate legislative changes necessary to implement the change to the exemption period. AAMVA stated that, in addition to States, motor vehicle dealers and motor vehicle auctions may need to change their business processes in response to the change to the exemption period. AAMVA further stated that State departments of motor vehicles will require time to train staff on the new exemption period and educate motor vehicle dealers and other effected entities. AAMVA requested a delay of one year to give all parties effected by the changes to the exemption period the time necessary to successfully implement the change to the exemption period.

The State of Delaware Department of Transportation submitted a petition for reconsideration on November 15, 2019 also requesting a one year delay to the changes to the exemption period in § 580.17. Delaware stated that legislative changes were necessary to accomplish the change to the exemption period and that its Legislature did not begin its legislative session until January 2020.

After reviewing the arguments in the petition for reconsideration submitted by AAMVA and Delaware, NHTSA has tentatively decided to delay the effective date of the changes to the exemption period in § 580.17 for one year, and apply the twenty-year exemption beginning with the 2011 model year, to ensure that the change to the exemption period is implemented with minimal disruption. The increase in the exemption period to twenty years will now come into effect on January 1, 2021 and will apply to model year 2011 and later vehicles. As is the case prior to implementation of the rule, model year 2010 vehicles will become exempt from odometer disclosure on January 1, 2020.

Response to Petitions for Reconsideration

Pursuant to the process established under 49 CFR 553.37, after carefully considering all aspects of the petition, NHTSA has decided to grant the petitions discussed above without further proceedings.

Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies require this agency to make determinations as to whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the aforementioned Executive Orders. The Executive Order 12866 defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

We have considered the potential impact of this rulemaking under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures and have determined that today's final rule is not significant for any of the aforementioned reasons. We are delaying changes to the exemptions from odometer disclosure to give State departments of motor vehicles the time necessary to implement the change. We thus anticipate that the economic impacts of this rulemaking will be limited.

Executive Order 13771

Executive Order 13771 titled ''Reducing Regulation and Controlling Regulatory Costs,'' directs that, unless prohibited by law, whenever an executive department or agency publicly proposes for notice and comment or otherwise promulgates a new regulation, it shall identify at least two existing regulations to be repealed. In addition, any new incremental costs associated with new regulations shall, to the extent permitted by law, be offset by the elimination of existing costs. Only those rules deemed significant under section 3(f) of Executive Order 12866, ''Regulatory Planning and Review,'' are subject to these requirements. As discussed above, this rule is not a significant rule under Executive Order 12866 and, accordingly, is not subject to the offset requirements of 13771.

NHTSA has determined that this is a deregulatory action under E.O. 13771, as it imposes no costs and, instead, amends 49 CFR 580.17 to delay the compliance date by one year

Delaying the compliance date of the amendments to § 580.17 for one year will result in a cost savings of $740,000 for the 2020 calendar year. These cost savings will accrue because persons and entities transferring ownership of a vehicle will not have to complete an odometer disclosure for vehicles older than ten models in age.

Executive Order 13609: Promoting International Regulatory Cooperation

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

NHTSA finds this rule will not implicate or encompass the issues outlined in the foregoing policy statement.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the proposal will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposal will not have a significant economic impact on a substantial number of small entities.

I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. The delay to the implementation of the change to the exemption period will require minimal changes in data entry for small businesses thereby providing these small businesses additional time to take any actions necessary to comply with the new requirements and will not result in any significant effect.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule will delay changes to the terms of an exemption for owners from disclosing vehicle mileage when transferring the vehicle giving State departments of motor vehicles sufficient time to make changes to their business processes necessary to implement the change to the exemption period.

Executive Order 12988 (Civil Justice Reform)

When promulgating a regulation, Executive Order 12988 specifically requires that the agency must make every reasonable effort to ensure that the regulation, as appropriate: (1) Specifies in clear language the preemptive effect; (2) specifies in clear language the effect on existing Federal law or regulation, including all provisions repealed, circumscribed, displaced, impaired, or modified; (3) provides a clear legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction; (4) specifies in clear language the retroactive effect; (5) specifies whether administrative proceedings are to be required before parties may file suit in court; (6) explicitly or implicitly defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship of regulations.

NHTSA notes that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks,'' (62 FR 19885; April 23, 1997) applies to any proposed or final rule that: (1) Is determined to be ''economically significant,'' as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If a rule meets both criteria, the agency must evaluate the environmental health or safety effects of the rule on children, and explain why the rule is preferable to other potentially effective and reasonably feasible alternatives considered by the agency. This rule is not subject to Executive Order 13045 because it is not economically significant.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed

or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.'' Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. For the specific provisions that we are adjusting in this rule, there are no applicable consensus standards.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). We note that as this rule only makes minor adjustments to 49 CFR part 580. Thus, it will not result in expenditures by any of the aforementioned entities of over $100 million annually.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Today's rule does not propose any new federal agency information collection requirements.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 580

Consumer protection, Motor vehicles, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 49 CFR part 580, as amended October 2, 2019, at 84 FR 52664, is further amended as follows:

PART 580—ODOMETER DISCLOSURE REQUIREMENTS

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

Authority: 49 U.S.C. 32705; Pub. L. 112–141; delegation of authority at 49 CFR 1.95.

■ 2. Section 580.17, as amended October 2, 2019, at 84 FR 52664, is further amended by revising paragraphs (a)(3) and (4) to read as follows:

§ 580.17 Exemptions.

* * * * *

(3)(i) A vehicle manufactured in or before the 2010 model year that is transferred at least 10 years after January 1 of the calendar year corresponding to its designated model year;

(ii) Example to paragraph (a)(3): For vehicle transfers occurring during calendar year 2020, model year 2010 or older vehicles are exempt.

(4)(i) A vehicle manufactured in or after the 2011 model year that is transferred at least 20 years after January 1 of the calendar year corresponding to its designated model year; or

(ii) Example to paragraph (a)(4): For vehicle transfers occurring during calendar year 2031, model year 2011 or older vehicles are exempt.

* * * * *

Issued in Washington, DC, under authority delegated in 49 CFR 1.95 and 501.5.

Jonathan Charles Morrison,

Chief Counsel.

[FR Doc. 2019–25657 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 121004518–3398–01; RTID 0648–XS017]

Reef Fish Fishery of the Gulf of Mexico; 2019 Commercial Accountability Measure and Closure for Gulf of Mexico Gray Triggerfish

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the gray triggerfish commercial sector in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf) through this temporary rule. NMFS projects that the 2019 commercial landings for gray triggerfish will reach the commercial annual catch target (ACT) (commercial quota) by November 26, 2019. Therefore, NMFS is closing the commercial sector for Gulf gray triggerfish on November 26, 2019, and it will remain closed through the end of the fishing year on December 31, 2019. This closure is necessary to protect the Gulf gray triggerfish resource.

DATES: This temporary rule is effective at 12:01 a.m., local time, on November 26, 2019, until 12:01 a.m., local time, on January 1, 2020.

FOR FURTHER INFORMATION CONTACT: Kelli O'Donnell, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *kelli.odonnell@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the Gulf reef fish fishery, which includes gray triggerfish, under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The Gulf of Mexico Fishery Management Council (Council) prepared the FMP and NMFS implements the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All gray triggerfish weights discussed in this temporary rule are in round weight.

The commercial ACL for Gulf gray triggerfish is 64,100 lb (29,075 kg) (50 CFR 622.41(b)(1)), and the commercial ACT (quota) is 60,900 lb (27,624 kg) (50 CFR 622.39(a)(1)(vi)). The regulations at 50 CFR 622.41(b)(1) require an overage of the commercial ACL be subtracted from the following year's ACL and ACT. Landings of gray triggerfish for the commercial sector in 2018 totaled 64,702 lb (29,348 kg), which is 602 lb (273 kg) greater than the 2018 ACL of 64,100 lb (29,075 kg). Accordingly, for 2019, NMFS reduced both the commercial ACL and ACT for Gulf gray triggerfish by 602 lb (273 kg) (84 FR 43725, August 22, 2019). The revised commercial ACT (commercial quota) for gray triggerfish in 2019 is 60,298 lb (27,351 kg), and the revised commercial ACL for gray triggerfish is 63,498 lb (28,802 kg).

As specified by 50 CFR 622.41(b)(1), NMFS is required to close the commercial sector for gray triggerfish when the commercial quota is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS projects the 2019 adjusted commercial quota for Gulf gray triggerfish will be reached by November 26, 2019. Accordingly, this temporary rule closes the commercial sector for Gulf gray triggerfish effective at 12:01 a.m., local

time, on November 26, 2019, and the sector will remain closed until the start of the next commercial fishing season on January 1, 2020.

During the commercial closure, the operator of a vessel with a valid commercial vessel permit for Gulf reef fish having gray triggerfish on board must have landed and bartered, traded, or sold such gray triggerfish prior to 12:01 a.m., local time, on November 26, 2019. During the closure, the sale or purchase of gray triggerfish taken from the Gulf EEZ is prohibited. The prohibition on the sale or purchase does not apply to gray triggerfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, on November 26, 2019, and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator for the NMFS Southeast Region has determined this temporary rule is necessary for the conservation and management of Gulf gray triggerfish and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.41(b)(1) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for NOAA Fisheries (AA) finds that the need to immediately implement this action to close the commercial sector for gray triggerfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to the authority set forth in 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the final rule implementing Amendment 37 to the FMP (78 FR 27084, May 9, 2013), which established the closure provision, was subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect gray triggerfish since the capacity of the fishing fleet allows for rapid harvest of the commercial quota. Prior notice and opportunity for public comment would require time and could potentially result in a harvest well in excess of the established commercial quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

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

Dated: November 20, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–25602 Filed 11–21–19; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 84, No. 228
Tuesday, November 26, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Doc. No. AMS–SC–19–0091; SC19–930–3 PR]

Tart Cherries Grown in the States of Michigan, et al.; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Cherry Industry Administrative Board (Board) to decrease the assessment rate established for the 2019–20 and subsequent fiscal years. The proposed assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by December 26, 2019.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or internet: *http://www.regulations.gov*. Comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov*. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Regional Director, Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov*.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Richard.Lower@usda.gov*.

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Agreement and Order No. 930, both as amended (7 CFR part 930), regulating the handling of tart cherries produced in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. Part 930 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Board locally administers the Order and is comprised of producers and handlers of tart cherries operating within the production area, and a public member.

The Department of Agriculture (USDA) is issuing this proposed rule in conformance with Executive Orders 13563 and 13175. This proposed rule falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review. Additionally, because this proposed rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled ''Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017, titled 'Reducing Regulation and Controlling Regulatory Costs' '' (February 2, 2017).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the Order now in effect, tart cherry handlers are subject to assessments. Funds to administer the Order are derived from such assessments. It is intended that the assessment rate would be applicable to all assessable tart cherries for the 2019–20 crop year and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule would decrease the assessment rate from $0.0075, the rate that was established for the 2016–17 and subsequent fiscal years, to $0.00575 per pound of tart cherries handled for the 2019–20 and subsequent fiscal years. Under the marketing order, the Board also recommends an allocation of assessments for operations and for promotion activities. This action would decrease the portion of assessments allocated to research and promotion activities from $0.0065 to $0.005 per pound of tart cherries and decrease the portion allocated to administrative expenses from $0.001 to $0.00075 per pound of tart cherries.

The Order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2016–17 and subsequent fiscal years, the Board recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on September 12, 2019, and unanimously recommended 2019–20 expenditures of $1,956,500, and an assessment rate of $0.00575 per pound of tart cherries, divided into $0.005 for promotional expenses and $0.00075 for administrative expenses. In comparison, last year's budgeted expenditures were $2,374,450. The assessment rate of $0.00575 is $0.00175 lower than the rate currently in effect. The Board recommended decreasing the assessment rate to reduce the assessment burden on handlers and utilize funds from the authorized reserve to help cover its expenses.

The major expenditures recommended by the Board for the 2019–20 year include $1,514,500 for research and promotion, $250,000 for salaries and wages, and $130,000 for administrative expenses. Budgeted expenses for these items in 2018–19 were $1,867,450, $275,000, and $130,000, respectively.

The Board derived the recommended assessment rate by considering anticipated expenses, an estimated crop of 230.74 million pounds of tart cherries, and the amount of funds available in the authorized reserve. Income derived from handler assessments, calculated at $1,326,755 (230.74 million pounds × $0.00575/pound), along with interest income and funds from the Board's authorized reserve, would be adequate to cover budgeted expenses of $1,956,500. Funds in the reserve are estimated to be $81,553 at the end of the 2019–20 fiscal year.

The assessment rate proposed in this rule would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate would be in effect for an indefinite period, the Board will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2019–20 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 400 producers of tart cherries in the regulated area and approximately 40 handlers of tart cherries who are subject to regulation under the Order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $1,000,000, and small agricultural service firms have been defined as those whose annual receipts are less than $30,000,000 (13 CFR 121.201).

According to the National Agricultural Statistics Service (NASS) and Board data, the average annual grower price for tart cherries utilized for processing during the 2018–19 season was approximately $0.196 per pound. With total utilization at 288.8 million pounds for the 2018–19 season, the total 2018–19 value of the crop utilized for processing is estimated at $56.6 million. Dividing the crop value by the estimated number of producers (400) yields an estimated average receipt per producer of $141,500. This is well below the SBA threshold for small producers.

A free on board (FOB) price of $0.80 per pound for frozen tart cherries was reported by the Food Institute during the 2018–19 season. Based on utilization, this price represents a good estimate of the price for processed cherries. Multiplying this FOB price by total utilization of 288.8 million pounds results in an estimated handler-level tart cherry value of $231 million. Dividing this figure by the number of handlers (40) yields estimated average annual handler receipts of $5.8 million, which is below the SBA threshold for small agricultural service firms. Assuming a normal distribution, the majority of producers and handlers of tart cherries may be classified as small entities.

This proposal would decrease the assessment rate collected from handlers for the 2019–20 and subsequent fiscal years from $0.0075 to $0.00575 per pound of tart cherries, with $0.005 per pound allocated to promotion and research and $0.00075 per pound allocated to administrative expenses. The Board unanimously recommended 2019–20 expenditures of $1,956,500, and an assessment rate of $0.00575 per pound of tart cherries. The proposed assessment rate of $0.00575 per pound is $0.00175 lower than the 2018–19 rate. The volume of assessable tart cherries for the 2019–20 fiscal year is estimated at 230.74 million. Thus, the $0.00575 rate should provide $1,326,755 in assessment income (230.74 million pounds × $0.00575/pound). Income derived from handler assessments, along with interest income and funds from the Board's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2019–20 year include $1,514,500 for research and promotion, $250,000 for salaries and wages, and $130,000 for administrative expenses. Budgeted expenses for these items in 2018–19 were $1,867,450, $275,000, and $130,000, respectively.

The Board recommended decreasing the assessment rate and utilizing funds from its authorized reserve in order to relieve the assessment burden on handlers. This action would also use the Board's reserve balance and maintain it below the levels authorized under the Order.

Prior to arriving at this budget and assessment rate, the Board considered information from the Board's Executive Committee (Committee). Alternative expenditure levels were discussed by the Committee, which reviewed the relative value of various activities to the tart cherry industry. The Committee determined all program activities were adequately funded and essential to the functionality of the Order; thus, no alternate expenditure levels were deemed appropriate. Additionally, the Board discussed alternatives of maintaining the current assessment rate of $0.0075 per pound or reducing marketing expenditures to achieve a lower rate. However, the Board determined it would be appropriate to reduce the assessment burden to handlers using some of the reserves built up following recurring seasons

with large crops. The Board also determined the recommended promotion expenditures, which are lower than in previous seasons, were appropriate and further reduction might hinder sales growth.

Based on these discussions and estimated deliveries, the recommended assessment rate of $0.00575 per pound of tart cherries would provide $1,326,755 in assessment income. Further, the Board recommended allocating $0.005 for promotional expenses and $0.00075 for administrative expenses. The Board determined that assessment revenue, along with funds from the reserve and interest income, would be adequate to cover budgeted expenses for the 2019–20 fiscal year.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2019–20 crop year should be approximately $0.20 per pound of tart cherries. Therefore, the estimated assessment revenue for the 2019–20 crop year as a percentage of total grower revenue would be about 2.9 percent.

This proposed rule would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may also reduce the burden on producers.

The Board's meeting was widely publicized throughout the tart cherry industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2019, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and information collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0177, Tart Cherries Grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/rules-regulations/moa/small-businesses*. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ 1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 930.200 is revised to read as follows:

§ 930.200 Assessment rate.

On and after October 1, 2019, the assessment rate imposed on handlers shall be $0.00575 per pound of tart cherries grown in the production area and utilized in the production of tart cherry products. Included in this rate is $0.005 per pound of tart cherries to cover the cost of the research and promotion program and $0.00075 per pound of tart cherries to cover administrative expenses.

Dated: November 21, 2019.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2019–25651 Filed 11–25–19; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–109; NRC–2014–0257]

Improved Identification Techniques Against Alkali-Silica Reaction (ASR) Concrete Degradation at Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), PRM–50–109, dated September 25, 2014, submitted by the C–10 Research and Education Foundation (C–10 or the petitioner). The petitioner requests that the NRC amend its regulations to provide improved identification techniques for better protection against concrete degradation due to alkali-silica reaction (ASR) at U.S. nuclear power plants. The petitioner asserts that reliance on visual inspection will not adequately identify ASR, confirm ASR, or provide the current state of ASR damage without petrographic examination. The NRC is denying the petition because existing NRC regulations and NRC oversight activities provide reasonable assurance of adequate protection of public health and safety. Specifically, existing NRC regulations are sufficient to ensure that concrete degradation due to ASR will not result in unacceptable reductions in the structural capacity of safety-related structures at nuclear power plants.

DATES: The docket for the petition for rulemaking PRM–50–109 is closed on November 26, 2019.

ADDRESSES: Please refer to Docket ID NRC–2014–0257 when contacting the NRC about the availability of information regarding this petition. You can obtain publicly-available documents related to the petition using any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search on the petition Docket ID NRC–2014–0257. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER**

INFORMATION CONTACT section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in Section V, Availability of Documents.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Yanely Malave, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1519, email: *Yanely.Malave@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. The Petition
II. Public Comments on the Petition
III. Reasons for Denial
IV. Conclusion
V. Availability of Documents

I. The Petition

On September 25, 2014, C–10, with assistance from the Union of Concerned Scientists (UCS), submitted a petition for rulemaking to the NRC (ADAMS Accession No. ML14281A124). The NRC docketed the petition on October 8, 2014, and assigned Docket No. PRM–50–109 to the petition. The petitioner requests that the NRC amend its applicable regulations to provide identification techniques for better protection against concrete degradation due to ASR at U.S. nuclear power plants. Specifically, the petitioner requests that the NRC require that all licensees comply with American Concrete Institute (ACI) Committee Report 349.3R, ''Evaluation of Existing Nuclear Safety-Related Concrete Structures'' (ACI 349.3R), and American Society for Testing and Materials (ASTM) Standard C856–11, ''Standard Practice for Petrographic Examination of Hardened Concrete'' (ASTM C856–11).

The petitioner previously submitted a request for enforcement action in accordance with § 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Requests for action under this subpart,'' specific to Seabrook Station (ADAMS Accession No. ML16006A002). That petition was rejected by the NRC in a letter dated July 6, 2016 (ADAMS Accession No. ML16169A172), because the request addressed deficiencies within existing NRC rules, similar to those raised in PRM–50–109. While mention of Seabrook Station, which is the only nuclear power plant with a documented occurrence of ASR to date, is included in this document in response to the petitioner's comments, the NRC's focus in this denial is on the generic request that the NRC require that all licensees of nuclear plants comply with ACI 349.3R and ASTM C856–11.

The petitioner raises the following three specific issues in PRM–50–109.

Issue 1: Visual inspections are not adequate to detect ASR, confirm ASR, or provide the current state of ASR damage.

The petitioner asserts that visual inspections are not capable of adequately identifying ASR, confirming ASR, or providing accurate information on the state of ASR damage (*i.e.,* its effect on structural capacity). The petitioner also asserts that only petrographic examinations (the use of microscopes to examine samples of rock or concrete to determine their mineralogical and chemical characteristics) in accordance with ASTM C856–11 are capable of determining or confirming whether ASR is present and determining the state of ASR damage. The petitioner offers additional information in five areas related to this issue.

A. At an NRC public meeting at Seabrook Station on June 24, 2014, when C–10 asked if the NRC was investigating U.S. nuclear power plants for ASR concrete degradation, the NRC staff responded that ASR concrete degradation could be adequately identified through visual examination.

B. When structural degradation is occurring, the petitioner asserts that it is critical to determine the root cause and confirm the form of degradation. The petitioner also asserts that the NRC has stated that ASR is confirmed only through petrographic examination, and in support of this statement the petitioner references an enclosure to a letter from the licensee for Seabrook Station, NextEra Energy Seabrook, LLC (NextEra) to the NRC, May 1, 2013 (ADAMS Accession No. ML13151A328).

C. Commentaries by materials science expert Dr. Paul Brown, provided by C–10 and the UCS, challenge the central hypothesis in the report submitted by NextEra, ''Seabrook Station: Impact of Alkali-Silica Reaction on Concrete Structures and Attachments'' (ADAMS Accession No. ML12151A397). As summarized in the petition, Dr. Brown challenges the conclusion in the report that ''confinement reduces cracking, and taking a core bore test would no longer represent the context of the structure once removed from the structure.''

D. The petitioner also asserts that the NRC memorandum titled, ''Position Paper: In Situ Monitoring of Alkali-Silica Reaction (ASR) Affected Concrete: A Study on Crack Indexing and Damage Rating Index to Assess the Severity of ASR and to Monitor ASR Progression'' (ADAMS Accession No. ML13108A047), supports the assertion that visual examination is insufficient to reliably identify ASR or evaluate its state (including contribution to rebar stress). The petitioner cites portions of the paper, which state that ASR can exist without indications of pattern cracking, visible surface cracking may be suppressed by heavy reinforcement while internal damage exists through the depth of the section, and crack mapping alone to determine ASR effects on the structure does not allow for the consideration of rebar stresses.

E. Finally, the petitioner asserts that visual inspections are of limited scope and cannot identify areas of degradation in many portions of concrete structures, such as below-grade portions that cannot be visually examined but are most likely to be exposed to groundwater and be more vulnerable to ASR. The petitioner notes as an example cracking in the concrete wall of the shield building of the Davis-Besse Nuclear Power Station. This condition was discovered in 2011, when a hole was cut through the building's wall to replace the reactor vessel head, but had remained undetected by visual inspections for a long period.

Issue 2: ACI and ASTM codes and standards address the detection and evaluation of ASR damage.

The petitioner asserts that ACI 349.3R provides an acceptable means of protecting against excessive ASR concrete degradation and is endorsed by the NRC in Information Notice (IN) 2011–20, ''Concrete Degradation by Alkali-Silica Reaction'' (ADAMS Accession No. ML112241029). Quantitative criteria in ACI 349.3R can be used to evaluate inspection results. The petitioner also states that ASTM

C856–11 is an acceptable means of conducting petrographic examination.

The petitioner also provided information specific to activities at Seabrook Station related to the implementation of ACI 349.3R and the American Society of Mechanical Engineers (ASME) *Boiler and Pressure Vessel Code* (BPV Code), Section XI, Subsection IWL. The petitioner states that ACI 349.3R requires the formation of a ''composite team,'' consisting of qualified civil or structural engineers, concrete inspectors, and technicians familiar with concrete degradation mechanisms and long-term performance issues, to effectively identify and evaluate concrete degradation, including degradation due to ASR.

The petitioner claims that NextEra did not have a composite team as specified in ACI 349.3R, and since it became the owner of Seabrook Station, NextEra has not had a trained and dedicated ''responsible engineer'' conducting the inspections to accurately record the results or take further action as required. The petitioner asserts that NextEra failed to test the concrete despite the extent of cracking visibly increasing, and that NextEra never had a code-certified ''responsible engineer'' doing the visual inspections of the Seabrook containment in accordance with ASME BPV Code, Section XI, Subsection IWL.

Issue 3: Regulations should require compliance with ACI 349.3R and ASTM C856–11.

The petitioner states that, although both ACI 349.3R and ASTM C856–11 are endorsed by the NRC, the NRC does not require nuclear power plant licensees to implement either of these standards.

To support the position that use of the standards should be required, the petitioner offers Seabrook Station's ASR concrete degradation as an example that would have been identified before it caused moderate to severe degradation in seismic Category I structures if the NRC had required compliance with these existing standards. The petitioner claims that when NextEra determined 131 locations with ''assumed'' ASR visual signs within multiple power-block structures during 2012, further engineering evaluations were not done. The petitioner also claims that, since discovering the situation, the NRC has not required Seabrook Station to: (1) Test a core bore taken from the containment; (2) use certified laboratory testing of key material properties to determine the extent of condition; or (3) obtain the data necessary to monitor the rate of progression.

II. Public Comments on the Petition

The NRC published a notice of docketing of PRM–50–109 on January 12, 2015 (80 FR 1476). The public comment period closed on March 30, 2015. Comment submissions on this petition are available electronically via *https://www.regulations.gov* using docket number NRC–2014–0257.

Overview of Public Comments

The NRC received 10 different comment submissions on the PRM. A *comment submission* is a communication or document submitted to the NRC by an individual or entity, with one or more individual comments addressing a subject or issue. Eight of the comment submissions were received during the public comment period. Two of the comment submissions were received after the comment period closed. The NRC determined that it was practical to consider the comment submissions received after the public comment period closed and considered all 10 received. Key information for each comment submission is provided in the following table.

Submission No.	ADAMS accession No.	Commenter	Affiliation
1	ML15026A339	Josephine Donovan	Private Citizen.
2	ML15026A338	Lynne Mason	Private Citizen.
3	ML15027A178	Katherine Mendez	Private Citizen.
4	ML15076A457	David Lochbaum	Union of Concerned Scientists.
5	ML15076A459	Garry Morgan	Blue Ridge Environmental Defense League—Bellefonte Efficiency and Sustainability Team/Mothers Against Tennessee River Radiation (BREDL/BEST/MATRR).
6	ML15076A460	G. Dudley Shepard	Private Citizen.
7	ML15085A523	Jason Remer	Nuclear Energy Institute.
8	ML15089A284	James M. Petro, Jr	NextEra Energy.
9	ML15097A337	Anonymous	Anonymous.
10	ML15112A265	Scott Bauer	STARS Alliance.

Seven commenters expressed support for the PRM and proposed identification techniques, while the three remaining commenters (numbers 7, 8, and 10) opposed the PRM in part or in whole. Based on similarity of content, the public comments were grouped into six bins. The NRC reviewed and considered the comments in making its decision to deny the PRM. Summaries of each bin and the NRC's responses are provided in the following discussion in an order that provides appropriate context for the response to each of the comment bins.

NRC Responses to Comments on PRM–50–109

Comment Bin 1: Existing inspection techniques will not adequately detect concrete degradation due to ASR, and C–10's proposed solutions (i.e., requiring compliance with ACI 349.3R and ASTM C856–11 via regulation) are appropriate to adequately detect ASR degradation. (Submission 4, Submission 5, Submission 6)

NRC Response: Although the NRC agrees with the petitioner that visual inspections are not enough to positively confirm ASR, the staff finds visual inspection sufficient to detect ASR concrete degradation before the safety function of a structure or component would be significantly degraded. The NRC disagrees with the comments that ACI 349.3R and ASTM C856–11 should be regulatory requirements. The current ASR literature and case history, as described in Section III and referenced in Section V, ''Availability of Documents,'' of this document, provide no evidence that ASR would degrade the safety function of a structure or component before it expands to a degree that would cause visible symptoms, such as cracking. Existing regulations require inspection methods that can detect applicable degradation mechanisms (including ASR) and require that significant degradation regardless of cause be addressed appropriately through additional plant-specific inspections or structural evaluations. Furthermore, the documents (ACI 349.3R and ASTM C856–11) do not provide specific guidance for identifying ASR

degradation in structures. Therefore, requiring their use via regulation would not provide improved techniques for identifying ASR degradation. Additional details on the NRC's position can be found in Section III, ''Reasons for Denial,'' of this document.

Comment Bin 2: The NRC should grant the C–10 petition for rulemaking because visual inspection of ASR concrete degradation is insufficient. (Submission 1, Submission 2)

NRC Response: The NRC disagrees with this comment. As indicated in the response to Comment Bin 1, there is no evidence in current ASR literature and case history that ASR would degrade the safety function of a structure or component before it expands to a degree that would cause visible symptoms. In addition, NRC staff finds visual inspection sufficient to detect ASR concrete degradation before the safety function of a structure or component would be degraded. Moreover, the commenters did not provide a basis for their position that visual inspection of concrete degradation is insufficient to identify ASR that would lead to unacceptable changes in concrete structural properties.

Comment Bin 3: The NRC should investigate the concrete cracks at Seabrook Station because the concrete degradation poses serious safety concerns. (Submission 3)

NRC Response: The NRC views this comment as a request for regulatory action outside the scope of PRM–50–109. As discussed in Section III of this document, the NRC has referred this comment to its Region I allegations staff, and has advised the commenter of this request.

Comment Bin 4: The nuclear industry does not believe that rulemaking is necessary to resolve issues related to inspecting concrete for ASR degradation. Following the issuance of NRC IN 2011–20, licensees took appropriate actions by: (a) Recording the issue in the Institute for Nuclear Power Operations Operating Experience system; and (b) updating their Structures Monitoring Program, improving procedures, and informing responsible individuals concerning examination for conditions that could potentially indicate the presence of ASR. In addition, there already exist ample regulatory requirements to ensure appropriate attention is given to potentially degraded concrete, including due to ASR. (Submission 7, Submission 10)

NRC Response: The NRC agrees with the comment. By issuing IN 2011–20, the NRC made the U.S. nuclear power industry aware of the operating experience related to ASR concrete degradation at Seabrook Station. Licensees are expected to evaluate INs in their operating experience programs and to incorporate, as appropriate and applicable, the information into their monitoring programs and procedures. Multiple license renewal applications (LRAs) submitted after the issuance of IN 2011–20 included information that demonstrates the monitoring programs have been updated to inspect for ASR degradation, regardless of the aggregate reactivity test results from construction (see, for example, Section 3.5.2.2.2.1.2 of LaSalle County Station LRA (ADAMS Accession No. ML14343A849), Waterford Steam Electric Station LRA (ADAMS Accession No. ML16088A324), and River Bend Station LRA (ADAMS Accession No. ML17153A282)).

Existing regulations such as § 50.55a, ''Codes and Standards''; § 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants''; 10 CFR part 50, appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants''; 10 CFR part 50, appendix J, ''Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors''; and 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' require licensees to monitor the performance or condition of structures and take corrective action to address degraded or nonconforming conditions in a manner commensurate with the safety significance of the structures. Compliance with these regulations provides reasonable assurance that affected structures remain capable of performing their intended functions. Further, the NRC confirms the acceptability of licensees' approaches through processes such as the reactor oversight process, license renewal, and review of licensees' responses to generic communications (*e.g.,* bulletins, generic letters, and INs that address significant industry events, operating experience, and degradation-specific issues that may have generic applicability). The existing regulatory requirements and processes provide reasonable assurance of adequate protection of public health and safety against the potential results of degradation of concrete structures; therefore, it is not necessary to amend the NRC's regulations.

The technical comments and clarifications made by the commenters related to ACI 349.3R and the role of visual inspections are addressed in Section III of this document.

Comment Bin 5: New rulemaking is not necessary to resolve issues related to inspecting concrete for ASR. The ACI 349.3R and ASTM C856–11 have been used for investigation of ASR conditions at Seabrook Station; however, neither standard provides inspectors with new or improved means to identify, monitor, or assess ASR-impacted structures, as implied by the petition. The commenter questions the basis of the petition, including misconceptions and factual errors made in the petition concerning NextEra activities at Seabrook Station. (Submission 8)

NRC Response: The NRC agrees with the comment that new rulemaking is not needed. The guidance in ACI 349.3R is primarily based on visual inspection, addresses only commonly occurring degradation conditions in nuclear structures, and provides very limited guidance with regard to ASR identification, monitoring, and evaluation. Therefore, it is not considered an authoritative document for ASR. ASTM C856–11 is a consensus standard that provides an established method for conducting petrography that can be used to confirm the diagnosis of ASR. Neither ACI 349.3R nor ASTM C856–11, however, provides a method for monitoring progression, or evaluating and quantifying observed ASR effects on structural capacity or performance. These documents have been in existence since 1996 (for ACI 349.3R) and 1977 (for ASTM C856–11) and do not provide any new or improved methods beyond what is already standard practice in the concrete industry.

The portions of the comment concerning NextEra activities at Seabrook Station are addressed in Section III of this document.

Comment Bin 6: Current ASME testing protocols should be followed. Ultrasonic testing should be conducted for reactor pressure vessels to test for defects and radiation filters should be installed on pressure vents as a post-Fukushima precaution. (Submission 9)

NRC Response: As stated in Section III of this document, Section 50.55a(g)(4) requires compliance with the ASME BPV Code, Section XI. The ASME BPV Code, Section XI, Subsection IWL, provides techniques for examination and evaluation of concrete surfaces that licensees follow under their licensing bases. The comments pertaining to ultrasonic testing of reactor pressure vessels and installation of radiation filters are not related to ASR degradation and are outside the scope of PRM–50–109.

III. Reasons for Denial

The NRC has determined that rulemaking, as requested in the petition, is not needed for reasonable assurance

of adequate protection of public health and safety at nuclear power plants with respect to ASR. The NRC's evaluation of the three issues raised in PRM–50–109 are set forth below.

Issue 1: Visual Inspections are not adequate to detect ASR, confirm ASR, or provide the current state of ASR damage.

The NRC agrees with the petitioner that visual inspections are not enough to positively confirm ASR. However, given the slow progression of ASR, visual inspections are sufficient to identify manifestations of potentially damaging ASR before the safety function of a structure or component would be degraded. This would be sufficient to inform whether further actions should be taken. Therefore, the NRC's position is that visual examination is acceptable for routinely monitoring concrete structures to identify areas of potential structural distress or degradation, including degradation due to ASR. This position is supported by the current ASR literature and case history, as referenced in Section V of this document. The occurrence of ASR expansion results in one or more common visual indications (*e.g.,* expansion causing deformation, movement, or displacement; cracking; surface staining; gel exudations; pop-outs) prior to causing significant structural degradation (as shown in Federal Highway Administration (FHWA)–HIF–09–004 and Canadian Standards Association (CSA) A864–00, referenced in Section V of this document). However, the presence of one or more of these visual symptoms is not necessarily an indication that ASR is the main factor responsible for the observed symptoms. If there are visual indications, the presence or absence of ASR should be confirmed by an acceptable method such as petrographic examination.

Based on this information, the NRC maintains that visual examination is an acceptable method for detecting indications of ASR degradation. Once ASR is suspected based on visual indications, the licensee would need to conduct additional inspections, testing (non-destructive or invasive), petrographic analysis, or structural evaluations, as appropriate to the specific case, to evaluate the effects of ASR on structural performance under design loads. This general approach is similar to and consistent with the approach recommended in literature related to ASR (*e.g.,* FHWA–HIF–09–004 and guidance by the Institution of Structural Engineers, referenced in Section V of this document).

The NRC evaluated the following five areas in which the petitioner provided additional information related to this issue.

A. Regarding the statements made by the NRC staff during the June 24, 2014, public meeting the NRC staff stated that it finds the use of visual examination acceptable for routine periodic monitoring, in implementing a structures monitoring program under § 50.65 and the containment inservice inspection program under § 50.55a, and in identifying the general condition of concrete structures and areas that are suspected to have deterioration or distress due to any degradation mechanism, including ASR. If the licensee identifies visual indications of ASR, the next step would be to confirm ASR by petrographic examination or other acceptable methods, and conduct further assessments, as necessary, to determine the impact on the structure's intended functions and the need for corrective actions, as required by appendix B to 10 CFR part 50. While visual inspections alone would not confirm the presence or absence of ASR, a petrographic examination of concrete is not necessary prior to manifestation of visual symptoms of ASR, given the minimal impact ASR has on structural performance of reinforced concrete structures at this stage. The NRC maintains its position that visual examination is an acceptable approach for assessing the concrete's general condition and identifying areas of potential structural distress or deterioration, including areas where ASR is suspected.

B. Specific to the petitioner's statement related to the need to determine the root cause of degradation, existing NRC regulations require that licensees promptly identify conditions adverse to quality, determine the cause, and take corrective actions. Specifically, Criterion XVI, ''Corrective Action,'' of 10 CFR part 50, appendix B requires that conditions adverse to quality such as failures, malfunctions, deficiencies, deviations, defective material and equipment, and nonconformances are promptly identified and corrected. In the case of significant conditions adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition. The NRC agrees that, while other techniques may emerge, petrographic examination of the concrete sample under a microscope is a well-established technique to confirm the presence or absence of ASR at any stage.

Once ASR is confirmed at a site by petrographic examination (conducted after manifestation of characteristic visual symptoms), it is conservative to assume that other structures exhibiting visible symptoms are also affected, based on similarity of materials and environmental exposure conditions. The degradation can then be addressed accordingly.

Appendix B to 10 CFR part 50 already requires the identification of a significant condition adverse to quality, the determination of the cause of the condition through root cause analyses and appropriate follow-up corrective actions. Therefore, a generic revision to the NRC's regulations is not necessary.

C. The NRC has previously responded to the statements referenced by the petitioner from Dr. Paul Brown, which were included in a letter from UCS to the NRC dated November 4, 2013 (ADAMS Accession No. ML13309B606). In a December 6, 2013 response (ADAMS Accession No. ML13340A405), the NRC noted that information from drilled cores may be valuable for assessing the impact of ASR on concrete; however, the use of test data from cores alone may not be an appropriate, realistic indicator of overall structural performance.

Additionally, the NRC notes that ASR literature and case history indicate that ASR has a much more detrimental effect on the mechanical properties of concrete cores and cylinders than on the structural behavior of reinforced concrete structural components and systems (as described in TXDOT Technical Report No. 12–8XXIA006 and the ACI *Structural Journal* article referenced in Section V of this document). These documents indicate that the empirical relationships in the ACI codes between concrete-cylinder compressive strength and other mechanical properties, including structural capacity, may not necessarily remain valid for ASR-affected structures. Reinforced concrete structures and components respond to load as part of a composite structural system in which there are external restraints, internal confinement, and interaction between the steel reinforcement and the concrete. Therefore, an evaluation of the impact of ASR on performance of affected reinforced concrete structural components and systems should consider the context to obtain a realistic assessment of the impact on structural capacity. The use of core test data in the traditional manner, alone, may not be appropriate or realistic to assess structural performance of ASR-affected structures.

D. Regarding the petitioner's reference to the NRC position paper (ADAMS

Accession No. ML13108A047), that document is not an official NRC position on the topic, but rather was prepared by an individual staff member to facilitate internal technical discussion and inform staff review of an issue. The NRC's current position on the role of visual inspections in identifying ASR is set forth in this document. The referenced position paper does not state that visual examination is insufficient to identify indications of ASR. However, it does note that surface cracking or crack mapping, alone, may not indicate the severity of ASR degradation and is not adequate to determine structural effects of ASR. The NRC agrees that surface crack mapping alone is not adequate to monitor ASR progression and to address its structural effects. In addition, petrographic examination provides very limited information to evaluate the structural effects of ASR.

Addressing visual indications of a potential concrete-degradation issue does not end with the visual inspection. Under existing NRC regulations, if indications of distress or deterioration are visually identified, licensees are required to address the effects of the observed degradation and demonstrate that the structure remains capable of performing its safety functions. Depending on the observed conditions, this can be accomplished through additional inspections, testing, structural evaluations, or a combination thereof.

E. Specific to the petitioner's comment on the limited scope of visual inspections, the NRC agrees that visual inspections cannot directly identify degradation in inaccessible portions of concrete structures. However, many below-grade structures in nuclear power plants are accessible for visual inspection on the interior face of the concrete. Additionally, ASR degradation or expansion in inaccessible areas would manifest visually in accessible areas, in the form of cracking, displacements, or deformations, before causing a significant structural impact. As noted previously, current ASR literature and case history show that visual inspections are sufficient to identify manifestations of potentially damaging ASR before there would be significant structural impacts. For concrete containment structures, existing regulations in § 50.55a(b)(2)(viii) require evaluation of the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of, or could result in, degradation to such inaccessible areas. Therefore, existing regulations, regulatory guidance, and licensee programs have provisions to adequately address degradation in inaccessible areas.

The issue of laminar cracking in the shield building at Davis-Besse, referenced by the petitioner, has no connection to ASR detection. Davis-Besse was a unique situation resulting from a combination of extreme environmental conditions and the design configuration of the shield building. The licensee evaluated the issue, including operability determinations and root cause analysis in its corrective action program; and the NRC's continued oversight of the issue has been documented in a series of NRC inspection reports, the latest of which is IR 05000346/2014008, dated May 28, 2015 (ADAMS Accession No. ML15148A489).

Issue 2: Codes and standards exist for detecting and evaluating ASR damage.

The NRC disagrees that there are consensus codes or standards sufficient to provide guidance for detecting and evaluating ASR damage. The scope of both ACI 349.3R and ASTM C856–11 are discussed separately below.

A. The ACI 349.3R is an ACI committee technical report intended to provide recommended guidance for developing and implementing a procedure for inspection and evaluation of many common concrete degradation mechanisms in nuclear concrete structures. It contains only very limited general information regarding ASR. ASR is not a common condition in nuclear power plants, and the quantitative evaluation criteria provided in the document have little or no specific applicability to ASR degradation. Therefore, ACI 349.3R is not an authoritative document to address and evaluate the impact of ASR on intended functions of affected structures.

The discussion of evaluation techniques in ACI 349.3R recommends visual inspection as the initial technique used for any evaluation, and states that visual inspection can provide significant quantitative and qualitative data regarding structural performance and the extent of any degradation. The recommended approach places emphasis on the use of general condition survey practices (visual inspection) in the evaluation, supplemented by additional testing or analysis as needed, based on the results of the general survey. Chapter 5, ''Evaluation Criteria,'' of ACI 349.3R states: ''these guidelines focus on common conditions that have a higher probability of occurrence and are not meant to be all-inclusive. These criteria primarily address the classification and treatment of visual inspection findings because this technique will have the greatest usage.''

Although ACI 349.3R provides useful general guidance for the development and implementation of a monitoring plan for concrete structures, the NRC has neither formally endorsed nor approved it for use. Instead, IN 2011–20 simply mentions ACI 349.3R as a resource where additional information may be found regarding visual inspections (ADAMS Accession No. ML112241029). Since ASR degradation would need to be addressed on a degradation-specific and plant-specific basis, requiring the use of ACI 349.3R would not provide better protection against ASR concrete degradation than the current NRC requirements.

Related to the petitioner's comments on ''composite teams,'' the NRC agrees that qualified personnel should be used to conduct activities pertaining to safety-related functions of structures, systems, and components (SSCs). Existing regulations provide for this in the quality assurance program requirements under appendix B to 10 CFR part 50. This appendix requires applicants and licensees to establish and implement a quality assurance program that applies to all activities affecting the safety-related functions of SSCs. This program specifies controls to provide adequate confidence that SSCs will perform satisfactorily in service, including appropriate qualification and training of personnel performing activities affecting quality to assure suitable proficiency. This adequate confidence is part of the basis for concluding that reasonable assurance of adequate protection is provided. The ASME BPV Code, Section XI, Subsection IWL, defines specific qualifications and responsibilities of the ''responsible engineer,'' who evaluates the examination results and the condition of the structural concrete related to the containment. Section 50.55a(g)(4) requires compliance with the ASME BPV Code, Section XI. In addition to § 50.55a requirements for containments, safety-related structures are monitored under § 50.65 (the maintenance rule), and the associated qualification requirements are typically provided in the licensee's implementing procedures, based on their 10 CFR part 50, appendix B program.

As for the petitioner's claim related to the implementation of ACI 349.3R at Seabrook Station, including the formation of a composite team, this topic is outside the scope of the NRC's consideration of the generic rulemaking action in response to PRM–50–109. However, this apparent claim of licensee wrongdoing was considered by

the NRC's allegations staff in Region I. After discussions with the petitioner, it was confirmed that the petitioner cited the issues with NextEra as examples of its concerns with regulations and did not intend the issues to be considered as allegations.

B. Regarding the petitioner's comments on ASTM C856–11, although the NRC has neither formally endorsed nor approved its use, the NRC agrees that ASTM C856–11 is a consensus standard that details how to conduct petrographic analysis of concrete bores and provides an acceptable method to positively confirm the diagnosis of ASR. However, it does not provide any guidance on when cores should be taken, from where cores should be taken, how many cores should be taken, or how frequently cores should be taken. Also, it does not provide a method to evaluate ASR damage for impact on structural performance.

ASTM C856–11 outlines procedures for the petrographic examination of samples of hardened concrete for a variety of purposes. One of the purposes of this consensus standard is identifying visual evidence to establish whether ASR has taken place, what aggregate constituents were affected, and what evidence of the reaction exists. Petrographic examination provides an assessment of the extent of ASR gel development and its intrusion into the pores of the concrete sample; however, petrographic examination does not indicate the impact of the ASR reaction on the structural performance under design loads. Furthermore, ASTM C856–11 does not provide any guidance on monitoring or evaluating a concrete structure, such as when to take cores, or which portion of a structure should be evaluated via core bores.

Materials laboratories that perform petrographic examination of hardened concrete samples typically follow the current ASTM C856 standard practice for the application, unless another specific procedure is specified in the request. The standard to which a plant-specific petrographic examination is performed is specified by the licensee and not addressed in the regulations. However, appendix B to 10 CFR part 50 requires licensees to ensure that activities affecting safety-related functions are controlled to provide adequate confidence that SSCs will perform satisfactorily in service. Also, 10 CFR part 50, appendix A, ''General Design Criteria for Nuclear Power Plants,'' Criterion 1, ''Quality standards and records,'' requires, in part, that ''where generally recognized codes and standards are used, they shall be identified and evaluated to determine their applicability, adequacy, and sufficiency and shall be supplemented or modified as necessary to assure a quality product in keeping with the required safety function.'' Therefore, the licensee must ensure the analysis is sufficient to identify ASR.

In summary, both ACI 349.3R and ASTM C856–11 provide useful guidance and methods licensees may adopt, as applicable, to meet requirements in existing NRC regulations, such as § 50.55a, § 50.65, and 10 CFR part 54. However, neither of the documents provide methods to comprehensively address the long-term structural impact and management of ASR degradation.

Issue 3: Regulations should require compliance with ACI 349.3R and ASTM C856–11.

The NRC disagrees that its regulations need to be revised to require compliance with ACI 349.3R and ASTM C856–11. The NRC's existing regulations are sufficient to provide reasonable assurance of adequate protection of public health and safety due to concrete degradation, including ASR.

The petition does not take into account the NRC's existing regulatory requirements that each nuclear power reactor licensee must meet to demonstrate the ongoing capability of structures to perform their intended safety functions. The NRC's regulatory requirements are applicable to all operating reactors and focused on overall structure and component performance requirements necessary to maintain intended safety functions. The NRC's regulations do not typically prescribe how licensees must meet the requirements, nor do the regulations normally address degradation-specific issues. The following discussion identifies and briefly summarizes the relevant regulatory requirements and processes and explains how they require licensees to address ASR before it becomes a safety issue.

- Section 50.65 requires licensees to monitor the performance or condition of SSCs under its scope, including safety-related structures, considering industry-wide operating experience, in a manner sufficient to provide reasonable assurance that these SSCs are capable of fulfilling their intended functions. For structures, this requirement is normally met by periodically monitoring their condition on a frequency that is commensurate with their safety significance and condition. If the basic assessments identify degradation, additional degradation-specific condition monitoring is required, along with more frequent assessments until the degradation is addressed. Regulatory Guide (RG) 1.160, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' provides guidance on methods acceptable to the NRC staff for implementation of the maintenance rule and includes the attributes of an acceptable structural monitoring program. In summary, § 50.65 already requires structural assessments that are adequate to detect visual indications of ASR before it would pose a significant structural concern.
- Criterion XVI, ''Corrective Action,'' of appendix B to 10 CFR part 50 requires licensees to implement a corrective action program to assure that conditions adverse to quality and non-conformances are promptly identified and corrected. In the case of significant conditions adverse to quality, the measures shall assure that the cause of the condition is determined, and corrective action is taken to preclude repetition. This requirement applies to all degradation mechanisms, including ASR. In the case of ASR, a licensee would have to identify the root cause of the degradation and address the degradation, such that intended safety functions are not impacted. Accordingly, Criterion XVI is an NRC regulatory requirement that provides for the identification and further technical evaluation of ASR, before there would be significant degradation to the structural integrity of safety-related concrete structures at nuclear power plants.
- Section 50.55a(g)(4) requires licensees to inspect concrete containments in accordance with the ASME BPV Code, Section XI, Subsection IWL, as incorporated by reference and subject to conditions. Subsection IWL requires that a general visual examination of all accessible containment concrete surfaces be conducted every 5 years by qualified personnel under the direction of the ''responsible engineer.'' Further, Subsection IWL requires a detailed visual examination to determine the magnitude and extent of deterioration and distress of suspect containment concrete surfaces initially detected by general visual examinations. Subsection IWL specifies acceptance standards based on acceptance by examination, acceptance by engineering evaluation (requires preparation of an engineering evaluation report including cause of the condition), or acceptance by repair/replacement. In accordance with the condition on use of Section XI in § 50.55a(b)(2)(viii)(E), licensees must evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. These

requirements are designed to ensure that visual indications of ASR will be detected prior to causing significant structural degradation that could impact the intended safety function of the containment. Accordingly, § 50.55a is a requirement that provides for the identification and further technical evaluation of ASR, before there would be significant degradation of structural integrity of concrete containment structures at nuclear power plants.

• Appendix J to 10 CFR part 50, ''Primary Reactor Containment Leakage Testing Requirements for Water Cooled Reactors,'' requires that primary reactor containments periodically meet the leakage-rate test requirements to ensure that (a) leakage does not exceed allowable rates listed in the technical specifications; and (b) integrity of the containment structure is maintained during its service life. This regulation requires periodic performance monitoring of the containment to demonstrate that the containment can perform its intended safety function, regardless of identified degradation. If the containment were unable to meet the requirements of 10 CFR part 50, appendix J, it would be declared inoperable and the plant could not return to operation until the issue was addressed. Accordingly, appendix J of 10 CFR part 50 is a regulatory requirement that provides for the identification and technical evaluation of ASR, before there would be significant degradation of structural integrity of concrete containment structures at nuclear power plants.

• Section 54.21(a)(3) requires applicants for license renewal to demonstrate that the effects of aging will be adequately managed, such that the intended functions of structures and components subject to aging management are maintained, consistent with the current licensing basis for the period of extended operation. Regulatory guidance for developing aging management programs, including for ASR aging effects on concrete structures, is provided in NUREG–1801, ''Generic Aging Lessons Learned Report'' (GALL Report). Any licensee applying for license renewal must have a structural aging management program in place that can identify indications of concrete degradation, including degradation due to ASR, before it becomes an issue that could impact an intended safety function. Accordingly, § 54.21(a)(3) is a regulatory requirement that provides for the identification and further technical evaluation of ASR, before there is significant degradation to the structural integrity of safety-related concrete structures at nuclear power plants.

• The Reactor Oversight Process (ROP) is the process that the NRC uses to verify that power reactors are operating in accordance with NRC rules and regulations. Under the ROP, the NRC conducts routine baseline inspections, problem identification and resolution inspections, reactive inspections, and other assessments of plant performance. If licensees are not properly meeting the regulations, the NRC can take actions to protect public health and safety.

• The generic communications process is used to address potential generic issues that are safety significant and may necessitate action by licensees to resolve. Generic communications, which include bulletins, generic letters and INs, are used to convey safety significant issues and operating experience, including degradation-specific issues. The NRC has issued a generic communication (IN 2011–20) to inform the industry of the generic impacts of ASR. Information about the NRC's Generic Communications Program is available at *https://www.nrc.gov/about-nrc/regulatory/gencomms.html*.

• The enforcement process may be used if licensees fail to adequately address safety-significant issues, consistent with the regulatory requirements as outlined above. The NRC may use enforcement actions, including issuing orders pursuant to § 2.202, ''Orders,'' to modify, suspend, or revoke a license if ASR becomes a safety-significant issue that a licensee is not adequately addressing.

In addition to these generic requirements and processes, the GALL Report (NUREG–1801) makes specific reference to ACI 349.3R in its guidance for aging management programs (AMPs). AMP XI.S6, ''Structures Monitoring,'' recommends that visual inspection be used to identify structural distress or deterioration of concrete, such as that described in ACI 201.1R and ACI 349.3R. In addition, the GALL Report notes that the personnel qualifications in Chapter 7 and the evaluation criteria in Chapter 5 of ACI 349.3R are acceptable for concrete structures. However, the GALL Report also notes that use of plant-specific criteria may also be justified. Although ACI 349.3R is one acceptable method to monitor concrete structures for degradation, it is not the only method, and so there is no need for the NRC to require its exclusive use via regulation.

With respect to ASTM C856–11, the NRC agrees that it is an acceptable and established consensus testing standard for conducting petrographic examination of hardened concrete that can be used to confirm the diagnosis of ASR. However, as discussed previously, the NRC's existing regulations in 10 CFR part 50, appendix A and appendix B, ensure appropriate methods or standards are used when conducting tests associated with safety-related structures. Therefore, there is no need to require the use of ASTM C856–11 through regulation.

The NRC also considered whether ASR concrete degradation raises new safety concerns that would justify additional regulatory requirements for all licensees beyond those already included in NRC regulations. While it is possible that there could be plants that used a potentially reactive aggregate in their concrete, the NRC is not aware of any U.S. nuclear power plants, other than Seabrook Station, that have a documented occurrence of ASR. The NRC notes that the use of a potentially reactive aggregate does not necessarily result in the occurrence of ASR. In addition to reactive aggregates, relatively high alkali content in the cement, and high relative humidity levels are necessary for ASR to occur. Through the issuance of IN 2011–20, the NRC has informed licensees of the occurrence of ASR-induced concrete degradation at Seabrook Station, with the expectation that the operating experience would be evaluated by licensees and considered for appropriate action. Thus, the nuclear power industry is aware of the potential for ASR to occur, even if aggregates were screened out based on reactivity or other tests conducted at the time of construction. For the reasons outlined above, the NRC has determined that the agency's existing regulatory structure is sufficient for the identification and technical evaluation of ASR before there is significant degradation to the structural integrity of safety-related concrete structures at nuclear power plants. Therefore, new or amended regulations are not needed to require industry-wide compliance with ACI 349.3R and ASTM C856–11.

The petitioner's claims related to Seabrook Station are outside the scope of the NRC's consideration of the generic rulemaking action in response to PRM–50–109; however, the apparent claims of NRC wrongdoing were forwarded to the NRC's Office of the Inspector General and subsequently to the NRC's allegations staff in Region I. After discussions with the petitioner, the NRC confirmed that the petitioner cited the issues as examples of their concerns with the regulations and did

not intend them to be considered as allegations or claims of wrongdoing.

IV. Conclusion

For the reasons cited in Section III of this document, the NRC is denying PRM–50–109 under § 2.803. Existing NRC regulations establish programmatic and design basis requirements that are adequate to address the effects of concrete degradation mechanisms, including ASR, in safety-related structures. Compliance with these regulations, verified through NRC licensing and oversight processes, provide reasonable assurance of adequate protection of public health and safety. Specifically, existing NRC regulations ensure that concrete degradation due to ASR will not result in unacceptable reductions in structural capacity of safety-related structures at nuclear power plants. Therefore, new or amended regulations to require the use of the documents identified in the PRM (ACI 349.3R and ASTM C856–11) to provide better protection against concrete degradation due to ASR are not needed in order to provide reasonable assurance of adequate protection of public health and safety at U.S. nuclear power plants.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated. For more information on accessing ADAMS, see the **ADDRESSES** section of this document.

Document	ADAMS Accession No./**Federal Register** citation/report No. and date	Link to publication
PRM Documents		
PRM from the C–10 Research and Education Foundation.	ADAMS Accession No. ML14281A124, September 25, 2014.	*https://pbadupws.nrc.gov/docs/ML1428/ML14281A124.pdf.*
Federal Register notice for PRM, notice of docketing, and request for comment.	**Federal Register**/Vol. 80, No. 7/Monday, January 12, 2015/Proposed Rules.	*https://www.gpo.gov/fdsys/pkg/FR-2015-01-12/html/2015-00199.htm.*
SECY–18–0036, ''Denial of Petition for Rulemaking Submitted by the C–10 Foundation (PRM–50–109).	ADAMS Accession No. ML15301A084, March 8, 2018.	*https://pbadupws.nrc.gov/docs/ML1530/ML15301A084.pdf.*
Public Comments on PRM (*see table under the heading, I. Public Comments on the Petition*).		
ASR-Related Technical Materials		
''Standard Practice for Petrographic Examination of Hardened Concrete'', ASTM International.	ASTM C856–11, 2011	Available for purchase: *https://www.astm.org/Standards/C856.htm.*
''Evaluation of Existing Nuclear Safety Related Concrete Structures'', American Concrete Institute.	ACI 349.3R–02, June 2002	Available for purchase: *https://www.concrete.org/store/productdetail.aspx?ItemID=349302&Format=DOWNLOAD.*
''Guide to the Evaluation and Management of Concrete Structures Affected by Alkali-Aggregate Reaction'', CSA Group.	CSA A864–00 Reaffirmed 2005	Available for purchase: *https://shop.csa.ca/en/canada/concrete/a864-00-r2005/invt/27010172000.*
''ASR/DEF Damaged Bent Caps: Shear Tests and Field Implications'' Texas Department of Transportation.	Technical Report No. 12–8XXIA006, August 2009.	*https://library.ctr.utexas.edu/digitized/IACreports/IAC-12-8XXIA006.pdf.*
''Report on the Diagnosis, Prognosis, and Mitigation of Alkali–Silica Reaction (ASR) in Transportation Structures'', Federal Highway Administration.	FHWA–HIF–09–004, January 2010	*https://www.fhwa.dot.gov/pavement/concrete/pubs/hif09004/hif09004.pdf.*
NRC Information Notice 2011–20: Concrete Degradation by Alkali-Silica Reaction, NRC.	ADAMS Accession No. ML112241029, November 18, 2011.	*https://www.nrc.gov/docs/ML1122/ML112241029.pdf.*
''Position Paper: In Situ Monitoring of Alkali-Silica Reaction (ASR) Affected Concrete: A Study on Crack Indexing and Damage Rating Index to Assess the Severity of ASR and to Monitor ASR Progression'', NRC.	ADAMS Accession No. ML13108A047, April 30, 2013.	*https://www.nrc.gov/docs/ML1310/ML13108A047.pdf.*
Referenced Documents Specific to Seabrook Station		
''Seabrook Station: Impact of Alkali-Silica Reaction on Concrete Structures and Attachments'', MPR Associates Inc.	ADAMS Accession No. ML12151A397, May 2012.	*https://www.nrc.gov/docs/ML1215/ML12151A397.pdf.*
''Seabrook Station Response to Confirmatory Action Letter'', NextEra.	ADAMS Accession No. ML13151A328, May 1, 2013.	*https://www.nrc.gov/docs/ML1315/ML13151A328.pdf.*
Letter from David Wright, UCS, to NRC Commissioners, UCS.	ADAMS Accession No. ML13309B606, November 4, 2013.	*https://www.nrc.gov/docs/ML1330/ML13309B606.pdf.*
Letter from William M. Dean, NRC, to David Wright, UCS, NRC.	ADAMS Accession No. ML13340A405, December 6, 2013.	*https://www.nrc.gov/docs/ML1334/ML13340A405.pdf.*
Letter from Robert M. Taylor, NRC, to Sandra Gavutis, C–10, NRC.	ADAMS Accession No. ML16169A172, July 6, 2016.	*https://www.nrc.gov/docs/ML1616/ML16169A172.pdf.*
Additional Referenced Documents		
NUREG–1801, ''Generic Aging Lessons Learned Report,'' Revision 2.	December 2010	https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1801/.

Document	ADAMS Accession No./**Federal Register** citation/report No. and date	Link to publication
RG 1.160, ''Monitoring the Effectiveness of Maintenance at Nuclear Power Plants,'' Revision 3.	ADAMS Accession No. ML113610098, May 2012.	*https://www.nrc.gov/docs/ML1136/ML113610098.pdf.*
''Davis-Besse Nuclear Power Station—Inspection of Apparent Cause Evaluation Efforts for Propagation of Laminar Cracking in Reinforced Concrete Shield Building and Closure of Unresolved Item Involving Shield Building Laminar Cracking Licensing Basis—Inspection Report 05000346/2014008'', NRC.	ADAMS Accession No. ML15148A489, May 28, 2015.	*https://www.nrc.gov/docs/ML1514/ML15148A489.pdf.*

Dated at Rockville, Maryland, this 19th day of November 2019.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

[Docket No. PRM–171–1; NRC–2019–0084]

Nuclear Power Plant License Fees Upon Commencing Commercial Operation

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; partial consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in its rulemaking process one issue raised in a petition for rulemaking, PRM–171–1, dated February 28, 2019, submitted by Dr. Michael D. Meier on behalf of the Southern Nuclear Operating Company (the petitioner), and is denying the remaining issue in PRM–171–1. The petitioner requested that the NRC amend its regulations related to the start of the assessment of annual fees for certain nuclear power plants.

DATES: The docket for the petition for rulemaking PRM–171–1 is closed on November 26, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0084 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2019–0084. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Dennis Andrukat, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–1325, email: *Dennis.Andrukat@nrc.gov,* or Jo A. Jacobs, Office of the Chief Financial Officer, telephone: 301–415–8388; email: *Jo.Jacobs@nrc.gov*. Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

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I. The Petition
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I. The Petition

The NRC received and docketed a petition for rulemaking (PRM), dated February 28, 2019 (ADAMS Accession No. ML19081A015) filed by Dr. Michael D. Meier, on behalf of the Southern Nuclear Operating Company (the petitioner). The NRC published a notice of docketing and request for comment in the **Federal Register** on June 10, 2019 (84 FR 26774). The petitioner requested that the NRC revise its regulations in part 171 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Annual fees for reactor licenses and fuel cycle licenses and materials licenses, including holders of certificates of compliance, registrations, and quality assurance program approvals and government agencies licensed by the NRC,'' related to the start of the assessment of annual fees for a combined license (COL) holder, to align with commencement of ''commercial operation'' [1] of a licensed nuclear power plant. Specifically, the petitioner requested that the NRC revise the timing of when annual license fees commence for holders of a COL under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power plants,'' in order to coincide with the time when a reactor achieves commercial operation, rather than when a § 52.103(g) finding is issued, which is when the NRC finds that the acceptance criteria in the COL are met and the licensee can begin operating the facility.

The petitioner stated that the issuance of the § 52.103(g) finding will occur prior to reactor startup, and several months before commercial operation of the reactor. The petitioner further noted that during this startup phase, the reactor will not have achieved commercial operation, and the licensee will be incapable of deriving revenue from the production of energy beyond the *de minimis* amounts from test energy. The petitioner asserted that because commercial operation does not occur until several months after the § 52.103(g) finding, the current language of § 171.15(a), ''Annual fees: Reactor licensees and independent spent fuel storage licenses,'' does not align with the NRC's stated policy to assess annual fees based on the benefits of receiving

[1] The petitioner defined ''commercial operation.'' The NRC does not have an official definition for commercial operation.

authorization to operate. The petitioner proposed that the regulations in § 171.15(a) be revised such that the responsibility of 10 CFR part 52 licensees to pay annual fees under 10 CFR part 171 be imposed at the time when the power reactor is deemed available for commercial operation under the licensee's and/or State regulatory agency's accounting rules.

The NRC identified two main issues in the petition related to the start of the assessment of annual fees for certain nuclear power plants:

Issue 1: To amend the regulations, for 10 CFR part 52 COL holders, to commence the assessment of annual fees at a time after the § 52.103(g) finding is issued.

Issue 2: To amend the regulations, for 10 CFR part 52 COL holders, to commence the assessment of annual fees when the ''facility has been declared available for commercial operation under applicable standards of the licensee or the State regulatory commission with jurisdiction over the facility.''

II. Public Comments on the Petition

The docketing notice for the petition invited interested persons to submit comments. The comment period closed on July 10, 2019. During the 30-day public comment period, the NRC received five public comment submissions with a total of seven comments, from the Nuclear Energy Institute, industry stakeholders, and one non-government organization. Comments received on the petition will be addressed in the proposed rule, ''Revision of Fee Schedules: Fee Recovery for FY 2020'' (NRC–2017–0228; RIN 3150–AK10).

III. Reasons for Consideration

The NRC will consider Issue 1 in the rulemaking process.

The petitioner proposed that § 171.15(a) be revised such that the responsibility for 10 CFR part 52 licensees to pay NRC annual fees under 10 CFR part 171 begin when the power reactor is deemed available for commercial operation under the licensee's and/or State regulatory agency's accounting rules. The petitioner stated there could be several months between the issuance of the § 52.103(g) finding and when the reactor has achieved commercial operation—that is, ''capable of deriving revenue from the production of energy beyond the *de minimis* amounts from test energy.''

The NRC regulations at § 171.15 currently require a 10 CFR part 52 COL holder to pay the annual fee upon the Commission's finding under § 52.103(g) that all acceptance criteria in the COL are met. Historically, annual fees commence when a licensee becomes authorized to possess and use licensed material, because this is when the licensee receives the benefits of a license. For 10 CFR part 52 COL holders, the authorization to use the material (*i.e.,* begin operating the reactor) is currently received when a § 52.103(g) finding is issued. Additionally, the NRC does not base fees on economic considerations such as licensees' economic status, market conditions, or the inability of licensees to pass through costs to its customers.

The NRC is required by statute, the Omnibus Budget Reconciliation Act of 1990, as amended, to apply fairness and equity in the assessment of fees to licensees. The NRC has found that it is fair and equitable to change the timing of when annual fees commence for 10 CFR part 52 licensees from when a § 52.103(g) finding is issued to a time that aligns more closely with becoming fully operational after the start up and initial testing phase. The NRC recognizes that, after the § 52.103(g) finding, fuel must be loaded and power ascension testing must be completed to provide assurance that the facility is fully operational. This process includes written notification to the NRC that successful power ascension testing is competed.[2]

Based on the NRC's review of this issue in PRM–171–1 and the public comments received, the NRC also will consider amending the timing regarding the assessment of annual fees to apply to future 10 CFR part 50 power reactor licensees. Public commenters were supportive of the proposed change, including the Nuclear Energy Institute, which represents numerous members of the class of licensees that would be directly impacted by this change. This issue will be considered in the FY 2020 proposed fee rule.

IV. Reasons for Denial

The NRC is denying Issue 2 raised by the petitioner.

The petitioner proposed that the regulations in § 171.15(a) be revised such that the responsibility for NRC annual fees under 10 CFR part 171 for 10 CFR part 52 licensees be imposed at the time when the power reactor is deemed available for commercial operation under the licensee's and/or State regulatory agency's accounting rules. The petitioner recommended revising § 171.15(a) to commence annual fees ''after the facility for which such license was issued has been declared available for commercial operation under applicable standards of the licensee or the State regulatory commission with jurisdiction over the facility.'' The petitioner also recommended deleting ''after the Commission has made the finding under § 52.103(g).''

The Commission has previously addressed this issue in the statement of considerations for the FY 2002 final fee rule (67 FR 42611; June 24, 2002). Specifically, the Commission stated that ''the NRC has not based its fees on licensees' economic status, market conditions, or the ability of licensees to pass through the costs to its customers.'' In keeping with the agency's safety and security mission, the NRC's regulations deliberately are not tied to economic viability or profitability, and the NRC has not assessed fees based on these concepts.

The petitioner interpreted the statement of considerations from the FY 2007 final fee rule (72 FR 31426, June 6, 2007) to mean that charging annual fees is associated with the ''benefits of receiving the NRC's authorization to operate.'' The petitioner maintained that this benefit is not gained with the issuance of a § 52.103(g) finding but with the start of commercial operation of the reactor. The petitioner defined commercial operation as the point at which ''the power reactor will be capable of generating sufficient energy to reliably serve the licensee's customers and generate sufficient revenue for the licensees to justify imposition of the annual fee.''

For three reasons, the NRC did not elect to adopt this approach. First, in contrast to the point at which power ascension tests are complete, there is no regulatory requirement for a licensee to notify the NRC when the licensee first begins commercial operation. Second, the term ''commercial operation'' is undefined in NRC regulations. Third, the Commission's longstanding and fundamental policy underlying the fee structure states that the imposition of the annual fee should not be related to the licensee's financial justification if the NRC is to maintain the integrity of the statutorily mandated fee collection requirements. The statement of considerations for the FY 2007 final fee rule, which the petitioner references, discusses that annual fees are based on the benefits of receiving operation authorization, regardless of whether the

[2] Only the current 10 CFR part 52 COLs contain a standard license condition that requires written notification be submitted to the NRC upon successful completion of power ascension testing. The NRC will consider adding this standard license condition to future 10 CFR parts 50 and 52 power reactor licensees.

licensee chooses to operate. The ''benefits'' received, as described therein, are not related to a determination of when commercial operation begins or the licensee's ability to generate revenue. The collection of annual fees is required to recover the resources needed to regulate each fee class that are not otherwise recovered through charges assessed for specific services in each fee class under 10 CFR part 170, ''Fees for facilities, materials, import and export licenses, and other regulatory services under the Atomic Energy Act of 1954, as amended.'' Additionally, NRC fees are not based on whether a licensed entity is commercially operating or commercially viable, and the NRC achieves fairness and equity by conducting an annual public rulemaking process to update its fees. Furthermore, an analysis of a licensee's commercial viability is outside the mission of the agency. Therefore, the NRC will not consider amending fee regulations to begin annual fee assessments based upon commercial operation under the licensee's and/or State regulatory agency's accounting rules.

V. Conclusion

For the reasons cited in this document, the NRC will consider one issue raised in this petition in its rulemaking process and will deny the remaining issue. The NRC will consider the one issue in the FY 2020 proposed fee rule. The NRC notes that acceptance of this portion of the petition into the rulemaking process does not mean that the petitioner's concerns will be addressed exactly as the petitioner requested. The NRC tracks the status of petitions and rules on its websites at *https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html* and *https://www.nrc.gov/about-nrc/regulatory/rulemaking/rules-petitions.html*. The public may monitor the docket for the rulemaking addressing Issue 1 on the Federal rulemaking website, *https://www.regulations.gov,* by searching on Docket ID NRC–2017–0228. In addition, the Federal rulemaking website allows members of the public to receive alerts when changes or additions occur in a docket folder. To subscribe: (1) Navigate to the docket folder (NRC–2017–0228); (2) click the ''Email Alert'' link; and (3) enter an email address and select the frequency for email receipts (daily, weekly, or monthly). As in all rulemakings, the NRC will request and consider public comments during the proposed rule phase before determining the approach that will be the basis for the final rule.

Dated at Rockville, Maryland, this 19th day of November, 2019.

For the Nuclear Regulatory Commission.

Maureen E. Wylie,

Chief Financial Officer.

[FR Doc. 2019–25581 Filed 11–25–19; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2019–0875; Product Identifier 2019–NM–143–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 747–400 series airplanes. This proposed AD was prompted by a report of a certain modification that causes interference with inspections that are intended to detect fatigue cracks. This proposed AD would require repetitive low frequency eddy current (LFEC) inspections of a certain fuselage upper skin lap splice for cracks, repetitive high frequency eddy current (HFEC) inspections of a certain fuselage upper skin lap splice for cracks, and applicable on-condition actions. 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 January 10, 2020.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com*. You may view this referenced service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0875.

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–2019–0875; 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: Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@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–2019–0875; Product Identifier 2019–NM–143–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 agency will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

Discussion

The FAA has received a report indicating that installation of a fuselage modification (Mod) doubler common to station (STA) 1640 to STA 1820 at stringer (STR)–34 and STR–40, done as

part of a The Boeing Company Model 747–400BCF conversion, interferes with existing required inspections, which are intended to detect fatigue cracks. As a result, the existing inspections, which are required by AD 2008–16–14, Amendment 39–15632 (73 FR 47035, August 13, 2008) (''AD 2008–16–14''), do not provide adequate fatigue crack detection in the area of the modification. This condition, if not addressed, could result in sudden decompression and loss of structural integrity of the airplane.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019. This service information describes procedures for repetitive LFEC inspections of a certain fuselage upper skin lap splice for cracks, repetitive HFEC inspections of a certain fuselage upper skin lap splice for cracks, and applicable on-condition actions. On-condition actions include repair. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishment of the actions identified in Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019, described previously, except for any differences identified as exceptions in the regulatory text of this proposed AD.

For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2019–0875.

Explanation of Requirements Bulletin

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

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

Costs of Compliance

The FAA estimates that this proposed AD would affect 3 airplanes of U.S. registry. The agency estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
LFEC inspection	5 work-hours × $85 per hour = $425 per inspection cycle.	$0	$425 per inspection cycle ...	$1,275 per inspection cycle.
HFEC inspection	5 work-hours × $85 per hour = $425 per inspection cycle.	0	$425 per inspection cycle ...	$1,275 per inspection cycle.

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

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

This 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–2019–0875; Product Identifier 2019–NM–143–AD.

(a) Comments Due Date

The FAA must receive comments by January 10, 2020.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of a certain modification that causes interference with inspections that are intended to detect fatigue cracks. The FAA is issuing this AD to address undetected fatigue cracks, which could result in sudden decompression and loss of structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019.

Note 1 to paragraph (g) of this AD: Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2901, dated July 25, 2019, which is referred to in Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019.

(h) Exceptions to Service Information Specifications

(1) For purposes of determining compliance with the requirements of this AD: Where Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019, uses the phrase ''the original issue date of the Requirements Bulletin 747–53A2901 RB,'' this AD requires using ''the effective date of this AD,'' except where Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019, uses the phrase ''the original issue date of the Requirements Bulletin 747–53A2901 RB'' in a note or flag note.

(2) Where Boeing Alert Requirements Bulletin 747–53A2901 RB, dated July 25, 2019, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) 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 (j)(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.

(j) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3520; email: *bill.ashforth@faa.gov*.

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

Issued in Des Moines, Washington, on November 15, 2019.

Dionne Palermo,

Acting Director, System Oversight Division, Aircraft Certification Service.

[FR Doc. 2019–25574 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0834; Airspace Docket No. 19–ASO–22]

RIN 2120–AA66

Proposed Amendment of the Class E Airspace; Bowling Green and Somerset, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace area designated as a surface area and the Class E airspace extending upward from 700 feet above the surface at Bowling Green-Warren County Regional Airport, Bowling Green, KY, and Lake Cumberland Regional Airport, Somerset, KY. The FAA is proposing this action as the result of the decommissioning of the Bowling Green VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. Additionally, the name and geographic coordinates of Lake Cumberland Regional Airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 10, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0834; Airspace Docket No. 19–ASO–22, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591;

telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace area designated as a surface area and the Class E airspace extending upward from 700 feet above the surface at Bowling Green-Warren County Regional Airport, Bowling Green, KY, and Lake Cumberland Regional Airport, Somerset, KY, to support instrument flight rule operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0834; Airspace Docket No. 19–ASO–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace area designated as a surface area at Bowling Green-Warren County Regional Airport, Bowling Green, KY, by removing the Bowling Green VORTAC and associated extension from the airspace legal description; and adding an extension within 1 mile each side of the 030° bearing from the airport extending from the 4.2-mile radius to 4.5 miles north of the airport;

Amending the Class E airspace area designated as a surface area at Lake Cumberland Regional Airport, Somerset, KY, by removing the Bowling Green VORTAC from the airspace legal description; adding an extension within 1 mile each side of the 043° bearing from the airport extending from the 4-mile radius to 4.8 miles northeast of the airport; and updating the name and geographic coordinates of Lake Cumberland Regional Airport (previously Somerset—Pulaski County—J.T. Wilson Field Airport) to coincide with the FAA's aeronautical database;

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile radius (increased from a 6.6-mile radius) of Bowling Green-Warren County Regional Airport; and removing the Bowling Green VORTAC and associated extension from the airspace legal description;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from an 8.6-mile radius) of Lake Cumberland Regional Airport; removing the Cumberland River NDB and associated extension as they are no longer required; adding an extension 8 miles south and 3.8 miles north of the 228° bearing from the Lake Cumberland Regional: RWY 05–LOC extending from the 6.5-mile radius of the Lake Cumberland Regional Airport to 10 miles southwest of the Lake Cumberland Regional: RWY 05–LOC; and updating the name and geographic coordinates of the Lake Cumberland Regional Airport (previously Somerset—Pulaski County—J.T. Wilson Field Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Bowling Green VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ASO KY E2 Bowling Green, KY [Amended]

Bowling Green-Warren County Regional Airport, KY,
(Lat. 36°57′52″ N, long. 86°25′11″ W)

Within a 4.2-mile radius of Bowling Green-Warren County Regional Airport, and within 1 mile each side of the 030° bearing from the airport extending from the 4.2-mile radius to 4.5 miles north of the airport.

* * * * *

ASO KY E2 Somerset, KY [Amended]

Lake Cumberland Regional Airport, KY
(Lat. 37°03′13″ N, long. 84°36′56″ W)

Within a 4-mile radius of Lake Cumberland Regional Airport, and within 1 mile each side of the 043° bearing from the airport extending from the 4-mile radius to 4.8 miles northeast of the airport.

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

* * * * *

ASO KY E5 Bowling Green, KY [Amended]

Bowling Green-Warren County Regional Airport, KY
(Lat. 36°57′52″ N, long. 86°25′11″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Bowling Green-Warren County Regional Airport.

* * * * *

ASO KY E5 Somerset, KY [Amended]

Lake Cumberland Regional Airport, KY
(Lat. 37°03′13″ N, long. 84°36′56″ W)

Lake Cumberland Regional: RWY 05–LOC, KY
(Lat. 37°03′38″ N, long. 84°36′28″ W)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the Lake Cumberland Regional Airport, and within 8 miles south and 3.8 miles north of the 228° bearing from the Lake Cumberland Regional: RWY 05–LOC extending from the 6.5-mile radius of the Lake Cumberland Regional Airport to 10 miles southwest of the Lake Cumberland Regional: RWY 05–LOC.

Issued in Fort Worth, Texas, on November 18, 2019.

Steve Szukala,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–25437 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0833 Airspace Docket No. 19–ASW–13]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Mansfield, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at C E 'Rusty' Williams Airport, Mansfield, LA. The FAA is proposing this action as the result of the decommissioning of the Mansfield non-directional beacon (NDB), which provided navigation information for the instrument procedures at this airport. Additionally, the name and geographic coordinates of C E 'Rusty' Williams Airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Comments must be received on or before January 10, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2019–0833; Airspace Docket No. 19–ASW–13, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email *fedreg.legal@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code.

Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would amend the Class E airspace extending upward from 700 feet above the surface at C E 'Rusty' Williams Airport, Mansfield, LA, to support instrument flight rule operations at this airport.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2019–0833; Airspace Docket No. 19–ASW–13.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace area extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 6.5-mile radius) at C E 'Rusty' Williams Airport, Mansfield, LA; removing the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; removing the Mansfield RBN and associated extension from the airspace legal description; and updating the name and geographic coordinates of the C E 'Rusty' Williams Airport (previously DeSoto Parish Airport) to coincide with the FAA's aeronautical database.

These actions are the result of an airspace review caused by the decommissioning of the Mansfield NDB, which provided navigation information for the instrument procedures at this airport.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. FAA Order 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

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

* * * * *

ASW LA E5 Mansfield, LA [Amended]

C E 'Rusty' Williams Airport, LA

(Lat. 32°04′22″ N, long. 93°45′56″ W)

That airspace extending upward from 700 feet above the surface within 6.4-mile radius of the C E 'Rusty' Williams Airport.

Issued in Fort Worth, Texas, on November 18, 2019.

Steve Szukala,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2019–25435 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408, and 416

[Docket No. SSA–2018–0028]

RIN 0960–AI33

Advance Designation of Representative Payees for Social Security Beneficiaries

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Strengthening Protections for Social Security Beneficiaries Act of 2018 (Strengthening Protections Act) requires us to promulgate regulations specifying the information Social Security beneficiaries and applicants must provide to designate a representative payee in advance of our determination that the beneficiary needs a representative payee. We propose to revise our rules to satisfy this requirement, and to specify that we will allow individuals to designate in advance one or more potential representative payees. We also explain how we propose to consider an individual's advance designation when we select a representative payee.

DATES: To ensure that your comments are considered, we must receive them by no later than December 26, 2019.

ADDRESSES: You may submit comments by any one of three methods—internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2018–0028 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2018–0028. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Peter Smith, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–3235. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background on Representative Payees

A representative payee is a person or an organization that we select to receive and manage Social Security benefits, Special Veterans benefits, and Supplemental Security Income (SSI) payments on behalf of a beneficiary. Generally, beneficiaries have the right to receive their benefits directly and manage them independently. However, we may determine that a beneficiary is unable to manage or direct the management of benefit payments because of the beneficiary's mental or physical condition, or because of the beneficiary's age.[1] In these cases, we appoint a representative payee when we believe it will serve the beneficiary's interest to receive benefits through a representative payee instead of receiving them directly.[2]

When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving,[3] and supports the best interest of the beneficiary.[4] It is important for us to select the best possible representative payee to ensure that the benefits are used for purposes in the best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations.[5]

Background on Section 201 of the *Strengthening Protections Act*

President Trump signed the *Strengthening Protections Act* into law on April 13, 2018.[6] Section 201 of that Act, ''Advance Designation of Representative Payees,'' amends section 205(j)(1) of the Social Security Act[7] to allow for advance designation of representative payees. It also requires us to promulgate regulations specifying the information that an individual must provide to designate a representative payee in advance.

Before we developed these proposed regulations, we hosted a National Disability Forum (NDF) on Advance Designation of Representative Payees, at which we received feedback from panelists with experience in fields relevant to our representative payee program.[8] We considered this feedback in developing these proposed regulations.

Explanation of Advance Designation

Section 201 of the *Strengthening Protections Act* establishes that individuals who are entitled to or applying for a benefit under title II, title VIII, or title XVI, and who have attained 18 years of age or are emancipated minors, are permitted to designate in advance one or more other individuals as a possible representative payee. We propose that these applicants or beneficiaries may designate one or more possible representative payees, provided that we have not determined the applicant or beneficiary is mentally or physically incapable of managing benefit payments, or that the applicant or beneficiary has not been found legally incompetent. Based on feedback we received at the NDF, these advance designations would not expire. Consistent with the *Strengthening*

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[1] See 42 U.S.C. 405(j)(1), 807(a), 1383(a)(2)(A)(ii); 20 CFR 404.2001(b), 408.601(b), 416.601(b).

[2] See 20 CFR 404.2001(a), 20 CFR 408.601(a), and 20 CFR 416.601(a).

[3] See 20 CFR 404.2022 and 416.622.

[4] See 20 CFR 404.2020 and 416.620.

[5] See 20 CFR 404.2035, 408.635, and 416.635 and, generally, 20 CFR part 404, subpart U, 20 CFR part 408, subpart F, and 20 CFR part 416, subpart F.

[6] *https://www.congress.gov/bill/115th-congress/house-bill/4547*.

[7] 42 U.S.C. 405(j)(1).

[8] To view additional information and materials related to the NDF, including panelist biographies and audio of the morning and afternoon sessions, go to *https://www.ssa.gov/ndf/ndf_outreach.htm#ht=tab10* and click on the tab for 10/30/2018.

Protections Act, we would only permit advance designations of individuals, not organizations.[9]

We propose that these individuals may designate possible representative payees in advance by providing us with the required information. This required information would include the name and telephone number of each advance designee and the priority order in which the individual would like us to consider the advance designees, if more than one are designated. Our current systems will allow for an applicant or beneficiary to designate up to three possible representative payees, however the relevant systems prevent us from receiving more than three designees at this time. Based on the feedback we received at the NDF, we also propose that an individual will have the option to identify the relationship of the advance designee to the individual. Further, we propose to collect and store the information provided and the date of the designation for recordkeeping purposes. We will store the information in a new system developed for this purpose. We would not collect the advance designee's Social Security number, which reflects preferences expressed during the panelist discussion at the NDF.

We also propose to consider advance designees first when selecting a representative payee. When we determine that a representative payee is necessary,[10] we would first review the advance designees previously identified by the individual (if any), in the order of priority established by the individual. However, the *Strengthening Protections Act* allows us to certify payments to another individual or organization if the advance designee is unwilling or unable to serve, if the payment of the benefits to the advance designee would not satisfy the requirements in section 205(j)(2) of the Social Security Act, or if other good cause exists to not appoint an advance designee.[11] We would follow the established guidance set forth in our existing regulations to determine whether other good cause exists to appoint another representative payee who is not one of the advanced designees.[12] If none of the individuals designated in advance by the individual are willing, able, or suitable to be a representative payee, we would then consider other potential representative payees by referring to our current established order of preference for representative payee selection.[13]

Our proposed selection process aligns with the input we received at the NDF, which underlined the need for a robust evaluation of an advance designee during the selection process. Ensuring that we select a representative payee who would best serve the beneficiary's interest continues to be our primary concern.

In addition to considering advance designees during the initial representative payee selection, we also propose considering advance designees when we select a subsequent representative payee. Accordingly, if an individual who currently has a representative payee requires a new representative payee, we would consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation. If we are unable to select from remaining advance designees, we would continue to use the regulations in subpart U of part 404 and subpart F of part 416 to guide representative payee selection.

Finally, we propose that individuals who are eligible to make advance designations may withdraw or revise their advance designations at any time, provided that at the time of modification they are still eligible to make advanced designations, by informing us of the change in writing, in person, by telephone, or by direct electronic submission through our website. If the individual wishes to revise advance designations, the individual must provide the required information for any newly designated individuals.

Proposed Changes

For our title II regulations, we propose to add a new section, § 404.2018 Advance designation of representative payees, to cover: (1) General information about advance designation; (2) how to designate possible representative payees in advance; (3) how to change an advance designation; (4) how we consider an advance designation when we select a representative payee; (5) how we consider an advance designation when we select a subsequent representative payee; and (6) that organizations may not be designated in advance as a possible representative payee. We also propose to add paragraph (g) in § 404.2020 to indicate that we would consider advance designation when we select representative payees. Finally, we propose to make a change to § 404.2021 to state that we will consider an advance designee before our current order of preference for representative payees.

For our title XVI regulations, we propose parallel changes. We would add a new section, § 416.618 Advance designation of representative payees, to cover the same six categories that we propose for title II. We would also add paragraph (g) in section § 416.620 to indicate that we would consider advance designation when we select representative payees. Similarly, we propose to make a change to § 416.621 to state that we will consider an advance designee before our current order of preference for representative payees. Finally, we propose to correct a grammatical error in the authority citation for subpart F of part 416.

For title VIII, we propose adding a new section, § 408.618 Advance designation of representative payees, to refer to § 404.2018, § 404.2020, and § 404.2021 for relevant information related to advance designation.

Rulemaking Analyses and Notices

We will consider all comments we receive on or before the close of business on the comment closing date indicated above. The comments will be available for examination in the rulemaking docket for these rules at the above address. We will file comments received after the comment closing date in the docket and will consider those comments to the extent practicable. However, we will not respond specifically to untimely comments. We may publish a final rule at any time after close of the comment period.

Clarity of These Proposed Rules

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments on how to make them easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rules clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?
- Do the rules contain technical language or jargon that is not clear?

[9] *See* section 205(j)(1)(C)(ii) of the Act, as amended by the section 2(a) of the Strengthening Protections Act, 42 U.S.C. 405(j)(1)(C)(ii).

[10] See 20 CFR 404.2010 and 416.610 for when payment will be made to a representative payee.

[11] *See* section 205(j)(1)(C)(i)(II) of the Act, as amended by the section 2(a) of the *Strengthening Protections Act,* 42 U.S.C. 405(j)(1)(C)(i)(II).

[12] See 20 CFR 404.2020, 404.2021, 416.620, and 416.621.

[13] See 20 CFR 404.2021 and 416.621

• Would a different format make the rules easier to understand, *e.g.,* grouping and order of sections, use of headings, paragraphing?

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that these proposed rules do not meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563.

We also determined that this final rule meets the plain language requirement of Executive Order 12866.

Executive Order 13132 (Federalism)

We analyzed this proposed rule in accordance with the principles and criteria established by Executive Order 13132, and determined that the proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. We also determined that this proposed rule would not preempt any State law or State regulation or affect the States' abilities to discharge traditional State governmental functions.

Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

E.O. 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature, and because it does not impose costs that reach the E.O. 12866 threshold for significance.

Anticipated Costs to Our Programs

SSA's Office of the Chief Actuary estimates that implementation of this rule will result in a very small increase in program cost for the Social Security and Supplemental Security Income programs over the 10-year period 2020 through 2029. This small increase would be considered de minimis under E.O. 13771.

Anticipated Administrative Costs to SSA

Our Office of Budget, Finance, and Management estimates that this change will result in administrative costs to the agency of approximately $275 million over 10 years, with none of the annual costs meeting or exceeding the E.O. 12866 threshold of $100 million. The administrative estimates comprise the costs for creating and running the online application; field office interviews; employee processing time; and sending annual mailers.

Paperwork Reduction Act

Section 404.2018 of these proposed rules imposes a new public reporting burden: The requirement for affected members of the public to use SSA's prescribed paper form or online application to submit the names of advance designees. SSA previously solicited comment on these proposed information collection instruments via a notice published in the **Federal Register**.[14] In response to that notice, several members of the public submitted comments. We provide a document detailing these comments, as well as our responses, as a supplemental document to this proposed rulemaking.

We have not changed the proposed Information Collection Request (ICR) since the publication of the above-referenced standalone **Federal Register** notice. However, we are again soliciting comment on the proposed ICR for section 404.2018 as part of this notice of proposed rule. Below is a chart showing current burden estimates for the proposed information collection instruments that will implement section 404.2018.

Modality of completion	Number of responses	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Total annual opportunity cost (dollars) **
SSA–4547—Paper Version	85,733	1	6	8,573	* $16.36	** $140,254
SSA–4547—Intranet version (SSI Claims System; MCS; iMAIN)	8,451,966	1	6	845,200	* 16.36	** 13,827,472
i4547—Internet version	3,201,466	1	6	320,147	* 16.36	** 5,237,605
Totals	11,739,194			1,173,919		** 19,205,331

* We based these figures on an average of the hourly wages for the various respondents, which includes: DI; retiree; and survivors' payments as reported in SSA's disability insurance payment data, and the average hourly salary for U.S. workers, as reported by Bureau of Labor Statistics data.

** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.* The total estimated burden hours for this ICR is 1,173,919 hours (reflecting SSA management information data), which results in an associated theoretical (not actual) opportunity cost financial burden of $19,205,331. This figure represents the theoretical amount a respondent could have earned during the time they completed the form. SSA does not actually charge respondents to complete our applications.

We note that this burden calculation assumes 100 percent of beneficiaries and applicants who are eligible to advance designate will choose to do so.

We are requesting public comments on this Information Collection Request. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*.

[14] August 13, 2019 at 84 FR 40121

You can submit comments until December 26, 2019, which is 30 days after the publication of this proposed rule. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by email or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income).

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 408

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI), Veterans.

20 CFR Part 416

Administrative practice and procedure; Reporting and recordkeeping requirements; Social security; Supplemental Security Income (SSI).

Andrew Saul,

Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend subpart U of part 404 of title 20 of the Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 2. Add section § 404.2018 to read as follows:

§ 404.2018 Advance designation of representative payees.

(a) *General.* An individual who:

(1) Is entitled to or an applicant for a benefit and;

(2) Has attained 18 years of age or is an emancipated minor, may designate in advance one or more individuals to possibly serve as a representative payee for the individual if we determine that payment will be made to a representative payee (see § 404.2010(a)). An individual may not designate in advance possible representative payees if we have information that the individual is either- legally incompetent or mentally incapable of managing his or her benefit payments; or physically incapable of managing or directing the management of his or her benefit payments.

(b) *How to designate possible representative payees in advance.* Individuals who meet the requirements in paragraph (a) of this section may designate in advance their choice(s) for possible representative payees by indicating their decision to designate a representative payee in advance and providing us with the required information. In addition to the required information, an individual may choose to provide us with the relationship of the advance designee to the individual. The information we require before we will consider an advance designee as a possible representative payee is:

(1) The name of the advance designee,

(2) A telephone number of the advance designee, and

(3) The order of priority in which the individual would like us to consider the advance designees, if he or she designates more than one advance designee.

(c) *How to make changes to advance designation.* Individuals who meet the requirements in paragraph (a) of this section may change their advance designees by informing us of the change and providing the required information (see paragraph (b)(1) through (3) of this section) to us. Individuals who meet the requirements in paragraph (a) of this section may withdraw their advance designation by informing us of the withdrawal.

(d) *How we consider advance designation when we select a representative payee.*

(1) If we determine that payment will be made to a representative payee, we will review an individual's advance designees in the order listed by the individual and select the first advance designee who meets the criteria for selection. To meet the criteria for selection—

(i) The advance designee must be willing and able to serve as a representative payee,

(ii) Appointment of the advance designee must comply with the requirements in section 205(j)(2) of the Social Security Act, and

(iii) There must be no other good cause (see §§ 404.2020 and 404.2021) to prevent us from selecting the advance designee.

(2) If none of the advance designees meet the criteria for selection, we will use our list of categories of preferred payees (see § 404.2021), along with our other regulations in subpart U of this part, as a guide to select a suitable representative payee.

(e) *How we consider advance designation when we select a subsequent representative payee.* If an individual who currently has a representative payee requires a change of representative payee, we will consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation, under paragraph (d) of this section.

(f) *Organizations.* An individual may not designate in advance an organization to serve as his or her possible representative payees.

■ 3. Amend § 404.2020 by

■ a. Revising paragraphs (e), and (f), and;

■ b. Adding paragraph (g).

The revisions and addition reads as follows:

§ 404.2020 Information considered in selecting a representative payee.

* * * * *

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary;

(f) The potential payee's criminal history; and

(g) Whether the beneficiary made an advance designation (see § 404.2018).

■ 4. Amend § 404.2021 by revising the introductory paragraph to read as follows:

§ 404.2021 What is our order of preference in selecting a representative payee for you?

As a guide in selecting a representative payee, we have established categories of preferred payees. These preferences are flexible. We will consider an individual's advance designee(s) (see § 404.2018) before we consider other potential representative payees in the categories of preferred payees listed in this section. When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving (see § 404.2022), and supports the best interest of the beneficiary (see § 404.2020). The preferences are:

* * * * *

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS

■ 5. The authority citation for subpart F of part 408 is revised to read as follows:

Authority: Secs. 205(j)(1)(C), 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1007, and 1010).

■ 6. Add § 408.618 to subpart F to read as follows:

§ 408.618 Advance designation of representative payees.

For information about advance designation, how to designate representative payees in advance, how to make changes to advance designations, how we consider an advance designation when we select a representative payee, how we consider an advance designation when we select a subsequent representative payee, and other relevant information, see §§ 404.2018, 404.2020, and 404.2021 of this chapter.

PART416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

■ 7. The authority citation for subpart F of part 416 is revised to read as follows:

Authority: Secs. 205(j)(1)(C), 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 405(j)(1)(C), 902(a)(5), 1383(a)(2) and (d)(1)).

■ 8. Add § 416.618 to subpart F to read as follows:

§ 416.618 Advance designation of representative payees.

(a) *General.* An individual who:

(1) Is eligible for or an applicant for a benefit; and

(2) Has attained 18 years of age or is an emancipated minor, may designate in advance one or more individuals to possibly serve as a representative payee for the individual if we determine that payment will be made to a representative payee (see § 416.610(a)). An individual may not designate in advance possible representative payees if we have information that the individual is either legally incompetent or mentally incapable of managing his or her benefit payments; or physically incapable of managing or directing the management of his or her benefit payments.

(b) *How to designate possible representative payees in advance.* Individuals who meet the requirements in paragraph (a) of this section may designate in advance their choice(s) for possible representative payees by indicating their decision to designate a representative payee in advance and providing us with the required information. In addition to the required information, an individual may choose to provide us with the relationship of the advance designee to the individual. The information we require before we will consider an advance designee as a possible representative payee is:

(1) The name of the advance designee,

(2) A telephone number of the advance designee, and

(3) The order of priority in which the individual would like us to consider the advance designees if he or she designates more than one advance designee.

(c) *How to make changes to advance designation.* Individuals who meet the requirements in paragraph (a) of this section may change their advance designees by informing us of the change and providing the required information (see paragraph (b)(1) through (3) of this section) to us. Individuals who meet the requirements in paragraph (a) of this section may withdraw their advance designation by informing us of the withdrawal.

(d) *How we consider advance designation when we select a representative payee.*

(1) If we determine that payment will be made to a representative payee, we will review advance designees in the order listed by the individual and select the first advance designee who meets the criteria for selection. To meet the criteria for selection—

(i) The advance designee must be willing and able to serve as a representative payee,

(ii) Appointment of the advance designee must comply with the requirements in section 205(j)(2) of the Social Security Act, and

(iii) There must be no other good cause (see §§ 416.620 and 416.621) to prevent us from selecting the advance designee.

(2) If none of the advance designees meet the criteria for selection, we will use our list of categories of preferred payees (see § 416.621), along with our other regulations in subpart F of this part, as a guide to select a suitable representative payee.

(e) *How we consider advance designation when we select a subsequent representative payee.* If an individual who currently has a representative payee requires a change of representative payee, we will consider any other designees identified by the individual at a time in which that individual was eligible to make an advanced designation, under paragraph (d) of this section.

(f) *Organizations.* An individual may not designate in advance an organization to serve as his or her possible representative payee.

■ 9. Amend § 416.620 by

■ a. Revising paragraphs (e) and (f), and

■ b. Adding paragraph (g):

The revisions and addition reads as follows:

§ 416.620 Information considered in selecting a representative payee.

* * * * *

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary;

(f) The potential payee's criminal history; and

(g) Whether the beneficiary made an advance designation (see § 416.618).

■ 10. Amend § 416.621 by revising the introductory paragraph to read as follows:

§ 416.621 What is our order of preference in selecting a representative payee for you?

As a guide in selecting a representative payee, we have established categories of preferred payees. These preferences are flexible. We will consider an individual's advance designees (see § 416.618) before we consider other potential representative payees in the categories of preferred payees listed in this section. When we select a representative payee, we will choose the designee of the beneficiary's highest priority, provided that the designee is willing and able to serve, is not prohibited from serving (see § 416.622), and supports the best interest of the beneficiary (see § 416.620). The preferences are:

* * * * *

[FR Doc. 2019–25569 Filed 11–25–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1100, 1107, and 1114

[Docket No. FDA–2019–N–2854]

RIN 0910–AH44

Premarket Tobacco Product Applications and Recordkeeping Requirements; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is reopening the comment period for the proposed rulemaking that appeared in the **Federal Register** of September 25, 2019. The Agency is taking this action in response to a request for an extension to the comment period to allow interested persons additional time to submit comments.

DATES: FDA is reopening the comment period on the proposed rule published September 25, 2019 (84 FR 50566). Submit either electronic or written comments December 16, 2019.

ADDRESSES: You may submit comments as follows. Please note that late,

untimely filed comments will not be considered. Electronic comments must be submitted on or before December 16, 2019. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 16, 2019. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–2854 for ''Premarket Tobacco Product Applications and Recordkeeping Requirements.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov*. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.gpo.gov/fdsys/pkg/FR-2015-09-18/pdf/2015-23389.pdf*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Paul Hart, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 877–287–1373, email: *AskCTP@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 25, 2019, FDA published a proposed rule that would, if finalized, establish requirements related to the content and format of premarket tobacco product applications, application review procedures, and recordkeeping. Interested persons were originally given until November 25, 2019, to comment on the proposed rule.

Following publication of the proposed rule in the **Federal Register** of September 25, 2019, FDA received a request to allow interested persons additional time to comment. The requester asserted that the time period of 60 days was insufficient to allow potential respondents to thoroughly evaluate and address pertinent issues. FDA has considered the request and is reopening the comment period for the proposed rule for 20 days. The Agency believes that a 20-day reopening of the comment period allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

Dated: November 21, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25675 Filed 11–25–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0824]

RIN 1625–AA09

Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and Burnham Canals. Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Advanced Notice of Proposed Rulemaking request for comments.

SUMMARY: The Coast Guard is seeking information and comments on a Notice of Proposed Rulemaking with a test schedule for the bridges crossing the Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals. The City of Milwaukee requested the regulations to be reviewed and updated to allow for a more balanced flow of maritime and land based transportation. The current regulation has been in place for over 30 years and is obsolete.

DATES: Comments and related materials must reach the Coast Guard on or before: January 27, 2020.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0824 using Federal eRulemaking Portal at *http://www.regulations.gov*.

See the ''Public Participation and Request for Comments'' portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD85 International Great Lakes Datum of 1985
LWD Low Water Datum based on IGLD85
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking (Advance Supplemental)
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

The Milwaukee River is approximately 104 miles long, beginning in Fond du Lac County the river flows easterly to a low head dam just above the Humboldt Avenue Bridge at mile 3.22 in downtown Milwaukee, WI. From here the river flows south to Lake Michigan. This southerly course of the Milwaukee River divides the lakefront area from the rest of the city. The Menomonee River joins the Milwaukee River at Mile 1.01 with the Kinnickinnic River joining the Milwaukee River at Mile 0.39. In total 21 bridges cross the Milwaukee River from mile 0.19 to mile 3.22. In the early 20th Century the Milwaukee River was heavily used to support the industries in and around the Great Lakes. Today, the river has been redeveloped as a tourist and recreational destination. From its confluence with the Milwaukee River the Menomonee River flows west for 33 miles. The lower three miles of the Menomonee River is passable by vessels over 600 feet in length. Seven bridges cross the navigable portion of the Menomonee River.

Over the years the flour mills, packing plants, breweries, machine shops, railways, and tanneries have been replaced with parks, a casino, microbreweries, and the Harley-Davidson Museum. The coal powered heat plant near mile 1.61 was converted to natural gas, which eliminated the need for coal to be delivered by barge. At present the only docks receiving vessels are the two cement silos located near mile 1.61.

The South Menomonee Canal and the Burnham Canal were both excavated during a waterways improvement project in 1864. Both man-made canals are tributaries of the Menomonee River branching just above its mouth. The South Menomonee Canal is crossed by two bridges and the Burnham Canal is crossed by three bridges.

The Kinnickinnic River flows north through the southern portion of the City of Milwaukee connecting with the Milwaukee River near Lake Michigan. Only the lower 2.30 miles of the river have been improved for vessel use. Five bridges cross the river with the Lincoln Avenue Bridge at the head of navigation. Freighters up to 1,000 feet in length transfer cargos at the confluence of the Kinnickinnic and Milwaukee Rivers.

The Port of Milwaukee won the 2016 Saint Lawrence Seaway Development Pacesetter Award for significantly increasing international tonnage shipped through their port. Salt, cement, aggregate, liquid bulk products, coal, grain, and general cargo goods are shipped through this portion of the port. 2.4 million tons of materials were shipped and received in 2018. The Port of Milwaukee is currently ranked 23rd in tonnage among the Great Lakes harbors and is a designated harbor of refuge for the eastern side of Lake Michigan and can accommodate emergency docking of vessels up to 1,000 feet long. Most of the recreational vessels in Milwaukee moor in the lake front marinas and only transit the rivers. Boat yards on the Menomonee and Kinnickinnic rivers haul out and store most of the recreational vessels in the fall and winter months and launch the vessels in the spring. This action contributes to a considerable surge in drawbridge openings in the fall and spring.

III. Discussion of Proposed Rule

In response to downtown Milwaukee residents' concerns regarding in a pronounced increase in vehicular traffic in the area, the City of Milwaukee has requested a complete review of the bridge regulations in this area.

Over the years these regulations have been amended considerably. This has had the effect of making them difficult to comprehend to the average person. In addition the cyclic higher water levels over the past 3 years and increased number of passenger vessels in the downtown area have resulted in significantly more bridge openings. Lastly, the conversion of older business building into condominiums have increased the evening vehicle traffic causing major traffic delays when the bridges are lifted. While the Milwaukee River is the primary concern with residents and mariners, this rulemaking proposes changes to the language governing bridges in the entire Milwaukee Harbor area, for the purpose of updating these regulations accurately reflect the current operational needs of these bridges and make them easier to understand by the general public.

Currently, the Canadian Pacific Railroad Bridge at Mile 1.74 over the Burnham Canal and the Sixth Street Bridge at Mile 1.37 over the Menomonee River are closed by regulation and do not need to open for the passage of vessels. The City of Milwaukee has requested that the Sixteenth Street Bridge, mile 2.14, over the Menomonee River remain closed and not open by regulation. No vessels have requested a bridge opening in at least 10 years and the bridge provides a horizontal clearance of 120 feet and a vertical clearance of 35 feet above LWD, allowing most vessels to pass under the bridge without an opening. The Coast Guard is working with the City of Milwaukee to convert the Sixteenth Street Bridge to a fixed structure.

Ice has historically hindered or prevented navigation during the winter months. For the last eight years the Coast Guard has authorized the drawbridges to open on signal with a 12-hour advance notice of arrival for vessels from November 19th to April 16th. After careful review of the drawtender logs provided by the City of Milwaukee, the Coast Guard proposes to allow all bridges to require a 12-hour advance notice for openings from November 1st to April 15th each year.

The City of Milwaukee requested that from 11 p.m. to 7 a.m. daily, the bridges would open on signal with a 2-hour advance notice. During these hours the bridges would not be manned and roving drawtenders would open the bridges for vessels. After reviewing the 2016, 2017, and 2018 drawtender logs it was found that for those hours between April and November of each year an average of 45 vessels requested openings. Of these requests an average of 32 openings were between the hours of 11 p.m. and midnight. From midnight to 7 a.m. there were only 13 vessels that requested openings. Based on the data reviewed we have concluded that, due to a lack of openings from midnight to 7 a.m. daily, the bridges shall open on signal if provided a 2-hour advance notice of arrival, meets the reasonable needs of navigation.

The City of Milwaukee also reported receiving several complaints from residents in the downtown area concerning the noise associated with the waterfront. To improve the quality of downtown living we propose to remove the special sound signals listed in the

CFR for each bridge. Mariners would request openings by using the standard sound signal of one prolonged blast followed by one short blast or by agreement on VHF–FM Marine Radio or by telephone. From Midnight to 7 a.m. the bridges would require a 2-hour advance notice of arrival provided by VHF–FM Marine Radio or by telephone thus reducing some of the noise associated with the waterfront.

The City of Milwaukee requests to operate the following bridges remotely: North Plankinton Avenue, mile 1.08, and North Sixth Street, mile 1.37, and North Ember Lane, mile 1.95, all over the Menomonee River. Each remotely operated bridge will have sufficient equipment to operate as if a drawtender is in attendance at the bridge. No drawtender will be responsible for monitoring or operating more than 3 drawbridges at any time. At a minimum each remotely operated drawbridge will have the capabilities to communicate by 2-way public address system, equipment capable of making appropriate sound signals as required, and have adequate camera systems in place to safely operate the bridge.

The current regulation allows for no openings from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 5:30 p.m. for vehicular rush hours. The city has requested to start the evening rush hour at 4 p.m. instead of 4:30 p.m. to help relieve vehicle congestion. The city of Milwaukee provided the following vehicle data provided by the Wisconsin Department of Transportation to support the additional 30 minutes of evening rush hour times. We have averaged the data into this spreadsheet:

Bridge name	Daily average vehicle counts	Average vehicle counts 4:30 p.m. to 5:30 p.m.	Average vehicle counts 4 p.m. to 4:30 p.m.	Average vehicle counts 4:00 p.m. to 5:30 p.m.
Broadway	11,201	1,582	332	1,914
Water St	17,753	1,669	742	2,411
St. Paul Ave	10,344	No Data	No Data	No Data
Clybourn St	11,262	955	848	1,803
Michigan St	10,484	1,202	304	1,506
Wisconsin Ave	10,423	1,144	323	1,467
Wells St	8,372	1,114	295	1,409
Kilbourn Ave	15,590	No Data	No Data	No Data
Juneau Ave	7,265	No Data	No Data	No Data
Cherry St	No Data	No Data	No Data	No Data
Pleasant St	6,307	No Data	*882	No Data
Knapp St	20,792	No Data	No Data	No Data
Kinnickinnic Ave	17,019	No Data	No Data	No Data
South First St	12,992	No Data	No Data	No Data
North Plankinton Ave	6,578	No Data	+768	No Data
North 6th St	15,045	No Data	No Data	No Data
South 6th St	15,045	No Data	No Data	No Data
(Muskego) Emmber Ln	4,616	No Data	No Data	No Data
1st Street	13,772	No Data	902	4,107

*PEAK.
+PEAK Daily.

Based on the data provided we intend to extend the rush hour times of no lifts to 4 p.m. to 5:30 p.m. Monday through Friday, except Federal Holidays.

Additionally, at the time when the original regulation was being written the stipulating regulation regarding the opening of bridges for public safety vessels had not yet been promulgated. An exception was included for vessels carrying U.S. mail and vessels that carry over 50 passengers for hire. The mail service no longer arrives by vessel. Limiting the exclusion by passenger count excludes other commercial vessels from transiting the river. This exclusion is only for the times the bridges do not need to open during high traffic times. During the test deviation, which is planned for the summer of 2020, the intent is to modify this exception to read: ''commercial vessels documented over 50 tons.'' This prevents tug and barge, cement boats, and other large commercial vessels from getting trapped between bridges, which creates an especially unsafe condition.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on 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 Proposed rule is soliciting comments for the test deviation planned for the summer navigation season of 2020. Additional comments are encouraged throughout the test deviation, when that publishes.

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. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a

significant economic impact on any vessel owner or operator. The bridges will open on signal with advance notice. The hours the bridges would be closed to accommodate high number of vehicle crossings is only 1 hour in the morning and 1.5 hours in the evening and supports other small business by eliminating traffic congestion and accessibility to those downtown business.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this 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 above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). We have made a 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 promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

V. 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 this 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 117

Bridges.

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; DHS Delegation No. 0170.1.

■ 2. Revise § 117.1093 to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and Burnham Canals.

(a) The draws of the bridges over the Milwaukee River shall operate as follows:

(1) The draws of the North Broadway Street bridge, mile 0.5, and North Water Street bridge, mile 0.6, and Michigan Street bridge, mile 1.1, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Saturday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Milwaukee River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; St. Paul Avenue, mile 1.21, Clybourn Street, mile 1.28, Wells Street, mile 1.61, Kilbourn Street, mile 1.70, State Street, mile 1.79, Highland Avenue, mile 1.97, and Knapp Street, mile 2.14.

(4) No commercial vessel over 50 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Milwaukee River will open on signal if a 12-hour advance notice is provided.

(b) The draws of bridges across the Menomonee River and South Menomonee Canal operate as follows:

(1) The draw of the North Plankinton Avenue bridge across the Menomonee River, mile 1.08, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Menomonee River and South Menomonee Canal shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; North Plankinton Avenue, mile 1.08, North Sixth Street, mile 1.37, and North Ember Lane, mile 1.95, all over the Menomonee River and South Sixth Street, mile 1.51, over the South Menomonee Canal.

(4) No commercial vessel over 50 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Menomonee River and South Menomonee Canal will open on signal if a 12-hour advance notice is provided.

(c) The draws of bridges across the Kinnickinnic River operate as follows:

(1) The draw of the Kinnickinnic Avenue bridge, mile 1.5, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday, except Federal holidays, the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Kinnickinnic River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; The South First Street Bridge, mile 1.78.

(4) No commercial vessel over 50 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Kinnickinnic River will open on signal if a 12-hour advance notice is provided.

(d) The Canadian Pacific Railroad Bridge at Mile 1.74 over the Burnham Canal, and the Sixteenth Street Bridge, mile 2.14, over the Menomonee River are closed by regulation and do not need to open for the passage of vessels.

Dated: November 19, 2019.

D.L. Cottrell,

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

[FR Doc. 2019–25617 Filed 11–25–19; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2019–0837]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Markers 229.5 to 230.5 Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for navigable waters of the Lower Mississippi River from mile marker (MM) 229.5 to MM 230.5, above Head of Passes. The safety zone is needed to protect personnel, vessels, and the marine environment on these navigable waters near Baton Rouge, LA, during a New Year's Eve fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector New Orleans. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before December 11, 2019.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0837 using the Federal eRulemaking Portal at *https://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 Justin Maio, Marine Safety Unit Baton Rouge, U.S. Coast Guard; telephone 225–298–5400 ext. 230, email *Justin.P.Maio@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On September 25, 2019, the Office of the Mayor-President of Baton Rouge, Louisiana, notified the Coast Guard that it will be conducting a fireworks display from 11:55 p.m. on December 31, 2019, through 12:30 a.m. on January 01, 2020, to commemorate the New Year. The fireworks are to be launched from the East Bank of the Mississippi River in Baton Rouge, Louisiana, near mile marker 230. Hazards from firework displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port New Orleans (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a half mile of the display.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a half mile of the fireworks before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under

authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 11:30 p.m. on December 31, 2019, through 12:30 a.m. on January 1, 2020. The safety zone covers all navigable waters of the Lower Mississippi River in Baton Rouge, LA, from mile marker (MM) 229.5 to MM 230.5 above Head of Passes. The duration of the zone is intended to ensure the safety of persons, vessels, and the marine environment before, during, and after the scheduled fireworks display. Entry into this zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative. They may be contacted on VHF–FM Channel 16 or 67, or through the Marine Safety Unit Baton Rouge Officer of the Day at 225–281–4789. All persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

IV. 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 size, location, duration, and time-of-day of the safety zone. This temporary safety zone would only restrict navigation on a one-mile portion of the Lower Mississippi River for approximately one hour on one evening. Moreover, the Coast Guard will issue BNMs via VHF–FM marine channel 16 about the zone, and the rule allows vessels to seek permission to enter the zone

B. Impact on Small Entities

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

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

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed 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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this 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 guide 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 a safety zone lasting one hour that would prohibit entry within a half mile of a fireworks display. Normally such actions are categorically excluded from further review under paragraph

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 call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. 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 *https://www.regulations.gov*. If your material cannot be submitted using *https://www.regulations.gov,* call or email 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 *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing 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.

■ 2. Add § 165.T08–0837 to read as follows:

§ 165.T08–0837 Safety Zone; Lower Mississippi River, Mile Markers 229.5 to 230.5, Baton Rouge, LA.

(a) Location. The following area is a safety zone: All navigable waters of the Lower Mississippi River from mile marker (MM) 229.5 to MM 230.5 above Head of Passes, Baton Rouge, LA.

(b) Effective period. This section is effective from 11:30 p.m. on December 31, 2019, through 12:30 a.m. on January 1, 2020.

(c) Regulations. (1) Under the general safety zone regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Sector New Orleans (COTP) or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Vessels requiring entry into this safety zone must request permission from the COTP or a designated representative via VHF–FM Channel 16 or 67, or through the Marine Safety Unit Baton Rouge Officer of the Day at 225–281–4789.

(3) All persons and vessels permitted to enter this safety zone must transit at the slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(d) Informational broadcasts. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

Dated: November 21, 2019.

Kristi M. Luttrell,

Captain, U.S. Coast Guard, Captain of the Port Sector New Orleans.

[FR Doc. 2019–25677 Filed 11–25–19; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0014; FRL–10002–54–Region 4]

Air Plan Approval; AL and SC: Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the Alabama and South Carolina State Implementation Plan (SIP) submissions provided on August 20, 2018 and September 7, 2018, respectively, for inclusion into their respective SIPs. This proposal pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA. Alabama and South Carolina certified that their SIPs contain provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in their State. EPA is proposing to determine that Alabama and South Carolina infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Comments must be received on or before December 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0014 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Bell can be reached via telephone at (404) 562–9088 or via electronic mail at *bell.tiereny@epa.gov*.

SUPPLEMENTARY INFORMATION:

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IV. What is EPA's analysis of how Alabama and South Carolina addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. Background and Overview

On October 1, 2015 (published October 26, 2015, *see* 80 FR 65292), EPA promulgated a revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an ''infrastructure SIP.'' States were required to submit such SIPs for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.[1]

This action is proposing to approve Alabama's August 20, 2018,[2] revision provided to EPA through the Alabama Department of Environmental Management (ADEM)) and South Carolina's September 7, 2018, revision provided to EPA through the Department of Health and Environmental Control (SC DEHC), for the applicable infrastructure SIP requirements of the 2015 8-hour ozone NAAQS, with the exception of the interstate transport provisions of section 110(a)(2)(D)(i)(I), pertaining to contribution to nonattainment or interference with maintenance in other states. With respect to the interstate transport provisions of section 110(a)(2)(D)(i)(I), EPA will address these provisions in separate rulemaking actions.

II. What elements are required under sections 110(a)(1) and 110(a)(2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements of section 110(a)(2) are summarized in section IV below, and in EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).''[3]

- 110(a)(2)(A): Emission Limits and Other Control Measures
- 110(a)(2)(B): Ambient Air Quality Monitoring/Data System
- 110(a)2(C): Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources[4]
- 110(a)(2)(D)(i)(I) and (II): Interstate Pollution Transport
- 110(a)(2)(D)(ii): Interstate Pollution Abatement and International Air Pollution
- 110(a)(2)(E): Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies
- 110(a)(2)(F): Stationary Source Monitoring and Reporting
- 110(a)(2)(G): Emergency Powers
- 110(a)(2)(H): SIP Revisions
- 110(a)(2)(I): Plan Revisions for Nonattainment Areas[5]
- 110(a)(2)(J): Consultation with Government Officials, Public Notification, and Prevention of Significant Deterioration (PSD) and Visibility Protection
- 110(a)(2)(K): Air Quality Modeling and Submission of Modeling Data
- 110(a)(2)(L): Permitting fees
- 110(a)(2)(M): Consultation and Participation by Affected Local Entities

III. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon portions of the SIP submissions from Alabama and South Carolina that address certain infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2015 8-hour ozone NAAQS. Whenever EPA promulgates a new or revised

[1] In these infrastructure SIP submissions States generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the federally-approved SIP. In addition, certain federally-approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

[2] The August 20, 2018, SIP submission provided by ADEM was received by EPA on August 27, 2018.

[3] Two elements identified in section 110(a)(2) are not governed by the three-year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather are due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. This proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment permitting requirements of 110(a)(2)(C).

[4] As mentioned above, the Part D permit program for construction and modification of major stationary sources is not relevant to this proposed rulemaking.

[5] As also mentioned above, this element is not relevant to this proposed rulemaking.

NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS, commonly referred to as ''infrastructure SIPs.'' These infrastructure SIP submissions must meet the various requirements of CAA section 110(a)(2), as applicable. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[6] Unless otherwise noted below, we are following that existing approach in acting on these submissions. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[7] The EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

IV. What is EPA's analysis of how Alabama and South Carolina addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

Alabama's and South Carolina's infrastructure SIP submissions address certain provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission Limits and Other Control Measures:* Section 110(a)(2)(A) requires that each implementation plan include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements. Several regulations within Alabama's and South Carolina's SIPs and state statutes are relevant to air quality control regulations. Below provides more detail for each state addressed in this proposed rulemaking.

Alabama

Alabama cites to the following regulations to satisfy this requirement. ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,*[8] authorizes ADEM to provide for attainment of the NAAQS. ADEM Admin. Code r. 335–3–1–.06—*Compliance Schedule,* sets the schedule for compliance with the State's Air Pollution Control rules and regulations. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means with which ADEM can require testing and emissions verification. ADEM Admin. Code r. 335–3–14–.03(l)(g)—*Standard for Granting Permits,* which authorizes ADEM to grant permits. Also, the following ADEM Administrative Code rules address this element: 335–3–14–.03(2)—*Stack Heights,* subparagraphs (d) and (e), 335–3–15–.02(9) —*Stack Heights,* subparagraphs (d) and (e), and 335–3–16–.02(10) —*General Provisions,* subparagraphs (d) and (e).

South Carolina

South Carolina cites to the following provisions to satisfy this requirement. South Carolina's Regulation[9] 61–62.5, Standard No. 2, *Ambient Air Quality Standards* and Regulation 61–62.1, *Definitions and General Requirements,* provide enforceable emission limits and other control measures, means, and techniques. Section 48–1–50(23) of the 1976 South Carolina Code of Laws, as amended, (S.C. Code Ann.) provides SC DHEC with the authority to ''Adopt emission and effluent control regulations standards and limitations that are applicable to the entire state, that are applicable only within specified areas or zones of the state, or that are applicable only when a specified class of pollutant is present.'' Collectively these provisions establish enforceable emissions limitations and other control measures, means or techniques, for activities that contribute to ozone concentrations in the ambient air and provide authority for SC DHEC to establish such limits and measures as well as schedules for compliance to meet the applicable requirements of the CAA.

EPA has made the preliminary determination that the provisions contained in Alabama's and South Carolina's SIP-approved State regulations and State statutes are adequate for enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance to satisfy the requirements of Section 110(a)(2(A) for the 2015 8-hour ozone NAAQS in each of the states.

2. 110(a)(2)(B) *Ambient Air Quality Monitoring/Data System:* Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to: (i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator. Below provides more detail for each state addressed in this proposed rulemaking.

Alabama

ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* authorizes the Director of ADEM to require sources to install, use and maintain monitoring equipment and submit emissions monitoring reports as prescribed by the Director. Pursuant to this regulation, these sources collect air monitoring data, quality assure the results, and report the data as prescribed by the Director. ADEM Admin. Code r. 335–3–1–.05—*Sampling and Testing Methods,* details the authority and means through which ADEM can require testing and emissions verification.

South Carolina

South Carolina's Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* addresses ambient monitoring requirements for major new source review. The *South Carolina Network Description and Ambient Air Network Monitoring Plan* provides for an ambient air quality monitoring system in the State. S.C. Code Ann. § 48–1–50(14) provides the Department with the necessary authority to ''collect and disseminate information on air and water control.''

[6] EPA explains and elaborates on these ambiguities and its approach to address them in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior actions on Alabama and South Carolina infrastructure SIPs to address the 2010 Nitrogen Dioxide NAAQS (81 FR 47124 (July 20, 2016) and 81 FR 63704 (September 16, 2016), respectively).

[7] *See Mont. Envtl. Info. Ctr.* v. *Thomas,* 902 F.3d 971 (9th Cir. 2018).

[8] Throughout this rulemaking, unless otherwise indicated, the term ''ADEM Administrative Code (Admin. Code r).'' indicates that the cited regulation has either been approved or submitted for approval into Alabama's federally-approved SIP. The term ''Alabama Code'' (Ala. Code) indicates cited Alabama state statutes, which are not a part of the SIP unless otherwise indicated.

[9] Throughout this rulemaking when referring to the South Carolina SIP, unless otherwise indicated, the term ''South Carolina Air Pollution Control Regulation'' or ''Regulation'' indicates that the cited regulation has been approved into South Carolina's federally-approved SIP. The term ''South Carolina Code of Laws'' or ''S.C. Code Ann.'' Indicates cited South Carolina state statutes, which are not a part of the SIP unless otherwise indicated.

Ambient Monitoring Network Plans

Annually, states develop and submit to EPA for approval statewide ambient monitoring network plans consistent with the requirements of 40 CFR parts 50, 53, and 58. The annual network plan involves an evaluation of any proposed changes to the monitoring network and includes the annual ambient monitoring network design plan and a certified evaluation of the agency's ambient monitors and auxiliary support equipment.[10]

On July 8, 2019 and July 1, 2019, Alabama and South Carolina, submitted their monitoring network plans to EPA, respectively. On October 30, 2019 and October 25, 2019, EPA approved these monitoring network plans. Alabama's and South Carolina's, approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0014. EPA has made the preliminary determination that Alabama's and South Carolina's SIPs and practices are adequate for the ambient air quality monitoring and data system related to the 2015 8-hour ozone NAAQS.

3. 110(a)(2)(C) *Programs for Enforcement of Control Measures and for Construction or Modification of Stationary Sources:* This element consists of three sub-elements: Enforcement, state-wide regulation of new and modified minor sources and minor modifications of major sources, and preconstruction permitting of major sources and major modifications in areas designated attainment or unclassifiable for a NAAQS as required by CAA title I part C (*i.e.,* the major source PSD program).

For the PSD sub-element, EPA interprets the CAA to require that a state's infrastructure SIP submission for a particular NAAQS demonstrate that the state has a complete PSD permitting program in place covering the PSD requirements for all regulated NSR pollutants.[11] A state's PSD permitting program is complete for this sub-element (and prong 3 of D(i) and J related to PSD) if EPA has already approved or is simultaneously approving the state's implementation plan with respect to all PSD requirements that are due under EPA regulations or the CAA on or before the date of EPA's proposed action on the infrastructure SIP submission.

Alabama's and South Carolina's 2015 8-hour ozone NAAQS infrastructure SIP submissions cited a number of SIP provisions to address these requirements. See below for more details on these SIP provisions.

Alabama

Alabama's infrastructure SIP submission cited the following provisions of the ADEM Admin. Code to satisfy 110(a)(2)(C):

Enforcement: Alabama's infrastructure SIP submission cited SIP-approved regulations Admin. Code r. 335–3–14–.01, *General Provisions,* and Admin. Code r. 335–3–14–.03, *Standards for Granting Permits,* which provide for enforcement of ozone precursor emission limits and control measures through permitting for new or modified stationary sources. ADEM has authority to issue enforcement orders and assess penalties through Code sections 22–22A–5, 22–28–10 and 22–28–22.

PSD Permitting for Major Sources: Alabama's infrastructure SIP submission cited ADEM Admin. Code r. 335–3–14–.04, *Prevention of Significant Deterioration in Permitting,* 335–3–14–.02, *Permit Procedure* and 335–3–14–.03—*Standards for Granting Permits.* These SIP-approved regulations provide that new major sources and major modifications in areas of the State designated attainment or unclassifiable for any given NAAQS are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA.

Regulation of minor sources and modifications: Alabama's infrastructure SIP submission cited ADEM Admin. Code r. 335–3–14–.01 *General Provisions,* 335–3–14–.02 *Permit Procedure,* and 335–3–14–.03—*Standards for Granting Permits.* These SIP approved regulations govern the preconstruction permitting of minor modifications and construction of minor stationary sources.

South Carolina

South Carolina's infrastructure SIP submission cited the following provisions to satisfy 110(a)(2)(C):

Enforcement: SC DHEC's SIP-approved permitting regulations, described below in this section, provide for enforcement of ozone emission limits and control measures through construction permitting for new or modified stationary sources. South Carolina's infrastructure SIP submission cites to statute 48–1–50(11), which provides SC DHEC the authority to administer penalties for violations of any order, permit, regulation or standards; and 48–1–50(10), which authorizes SC DHEC to require and approve construction plans for sources and inspect the construction thereof for compliance with the approved plan. Additionally, SC DHEC is authorized under 48–1–50(3) and (4) to issue orders requiring the discontinuance of the discharge of air contaminants into the ambient air that create an undesirable level and seek an injunction to compel compliance with the Pollution Control Act and permits, permit conditions and orders.

PSD Permitting for Major Sources: South Carolina's authority to regulate new and modified sources to assist in the protection of air quality in South Carolina is established in Regulations 61–62.1, Section II, *Permit Requirements;* 61–62.5, Standard No. 7, *Prevention of Significant Deterioration* of South Carolina's SIP. These regulations pertain to the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as attainment or unclassifiable. These regulations provide that new major sources and major modifications in such areas are subject to a federally-approved PSD permitting program meeting all the current structural requirements of part C of title I of the CAA, which satisfies the infrastructure SIP PSD elements.

Regulation of minor sources and modifications: Regulation 61–62.1, Section II, *Permit Requirements* governs the preconstruction permitting of minor modifications and construction of minor stationary sources in South Carolina.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs are adequate for enforcement of control measures, the PSD element, and regulation of construction of minor stationary sources and minor modifications for the 2015 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i)(I) and (II) *Interstate Pollution Transport:* Section 110(a)(2)(D)(i) has two components: 110(a)(2)(D)(i)(I) and 110(a)(2)(D)(i)(II). Each of these components has two subparts resulting in four distinct components, commonly referred to as ''prongs,'' that must be addressed in infrastructure SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1'') and interfering with maintenance of the NAAQS in another

[10] On occasion, proposed changes to the monitoring network are evaluated outside of the network plan approval process in accordance with 40 CFR part 58.

[11] *See* EPA's September 13, 2013, memorandum entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).

state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4'').

110(a)(2)(D)(i)(I)—prongs 1 and 2: EPA is not proposing any action in this rulemaking related to the interstate transport provisions pertaining to the contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2). EPA will address prongs 1 and 2 in separate rulemakings.

110(a)(2)(D)(i)(II)—prong 3: With regard to section 110(a)(2)(D)(i)(II), the PSD element, referred to as prong 3, this requirement may be met by a state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to: a PSD program meeting current structural requirements of part C of title I of the CAA, or (if the state contains a nonattainment area that has the potential to impact PSD in another state) a NNSR program.

Alabama

As explained regarding 110(a)(2)(C), Alabama's SIP contains a PSD program meeting current federal requirements for such programs at 335–3–14–.04—*Prevention of Significant Deterioration in Permitting,* which satisfies prong 3 with respect to areas in the State designated as attainment and unclassifiable. Alabama's SIP also contains a NNSR program at 335–3–14–.05—*Air Permits Authorizing Construction in or Near Nonattainment Areas,* which satisfies prong 3 to the extent there are nonattainment areas within the State.

South Carolina

As explained regarding 110(a)(2)(C), South Carolina's SIP contains a PSD program meeting current federal requirements for such programs at Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration* which satisfies prong 3 with respect to areas in the State designated as attainment and unclassifiable. South Carolina's SIP also contains a NNSR program at 61–62.5, Standard No. 7.1, *Nonattainment New Source Review,* which satisfies prong 3 to the extent there are nonattainment areas within the State.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs are adequate for interstate transport for PSD permitting of major sources and major modifications related to the 2015 8-hour ozone NAAQS for section 110(a)(2)(D)(i)(II) (prong 3).

110(a)(2)(D)(i)(II)—prong 4: Section 110(a)(2)(D)(i)(II) requires that the SIP contain adequate provisions to protect visibility in other states. This requirement is satisfied for any relevant NAAQS when the state has a fully approved regional haze SIP.

Alabama

Alabama's SIP contains a fully-approved regional haze plan, which was submitted to EPA on July 15, 2008, amended on October 16, 2015, and fully approved by EPA on October 12, 2017 (82 FR 47385). EPA's approval of the Alabama regional haze SIP therefore ensures that emissions from Alabama are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

South Carolina

South Carolina's SIP contains a fully-approved regional haze plan. At the time of the SIP submittal, EPA had proposed full approval of the plan on June 4, 2018 (83 FR 25604). EPA fully approved South Carolina's regional haze plan into the South Carolina SIP on September 24, 2018 (83 FR 48237). EPA's approval of South Carolina's regional haze SIP therefore ensures that emissions from South Carolina are not interfering with measures to protect visibility in other states, satisfying the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs meet the requirements of prong 4 of section 110(a)(2)(D)(i)(II) for the 2015 8-hour ozone NAAQS.

5. 110(a)(2)(D)(ii) *Interstate and International Transport Provisions:* Section 110(a)(2)(D)(ii) requires SIPs to include provisions ensuring compliance with section 115 and 126 of the Act, relating to interstate and international pollution abatement.

Alabama

ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant Deterioration in Permitting* describes how Alabama notifies neighboring states of potential emission impacts from new or modified sources applying for PSD permits. This regulation requires ADEM to provide an opportunity for a public hearing to the public, which includes state or local air pollution control agencies, ''whose lands may be affected by emissions from the source or modification.'' Additionally, Alabama does not have any pending obligation under sections 115 and 126 of the CAA.

South Carolina

South Carolina's Regulation 61–62.5, Standards 7 and 7.1(q)(2)(iv), *Public Participation,* requires SC DHEC to notify air agencies ''whose lands may be affected by emissions'' from each new or modified major source if such emissions may significantly contribute to levels of pollution in excess of a NAAQS in any air quality control region outside of South Carolina. Additionally, South Carolina does not have any pending obligation under section 115 and 126 of the CAA.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs and practices are adequate for ensuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2015 8-hour ozone NAAQS.

6. 110(a)(2)(E) *Adequate Resources and Authority, Conflict of Interest, and Oversight of Local Governments and Regional Agencies:* Section 110(a)(2)(E) requires that each implementation plan provide: (i) Necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the state comply with the requirements respecting state boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provisions. EPA's rationale respecting each sub-element for which EPA is proposing action in this rulemaking is described below.

Alabama

In support of sub-elements 110(a)(2)(E)(i) and (iii), the ADEM SIP submission cites to Ala. Code section 22–28–11, which authorizes ADEM to adopt emission requirements through regulations, and section 22–28–9, which authorizes ADEM to employ necessary staff to carry out its responsibilities. As evidence of the adequacy of ADEM's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Alabama on March 25, 2019, outlining 105 grant commitments and current status of these commitments for fiscal year 2018. The letter EPA submitted to Alabama can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0014.

Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, Alabama's grants were finalized and closed out. Alabama's funding is also met through the State's title V fee program at ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees* [12] and ADEM Admin. Code r. 335–1–6—*Application Fees.*[13] For 110(a)(2)(E)(iii), requirements dictating the roles of local or regional governments are derived from Ala. Code section 22–28–23, which do not allow local programs to be less strict than the Alabama SIP and allows for oversight from the Alabama Environmental Commission.

Section 110(a)(2)(E)(ii) requires that the state comply with section 128 of the CAA. Section 128 requires that the SIP contain requirements providing that: (a)(1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and (a)(2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar powers be adequately disclosed. Alabama's infrastructure SIP submission cites to the following SIP-approved provisions: ADEM Admin. Code r. 335–1–1.03, ''Organization and Duties of the Commission'', 335–1–1.04, ''Organization of the department''. These regulations mandate that members of the Alabama Environmental Management Commission (EMC), and the ADEM Director, Deputy Director, Division Chiefs, and all ADEM personnel meet all requirements of the state ethics law and the conflict of interest provisions of applicable Federal laws. ADEM and the EMC are the entities that have the authority to issue and approve CAA permits and enforcement orders. The ADEM Air Director has the authority to approve permits and enforcement orders for Alabama. In the case of appeal, permits and enforcement orders are sent to the EMC and the EMC has final approval authority.

South Carolina

In support of sub-elements 110(a)(2)(E)(i) and (iii), South Carolina's infrastructure SIP submission cites to several provisions. S.C. Code Ann. Section 48, Title 1, as referenced in South Carolina's infrastructure SIP submission, provides the SC DHEC's general legal authority to establish a SIP and implement related plans. S.C. Code Ann. Section 48–1–50(12) grants SC DHEC the statutory authority to ''[a]ccept, receive and administer grants or other funds or gifts for the purpose of carrying out any of the purposes of this chapter; [and to] accept, receive and receipt for federal money given by the Federal government under any Federal law to the State of South Carolina for air or water control activities, surveys or programs.'' S.C. Code Ann. Section 48, Title 2 grants SC DHEC statutory authority to establish environmental protection funds, which provide resources for SC DHEC to carry out its obligations under the CAA. Specifically, in Regulation 61–30, *Environmental Protection Fees,* SC DHEC established fees for sources subject to air permitting programs. SC DHEC notes that it implements the SIP in accordance with the provisions of S.C. Code Ann § 1–23–40 (the Administrative Procedures Act) and S.C. Code Ann. Section 48, Title 1. For Section 110(a)(2)(E)(iii), the submission states that South Carolina does not rely on localities for implementing any portion of the CAA.

As evidence of the adequacy of SC DHEC's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to South Carolina on May 2, 2019, outlining 105 grant commitments and the current status of these commitments for fiscal year 2018. The letter EPA submitted to South Carolina can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2019–0014. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2018, therefore, SC DHEC's grants were finalized and closed out.

With respect to 110(a)(2)(E)(ii),[14] South Carolina satisfies the requirements of CAA section 128(a)(1) for the South Carolina Board of Health and Environmental Control, which is the ''board or body which approves permits and enforcement orders'' under the CAA in South Carolina, through S.C. Code Ann. Sections 8–13–100, 8–13–700(A) and (B), and 8–13–730. S.C. Code Ann. Section 8–13–730 provides that ''[u]nless otherwise provided by law, no person may serve as a member of a governmental regulatory agency that regulates business with which that person is associated,'' and S.C. Code Ann. Section 8–13–700(A) which provides in part that ''[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.'' S.C. Code Ann. Section 8–13–700(B)(1)–(5) provides for disclosure of any conflicts of interest by a public official, public member or public employee. These State statutes have been approved into the South Carolina SIP as required by CAA section 128 and meet the requirement of CAA Section 128(a)(1) concerning boards and bodies representing the public interest and not deriving significant income from regulated entities; and 128(2) concerning adequate disclosure of potential conflicts of interest.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs have adequately addressed the requirements of section 128(a), and accordingly have met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. EPA is proposing to approve Alabama's and South Carolina's, infrastructure SIP submissions as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

7. 110(a)(2)(F) *Stationary Source Monitoring and Reporting:* Section 110(a)(2)(F) requires SIPs to meet applicable requirements addressing: (i) The installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions related data from such sources, and

(iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to this section, which reports shall be available at reasonable times for public inspection. EPA's rules regarding how SIPs need to address source monitoring requirements at 40 CFR 51.212 require SIPs to exclude any provision that would prevent the use of credible evidence of noncompliance.

Additionally, States are required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI), pursuant to Subpart A

[12] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

[13] This regulation has not been incorporated into the federally-approved SIP.

[14] *See* the description of the section 128 requirements provided above regarding for the Alabama submission.

to 40 CFR part 51—''Air Emissions Reporting Requirements.'' The NEI is EPA's central repository for air emissions data. All states are required to submit a comprehensive emission inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—nitrogen oxides, sulfur dioxides, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants.

Alabama

Alabama's infrastructure SIP submission cites to ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* 335–3–12—*Continuous Monitoring Requirements for Existing* Source, and ADEM Admin. Code r. 335–3–1–.13—*Credible Evidence* for this requirement. ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting,* authorizes the Director of ADEM to require sources to install, use and maintain monitoring equipment and submit emissions monitoring reports as prescribed by the Director. Pursuant to this regulation, these sources collect air monitoring data, quality assure the results, and report the data as prescribed by the Director. ADEM Admin. Code r. 335–3–12—*Continuous Monitoring Requirements for Existing Sources* requires certain existing sources to continuously monitor emissions of specified pollutants. Additionally, ADEM Admin. Code r. 335–3–12–.02 requires owners and operators of emissions sources to ''install, calibrate, operate and maintain all monitoring equipment necessary for continuously monitoring the pollutants.'' [15] ADEM Admin. Code r. 335–3–1–.13—*Credible Evidence,* makes allowances for owners and/or operators to utilize ''any credible evidence or information relevant'' to demonstrate compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certification and can be used to establish whether or not an owner or operator has violated or is in violation of any rule or standard. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the Alabama SIP.

Alabama's most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

South Carolina

The South Carolina submissions cites to SIP-approved Regulation 61–62.1, *Definitions and General Requirements,* Section III, *Emission Inventory* which provides for emission inventories and other emission monitoring and reporting requirements for stationary sources. Specifically, this regulation provides an emission inventory plan that establishes reporting requirements for various pollutants from permitted facilities on annual or three-year cycles, depending on emission levels and nonattainment area status. Further, S.C. Code Ann. § 48–1–22 provides the Department with the necessary authority to ''Require the owner of operator of any source or disposal system to establish and maintain such operational records; make reports; install, use and maintain monitoring equipment or methods; samples and analyze emissions or discharges in accordance with prescribed methods, at locations, intervals, and procedures as the Department shall prescribe; and provide such other information as the Department reasonably may require.'' Finally, R. 61–62.1, Section V, *Credible Evidence,* specifies that non-reference test data and other information already available and utilized for other purposes may be used to demonstrate compliance or noncompliance with emission standards. Accordingly, EPA is unaware of any provision preventing the use of credible evidence in the South Carolina SIP.

South Carolina's most recently published triennial compiled emissions information is available as part of the 2014 NEI. EPA compiles the emissions data, supplementing it where necessary, and releases it to the public through the website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.*

EPA has made the preliminary determination that Alabama's and South Carolina's SIP and practices are adequate for the stationary source monitoring systems related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(F).

8. 110(a)(2)(G) *Emergency Powers:* This section requires that states demonstrate authority comparable with section 303 of the CAA and adequate contingency plans to implement such authority.

Alabama

Alabama's infrastructure SIP submission cites Ala. Code sections 22–28–22, 22–28–14 and 22–28–21, which gives ADEM authority to adopt regulations for the purpose of protecting human health, welfare and the environment as required by section 303 of the CAA. ADEM Admin. Code r. 335–3–2—*Air Pollution Emergency,* provides for the identification of air pollution emergency episodes, episode criteria, and emissions reduction plans. Alabama's compliance with section 303 of the CAA and adequate contingency plans to implement such authority is also met by Ala. Code section 22–28–21 *Air Pollution Emergencies.* Ala. Code Section 22–28–21 provides ADEM the authority to order the ''person or persons responsible for the operation or operations of one or more air contaminants sources'' causing ''imminent danger to human health or safety in question to reduce or discontinue emissions immediately.'' The order triggers a hearing no later than 24-hours after issuance before the Environmental Management Commission which can affirm, modify or set aside the Director's order. Additionally, the Governor can, by proclamation, declare, as to all or any part of said area, that an air pollution emergency exists and exercise certain powers in whole or in part, by the issuance of an order or orders to protect the public health. Under Ala. Code sections 22–28–3(a) and 22–28–10(2), ADEM also has the authority to issue such orders as may be necessary to effectuate the purposes of the Alabama Pollution Control Act, which includes achieving and maintaining such levels of air quality as will protect human health and safety and, to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the social development of this state and facilitate the enjoyment of the natural attractions of the state.

South Carolina

South Carolina's infrastructure SIP submission cites Regulation 61–62.3, *Air Pollution Episodes,* which provides for contingency measures when an air pollution episode or exceedance may

[15] ADEM Admin. Code r. 335–3–12–.02 establishes that data reporting requirements for sources required to conduct continuous monitoring in the state should comply with data reporting requirements set forth at 40 CFR part 51, Appendix P.

lead to a substantial threat to the health of persons in the state or region. S.C. Code Ann. Section 48–1–290 provides SC DHEC, with concurrent notice to the Governor, the authority to issue an order recognizing the existence of an emergency requiring immediate action as deemed necessary by SC DHEC to protect the public health or property. Any person subject to this order is required to comply immediately. Additionally, S.C. Code Ann. Section 1–23–130 provides SC DHEC with the authority to establish emergency regulations to address an imminent peril to public health, or welfare, and authorizes emergency regulations to protect natural resources if any natural resource related agency in the State finds that abnormal or unusual conditions, immediate need, or the State's best interest require such emergency action.

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs state laws are adequate for emergency powers related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(G).

9. 110(a)(2)(H) *SIP Revisions:* Section 110(a)(2)(H), in summary, requires each SIP to provide for revisions of such plan: (i) As may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii) whenever the Administrator finds that the plan is substantially inadequate to attain the NAAQS or to otherwise comply with any additional applicable requirements.

Alabama

As previously discussed, ADEM is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Alabama has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS. ADEM Admin. Code r. 335–1–1–.03—*Organization and Duties of the Commission,*[16] provides the Alabama Environmental Management Commission with the authority to establish, adopt, promulgate, modify, repeal and suspend rules, regulations, or environmental standards which may be applicable to Alabama or ''any of its geographic parts.'' Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* incorporates NAAQS, as amended or revised, and provides that the NAAQS apply throughout the State.

South Carolina

SC DHEC is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS in South Carolina. The State has the ability and authority to respond to calls for SIP revisions and has provided a number of SIP revisions over the years for implementation of the NAAQS. S.C. Code Ann. Section 48, Title 1, provides SC DHEC with the necessary authority to revise the SIP to accommodate changes in the NAAQS and thus revise the SIP as appropriate.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP submissions, adequately provide for future SIP revisions related to the 2015 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Alabama's, and South Carolina's infrastructure SIP submission with respect to section 110(a)(2)(H).

10. 110(a)(2)(J) *Consultation with government officials, public notification, and PSD and visibility protection:* EPA is proposing to approve Alabama's, and South Carolina's infrastructure SIP for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J) to include a program in the SIP that complies with the applicable consultation requirements of section 121, the public notification requirements of section 127 and PSD.

With regard to the PSD element of section 110(a)(2)(J), this requirement is met by a state's confirmation in an infrastructure SIP submission that the state has a SIP-approved PSD program meeting all the current requirements of part C of title I of the CAA for all NSR regulated pollutants. As discussed in more detail above under the section discussing 110(a)(2)(C), the Alabama and South Carolina SIPs contain provisions for the State's PSD programs that reflect current PSD requirements to satisfy the PSD element of section 110(a)(2)(J).

With regard to the visibility protection element of section 110(a)(2)(J), EPA's 2013 Guidance notes that it does not treat the visibility protection aspects of section 110(a)(2)(J) as applicable for purposes of the infrastructure SIP approval process. EPA recognizes that states are subject to visibility protection and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). However, there are no newly applicable visibility protection obligations after the promulgation of a new or revised NAAQS. Thus, EPA has determined that states do not need to address the visibility component of 110(a)(2)(J) in infrastructure SIP submittals. As such, Alabama's and South Carolina's infrastructure SIP submissions related to the 2015 8-hour ozone NAAQS do not address the visibility protection element of section 110(a)(2)(J).

With regard to consultation, Section 110(a)(2)(J) of the CAA requires states to provide a process for consultation with local governments, designated organizations and Federal Land Managers (FLMs) carrying out NAAQS implementation requirements pursuant to section 121 relative to consultation. EPA's rationale for the consultation and public notice sub-elements for Alabama and South Carolina are described below.

Alabama Consultation with government officials (121 consultation): ADEM Admin. Code r. 335–3–1–.03—*Ambient Air Quality Standards,* as well as its Regional Haze Implementation Plan (which allows for continued consultation with appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLMs), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. In addition, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials.

Public notification (127 public notification): ADEM Admin. Code r. 335–3–14–.01(7)—*Public Participation,* and 335–3–14–.05(13)—*Public Participation,* and Ala. Code section 22–28–21—*Air Pollution Emergencies,* provide for public notification when air pollution episodes occur. Furthermore, ADEM has several public notice mechanisms in place to notify the public of ozone forecasting. Alabama maintains a public website on which daily air quality index forecasts are posted for the Birmingham, Huntsville, and Mobile areas. This website can be accessed at: *http://adem.alabama.gov/programs/air/airquality.cnt.*

South Carolina

Consultation with government officials (121 consultation): South Carolina's Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* as well as the State's

[16] This regulation has not been incorporated into the federally-approved SIP.

Regional Haze Implementation Plan (which allows for consultation between appropriate state, local, and tribal air pollution control agencies as well as the corresponding FLM), provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. South Carolina has SIP-approved state-wide consultation procedures for the implementation of transportation conformity. Implementation of transportation conformity as outlined in the consultation procedures requires SC DHEC to consult with federal, state and local transportation and air quality agency officials on the development of motor vehicle emissions budgets. Additionally, S.C. Code Section 48–1–50(8) provides SC DHEC with the necessary authority to ''Cooperate with the governments of the United States or other states or state agencies or organizations, official or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.''

Public notification (127 public notification): Regulation 61–62.3, *Air Pollution Episodes,* requires that SC DHEC notify the public of any air pollution episode or NAAQS violation. S.C. Code Ann. § 48–1–60 establishes that ''Classification and standards of quality and purity of the environment [are] authorized after notice and hearing.'' Additionally, Regulation 61–62.5, Standard 7.1(q), *Public Participation,* notifies the public by advertisement in a newspaper of general circulation in each region in which a proposed plant or modifications will be constructed of the degree of increment consumption that is expected from the plant or modification, and the opportunity for comment at a public hearing as well as the opportunity to provide written public comment. An opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the plant or modification, alternatives to the plant or modification, the control technology required, and other appropriate considerations is also offered.

EPA also notes that SC DHEC maintains a website that provides the public with notice of ozone NAAQS exceedances, measures the public can take to help prevent such exceedances, and the ways in which the public can participate in the regulatory process. See *https://www.scdhec.gov/environment/your-air/most-common-air-pollutants/ozone-forecast.*

EPA has made the preliminary determination that Alabama's and South Carolina's SIPs and practices adequately demonstrate that the States meets applicable requirements related to consultation with government officials, ability to provide public notification, and PSD of section 110(a)(2)(J) for the 2015 8-hour ozone NAAQS. Thus, EPA is proposing to approve Alabama's, and South Carolina's infrastructure SIP for the 2015 8-hour ozone NAAQS with respect to the general requirement in section 110(a)(2)(J).

11. 110(a)(2)(K) *Air Quality Modeling and Submission of Modeling Data:* Section 110(a)(2)(K) of the CAA requires that SIPs provide for performing air quality modeling so that effects on air quality of emissions from NAAQS pollutants can be predicted and submission of such data to EPA can be made.

Alabama

ADEM Admin. Code r. 335–3–14–.04—*Prevention of Significant Deterioration Permitting,* specifically sub-paragraph (11)—*Air Quality Models,* specifies that required air modeling be conducted in accordance with the applicable EPA air quality models specified in the ''Guideline on Air Quality Models.'' ADEM Admin. Code r. 335–3–1–.04—*Monitoring, Records, and Reporting* details how sources are required as appropriate to establish and maintain records; make reports; install, use, and maintain such monitoring equipment or methods; and provide periodic emission reports as the regulation requires. These reports and records are required to be compiled and submitted to the State. These regulations also demonstrate that Alabama has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 2015 8-hour ozone NAAQS.

Additionally, Alabama participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, Alabama's air quality regulations and practices demonstrate that ADEM has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS has been promulgated, and to provide such information to EPA Administrator upon request.

South Carolina

South Carolina's Regulations 61–62.5, Standard No. 2, *Ambient Air Quality Standards,* and Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP specify that required air modeling be conducted in accordance with 40 CFR part 51, Appendix W, *Guideline on Air Quality Models.* Also, S.C. Code Ann. § 48–1–50(14) provides SC DHEC with the necessary authority to ''Collect and disseminate information on air and water control.''

Additionally, South Carolina participates in a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2015 8-hour ozone NAAQS, for the southeastern states. Taken as a whole, South Carolina's air quality regulations and practices demonstrate that SC DHEC has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of any emissions of any pollutant for which a NAAQS had been promulgated, and to provide such information to EPA Administrator upon request.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP and practices adequately demonstrate the State's ability to provide for air quality modeling, along with analysis of the associated data, related to the 2015 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(K).

12. 110(a)(2)(L) *Permitting Fees:* This section requires the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under the CAA, a fee sufficient to cover: (i) The reasonable costs of reviewing and acting upon any application for such a permit, and (ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under title V.

Alabama

ADEM Admin. Code r. 335–1–6—*Application Fees* [17] requires ADEM to charge permit-specific fees to the applicant/source as authorized by Ala. Code section 22–22A–5. ADEM relies on these State requirements to demonstrate that its permitting fee structure is

[17] This regulation has not been incorporated into the federally-approved SIP.

sufficient for the reasonable cost of reviewing and acting upon PSD and NNSR permits. Additionally, Alabama has a fully-approved title V operating permit program—ADEM Admin. Code r. 335–1–7—*Air Division Operating Permit Fees* [18]—that covers the cost of implementation and enforcement of PSD and NNSR permits after they have been issued.

South Carolina

S.C. Code Ann. Section 48–2–50 prescribes that SC DHEC charge fees for environmental programs it administers pursuant to federal and State law and regulations including those that govern the costs to review, implement and enforce PSD and NNSR permits. Regulation 61–30, *Environmental Protection Fees* [19] prescribes fees applicable to applicants and holders of permits, licenses, certificates, certifications, and registrations, establishes procedures for the payment of fees, provides for the assessment of penalties for nonpayment, and establishes an appeal process for refuting fees. Additionally, South Carolina has a federally-approved title V program, Regulation 61–62.70, *Title V Operating Permit Program*,[20] which assesses fees to provide for the implementation and enforcement of the requirements of PSD and NNSR for facilities once they begin operating.

EPA has made the preliminary determination that Alabama's and South Carolina's state rules and practices adequately provide for permitting fees related to the 2015 8-hour ozone NAAQS, when necessary. Accordingly, EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submissions with respect to section 110(a)(2)(L).

13. 110(a)(2)(M) *Consultation and Participation by Affected Local Entities:* Section 110(a)(2)(M) of the Act requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

Alabama

ADEM coordinates with local governments affected by the SIP. ADEM Administrative Code 335–3–17–.01—*Transportation Conformity* is one way that Alabama provides for consultation with affected local entities. More specifically, Alabama adopted state-wide consultation procedures for the implementation of transportation conformity which includes the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. Required partners covered by Alabama's consultation procedures include federal, state and local transportation and air quality agency officials. Furthermore, ADEM has worked with the Federal Land Managers as a requirement of the regional haze rule.

South Carolina

South Carolina's Regulation 61–62.5, Standard No. 7, *Prevention of Significant Deterioration,* of the South Carolina SIP requires that SC DHEC notify the public, which includes local entities, of an application, preliminary determination, the activity or activities involved in the permit action, any emissions change associated with any permit modification, and the opportunity for comment prior to making a final permitting decision. Also, as noted above, S.C. Code Ann. Section 48–1–50(8) allows SC DHEC to ''Cooperate with the governments of the United States or other states or state agencies or organizations, officials, or unofficial, in respect to pollution control matters or for the formulation of interstate pollution control compacts or agreements.'' By way of example, SC DHEC has worked closely with local political subdivisions during the development of its Transportation Conformity SIP and Regional Haze Implementation Plan.

EPA has made the preliminary determination that Alabama's and South Carolina's SIP and practices adequately demonstrate consultation with affected local entities related to the 2015 8-hour ozone NAAQS when necessary.

V. Proposed Action

With the exception of interstate transport provisions pertaining to contribution to nonattainment or interference with maintenance in other states of section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is proposing to approve Alabama's and South Carolina's August 20, 2018 and September 7, 2018, SIP submissions for the 2015 8-hour ozone NAAQS for the above described infrastructure SIP requirements, respectively. EPA is proposing to approve Alabama's and South Carolina's infrastructure SIP submissions for the 2015 8-hour ozone NAAQS because the submissions are consistent with section 110 of the CAA.

VI. Statutory and Executive Order Reviews

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

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

The Alabama SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a

[18] Title V program regulations are federally approved but not incorporated into the federally-approved SIP.

[19] This regulation has not been incorporated into the federally-approved SIP.

[20] Title V program regulations are federally-approved but not incorporated into the federally-approved SIP.

tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: November 13, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–25577 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0214; FRL–10002–53–Region 4]

Air Plan Approval; Alabama: Revisions to Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Alabama State Implementation Plan (SIP), submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via two letters dated August 27, 2018, and October 25, 2018. The proposed SIP revisions make technical amendments to the State's Cross-State Air Pollution Rule (CSAPR) regulations. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0214 at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

FOR FURTHER INFORMATION CONTACT: Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Scofield can be reached via telephone at (404) 562–9034, or via electronic mail at *scofield.steve@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. What action is EPA taking?

EPA is proposing to approve changes to the Alabama SIP that were provided to EPA through two letters dated August 27, 2018, and October 25, 2018.[1] Specifically, EPA is proposing to approve two SIP revisions that include changes to Alabama's CSAPR regulations, found in ADEM Administrative Code Rules 335–3–5–.13, 335–3–8–.14, 335–3–8–.40, and 335–3–8–.46.[2]

Alabama's August 27, 2018, SIP revision makes changes to ADEM's CSAPR regulations by adding the term ''Group 2'' in several places to Rule 335–3–8–.40 to make the terminology consistent with EPA's CSAPR NO_X Ozone Season Group 2 Trading Program regulations. Alabama's October 25, 2018, SIP revision changes the CSAPR regulations in Rules 335–3–5–.13, 335–3–8–.14, and 335–3–8–.46 by explicitly addressing the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new units in Indian country within the State and not used for that purpose. In addition, the October 25, 2018, SIP revision makes minor and administrative changes, such as correcting typographical errors.

II. Background

EPA issued CSAPR in July 2011 and the CSAPR Update in September 2016 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution for specific National Ambient Air Quality Standards (NAAQSs).[3] Under CSAPR, large electricity generating units (EGUs) in Alabama were subject to the Federal Implementation Plan (FIP) provisions requiring the units to participate in federal allowance trading programs for annual emissions of sulfur dioxide (SO_2) and annual and ozone season emissions of nitrogen oxides (NO_X). CSAPR includes provisions under which states may submit for EPA approval SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs, provided that the SIP revisions meet all relevant criteria. Alabama previously submitted, and EPA has approved, SIP revisions to replace the CSAPR and CSAPR Update FIP requirements applicable to the State's EGUs with requirements established under Alabama's own CSAPR state

[1] EPA received ADEM's submissions on September 7, 2018 and October 30, 2018, respectively.

[2] EPA notes that the Agency received other revisions to Alabama SIP submitted with the August 27, 2018, letter. EPA will consider action on the remaining revisions in separate actions.

[3] *See* Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011); Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS, 81 FR 74504 (October 26, 2016).

trading program regulations. *See* 81 FR 59869 (August 31, 2016); 82 FR 46674 (October 6, 2017).

III. Analysis of State's Submittal

Alabama's August 27, 2018, SIP revision makes changes to the State's CSAPR regulations by adding the term ''Group 2'' throughout Rule 335–3–8–.40. These changes were intended to make the terminology in ADEM's Transport Rule (TR) NO_X Ozone Season Group 2 Trading Program rule consistent with EPA's CSAPR regulations.

Alabama's October 25, 2018, SIP revision makes changes to the State's CSAPR regulations by amending Rules 335–3–8–.14 and 335–3–8–.46, in the CSAPR NO_X trading rules in Chapter 335–3–8, and Rule 335- 3–5–.13, in the CSAPR SO_2 trading rules in Chapter 335–3–5, to more clearly address the distribution of any allowances that may remain after allocations to all existing units have reached their historical emissions caps. These revisions ensure that Alabama's rules contain provisions explicitly providing for the disposition of the total budget established for units in Alabama by EPA for each trading program, consistent with Alabama's original intent in adopting its trading program regulations and with EPA's understanding when initially approving the regulations into the SIP.[4] Similarly, language was also added to Rule 335–3–8–.14 to explicitly provide for the disposition of 13 allowances that are set aside for any new CSAPR NO_X Ozone Season Group 2 units in Indian country within the State of Alabama in the event that EPA does not allocate the allowances to such units. Finally, as discussed above, addition, the October 25, 2018, SIP revision makes minor changes that do not change the substance of the regulations, such as correcting typographical errors.

With the aforementioned changes, the State's CSAPR regulations as revised remain consistent with all the applicable requirements in 40 CFR 52.38 and 52.39 for approval of CSAPR SIP revisions. EPA proposes to find that these changes to Rule 335–3–5 and Rule 335–3–8 also will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. Therefore, EPA is proposing to approve these changes into the Alabama SIP.

[4] *See* notices of proposed rulemaking to approve Alabama's CSAPR state trading program regulations at 82 FR 39070 (August 17, 2017), and 81 FR 41914 (June 28, 2016).

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference ADEM Administrative Code Rules 335–3–5–.13, 335–3–8–.14, 335–3–8–.40, and 335–3–8–.46, which make the following revisions to Alabama's SIP: Add the term ''Group 2'' to the State's rules consistent with EPA's CSAPR NO_X Ozone Season Group 2 Trading Program regulations, address the disposition of any allowances that remain after allocations to all existing units have reached their historical emission caps as well as any allowances set aside for new CSAPR NO_X Ozone Season Group 2 units in Indian country within Alabama and not used for that purpose, and make other minor changes. The revisions were state effective on October 5, 2018, and December 7, 2018. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve changes to the Alabama SIP, that were provided to EPA through Alabama's August 27, 2018, and October 25, 2018, SIP revisions. Specifically, EPA is proposing to approve changes to ADEM Administrative Code Rules 335–3–5–.13, 335–3–8–.14, 335–3–8–.40, and 335–3–8–.46, as described above, in order to make the terminology in Alabama's regulations more consistent with the federal CSAPR regulations and explicitly provide for the disposition of certain allowances included in the State's overall budgets. This action is limited to the rules currently before the Agency and does not modify any other CSAPR rules in Alabama's SIP.

VI. Statutory and Executive Order Reviews

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

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

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 13, 2019.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2019–25576 Filed 11–25–19; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2019–0399, FRL–10002–59–Region 2]

Approval of Air Quality Implementation Plans; New Jersey; Gasoline Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency proposes to approve a revision to the New Jersey State Implementation Plan for ozone National Ambient Air Quality Standard which includes regulatory amendments relevant to the New Jersey Department of Environmental Protection's requirements for Stage I and Stage II vapor recovery systems at gasoline dispensing facilities: Upgrades to Stage I controls for tank breathing and refueling systems; decommissioning existing Stage II systems incompatible with onboard refueling vapor recovery systems on or before December 23, 2020 with a demonstration that such removal is consistent with the Clean Air Act and EPA Guidance; and allowing for continued use of existing onboard refueling vapor recovery-compatible Stage II systems if facilities maintain the systems, including compliance with required testing, to ensure proper working order. The amendments also require installation of enhanced conventional dripless nozzles and low permeation hoses as part of decommissioning existing Stage II systems or as maintenance. The intended effect of the amendments is to propose approval of New Jersey's revised vapor recovery regulations. New Jersey's comprehensive submittal also included changes in amendments for its air permitting program and t-butyl acetate emission reporting requirements, however, the EPA will be acting on these amendments under a separate action.

DATES: Comments must be received on or before December 26, 2019.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2019–0399, at *http://www.regulations.gov*. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

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

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I. What is being addressed in this document?

Stage I and Stage II vapor recovery systems at gasoline dispensing facilities (GDFs) control hydrocarbon vapors, such as volatile organic compounds (VOC), at the point of the delivery truck's dispensing gasoline to storage tanks (Stage I) and during the refueling of motor vehicles (Stage II). Stage I vapor recovery systems (Stage I Systems), which have been in place nationwide since the 1970s, route displaced vapors back to the delivery truck (through either a dual-point or a single-point delivery and vent system) during unloading of gasoline from the truck to the storage tank. A dual-point system utilizes two hoses: One to deliver the product and the other to return the vapors back to the tanker truck with rotatable adapters located on the product port and the vapor port. A single-point vapor recovery system utilizes one co-axial hose that is essentially a hose within a hose, allowing product to enter and vapors to exit at the same time.

Stage II vapor recovery systems (Stage II Systems) have been required in New Jersey since 1988. They utilize nozzles and hoses, installed on the GDF dispenser, that capture the fuel vapors from the gas tank of the refueling vehicle and return the vapors to the underground or aboveground storage tank via underground piping to prevent vapors from escaping to the atmosphere. GDFs in New Jersey employ two types of Stage II Systems—vacuum-assist and vapor balance systems. Vacuum-assist systems rely on a vacuum pump in the dispensing nozzle to move vapors from the vehicle into the GDF storage tank. Vapor balance systems transfer vapors from the vehicle to the storage tank based on pressure differential. Vacuum-assist systems work best with vehicles that are not equipped with technology to capture hydrocarbon emission inside the vehicle.

Onboard refueling vapor recovery (ORVR) systems, a type of hydrocarbon emission control technology, is a carbon canister installed in automobiles to capture fuel vapors evacuated from the vehicle gasoline tank before those vapors reach the GDF pump nozzle. The ORVR captures and holds the vapors until they are combusted in the engine during operation. Incompatibility between the ORVR and vacuum-assist Stage II Systems could result in excess emissions from the GDF storage tank. Such an incompatibility could result from the ORVR's causing the vacuum pump on the nozzle to pump air rather than gasoline vapors back to the GDF storage tank. Vapor return to the GDF can lead to vapor growth, over-pressurization of the GDF storage tank, and potentially excess emissions. Thus, Stage II vapor recovery programs have become largely redundant and potentially incompatible controls. As such, the continued use of Stage II Systems achieves a declining emission reduction as an increasing proportion of the on-road motor vehicle fleet in New Jersey comprise of ORVR-equipped vehicles.

To address the potential incompatibility, some GDFs have

installed ORVR-compatible Stage II Systems; these include: Vapor balance systems; vapor recovery systems with tank pressure management emission control equipment that are installed on the atmospheric vent of the GDF tank and operated in conjunction with Stage I and Stage II equipment; and vacuum assist systems that have ORVR-compatible pump nozzles.

Stage II Systems and ORVR systems were both required by the 1990 Amendments to the Clean Air Act (CAA).[1] However, Congress recognized that the two technologies would, in time, become redundant; therefore, the CAA allows GDFs to phase out of the Stage II program as more ORVR-equipped vehicles come into use.

II. What is the background of this action as it relates to Stage II vapor recovery?

On November 29, 2017, the New Jersey Department of Environmental Protection (the State) submitted a revision to its State Implementation Plan (SIP). The SIP revision consists of the State's newly adopted New Jersey Administrative Code (N.J.A.C.) 7:27–16.3, ''Gasoline Transfer Operations,'' (the Rule), which makes the following changes to the controls required for Phase II[2] vapor recovery at GDFs operating in New Jersey. For GDFs with existing ORVR-compatible Stage II Systems, the Rule allows GDFs to choose either: To decommission non-compliant systems within three years, or to continue to maintain the system as an ORVR-compatible system and comply with the requirement to test to ensure the system is working properly under N.J.A.C. 7:27–16.3(j). As part of decommissioning, under N.J.A.C. 7:27–16.3(g), each GDF with a storage tank greater than 2,000 gallons must be equipped with CARB-certified dripless enhanced conventional dispensing nozzles and dispenser hoses that are CARB-certified low permeation hoses. An existing GDF is not required to replace nozzles and hoses immediately with CARB-certified but may make the replacements as part of maintenance if prior to decommissioning. If no nozzle is CARB-certified at the time of the installation, decommissioning, or nozzle replacement, a conventional nozzle may be installed. This reflects the latest technology and furthers the State's efforts for attainment of the ozone NAAQS.

Under CAA Section 202(a)(6), Congress provided authority to EPA to allow states to remove (*e.g.,* decommission) Stage II vapor recovery programs from their SIPs, through a SIP revision, after EPA finds that ORVR is in widespread use nationwide. Nationally, the ORVR system has been phased in for new passenger vehicles since the model year 1998 and for light-duty trucks and most heavy-duty gasoline powered vehicles since model year 2001. Since 2006, nearly all new gasoline-powered light-duty vehicles, light-duty trucks, and heavy-duty vehicles have been equipped with ORVR systems.

On May 16, 2012, the EPA determined that ORVR systems are in widespread use nationwide for control of gasoline emissions during refueling of vehicles at GDFs (Widespread Use Rule). *See* 77 FR 28772 (May 16, 2012). The ORVR Widespread Use Rule also allowed the EPA to exempt all new ozone nonattainment areas classified serious or above from the requirement to adopt Stage II vapor recovery programs. Following promulgation of the Widespread Use Rule, the EPA issued guidance[3] on how states may develop approvable SIP revisions that seek to remove Stage II programs from SIPs (the EPA Guidance). The EPA Guidance provides recommendations on how states may assess and demonstrate compliance with relevant CAA requirements and consistency with the EPA Widespread Use Rule in decommissioning Stage II programs. First, the EPA Guidance indicates that Incremental Equation 1 may be used to demonstrate compliance with the non-interference provisions under Section 110(l) and comparable measures provisions under Section 184(b)(2) of the CAA. Second, the EPA Guidance states that Delta Equation 2 may be used to demonstrate that removal of a state's pre-1990 Stage II vapor recovery program would not constitute backsliding and that the state would be in compliance with Section 193 of the CAA.

The 2012 EPA widespread use analysis included in the EPA Guidance was based on the projected installation of ORVR systems on new model vehicles and estimates that in 2012 more than 75 percent of gasoline refueling nationwide would occur with ORVR-equipped vehicles.[4] The State, in its November 2017 submission, estimates that by 2017 approximately 90 percent of the vehicle fleet in New Jersey will have been equipped with ORVR technology.

III. What is the background of this action as it relates to Stage I vapor recovery?

The current proposed Rule allows for strengthening Stage I Systems to include, with a few exceptions, CARB-certified Stage I enhanced vapor recovery components. The amendments allow existing GDFs one year to install a CARB-certified Stage I enhanced vapor recovery pressure/vacuum relief vent valve and seven years to comply with the remaining equipment requirements. Unlike the CARB regulations, the proposed rule does not require all the components to be approved in the same Executive Order. The State's amendments also include an exception to the CARB requirements for single-point vapor balance systems and rotatable adapters for existing systems. The State requires a dual-point vapor balance system for new Stage I Systems. However, an existing facility that has already installed a single-point vapor balance system does not need to replace it with a dual-point system nor install rotatable adapters.

IV. What is the EPA's analysis of New Jersey's submission?

In reviewing the proposed SIP revision, the EPA must ensure that: (1) The State has demonstrated that the proposed action would not interfere with ozone attainment; (2) that the proposed action would achieve equivalent or greater emission reductions; and (3) that the ultimate period to remove Stage II Systems in New Jersey is during a time when the State can demonstrate *de minimis* incremental benefits. The EPA finds that the State has demonstrated widespread use of ORVR systems throughout the motor vehicle fleet and that implementation of the Rule in the proposed SIP revision would comply with CAA Sections 110(l), 184(b)(2), and

[1] Section 182(b)(3) of the CAA requires moderate and above ozone nonattainment areas to implement Stage II vapor recovery programs. Also, under CAA section 184(b)(2), states in the Ozone Transport Region (OTR) are required to implement Stage II or comparable measures. CAA section 202(a)(6) required EPA to promulgate regulations for ORVR for light-duty vehicles (passenger cars).

[2] The New Jersey Administrative Code 7:27–16.3, Gasoline Transfer Operations. It should be noted that this **Federal Register** notice and the EPA use the term ''Stage I'' and ''Stage II'', whereas, the State follows the terminology ''Phase I'' and ''Phase II'' that California Air Resources Board (CARB) uses, because both the existing Rule and the amendments rely upon CARB certifications.

[3] EPA (2012). ''Guidance on Removing Stage II Gasoline Refueling Vapor Recovery Programs from State Implementation Plans and Assessing Comparable Measures,''. See, *https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20120807_page_stage2_removal_guidance.pdf,* last accessed September 12, 2019.

[4] See, Appendix Table A–1 of the EPA 2012 Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures.

193. As outlined in the SIP revision, the modifications authorized under the proposed Rule [5] will result in an emission reduction of approximately 3.5 tons per day of VOC. In evaluating the State's analysis, the EPA also considered previous EPA approvals of the removal of Stage II System from other SIPs to ensure consistency to similar Stage II-related SIP revisions.

The State's proposed SIP revision also includes requirements for CARB-certified Stage I enhanced vapor recovery components for tank breathing and refueling systems. The Stage I enhancements will achieve approximately 5 tons per day of VOC emission reductions.

V. What are the relevant CAA requirements for this SIP revision?

a. CAA Section 110(l) Non-Interference Measure

CAA Section 110(l) specifies that the EPA cannot approve a SIP revision if it would interfere with attainment of National Ambient Air Quality Standards (NAAQS), reasonable further progress towards attainment, or any other applicable requirement of the CAA. The State has demonstrated through application of the Incremental Equation 1 and the Motor Vehicle Emissions Simulator (MOVES) model to the relevant state emissions data, in accordance with the EPA Guidance, that the combination of the widespread use ORVR-equipped vehicles and the decommissioning of ORVR-incompatible vapor control systems will not result in an actual increase of VOC emissions in the State. For purposes of the current proposed rulemaking, the incremental emissions impact derived from Incremental Equation 1 is the difference between the refueling vapors that Stage II captures from non-ORVR vehicles and associated incompatible excess emissions. The EPA Guidance calls for demonstrating ''the point in time at which *de minimis* incremental benefits are reached.'' Using emissions data from a sample of urban and rural non-attainment areas (*i.e.,* Essex, Middlesex, Camden, Ocean, and Salem counties) the State estimated this time period to be a nine-year span from 2014 through 2022. As recommended in the EPA Guidance, the State used the MOVES model to estimate the fraction of gasoline dispensed to ORVR-equipped vehicles and the fraction of annual vehicle miles traveled by ORVR-equipped vehicles. The State used the above-mentioned nine-year span [6] and the five counties for the time and geographic parameters, respectively. Because a small, but declining, number of non-ORVR vehicles remain in the State highway fleet, there is a small, but ever-decreasing, level of future emission reduction that could be achieved from Stage II Systems. However, the State has demonstrated that statewide overall benefits from Stage II Systems become zero during the mid-2017 to mid-2021 timeframe; that is, Stage II System implementation provides no net difference in the total VOC emission. Because the timing of this proposed rulemaking coincides with the mid-2017 and mid-2021 timeframe (*i.e.,* the effective date for N.J.A.C. 7:27–16.3 is on or before December 23, 2020), the removal of the Stage II program from the SIP will not interfere with the State's attainment of the ozone NAAQS.

b. CAA Section 184(b)(2) Comparable Measure

Because New Jersey is located in the northeast Ozone Transport Region, under CAA Section 184(b)(2), the State must adopt and implement either Stage II controls at GDFs or control measures capable of achieving emission reductions comparable to those achievable through Stage II Systems. The State conducted a statewide comparable measure analysis in accordance with the EPA Guidance that shows that phasing out the Stage II program would result in zero or *de minimis* [7] incremental loss of area wide emission control during the mid-2017 and mid-2021 timeframe. This is because as the number of ORVR vehicles increases, the efficiency of refueling ORVR vehicles at the Stage II GDFs decreases.

In determining the optimal period for requiring the decommissioning of Stage II Systems (*i.e.,* mid-2017 and mid-2021), the State analyzed Stage II related gasoline throughput distribution (*i.e.,* amount of gasoline dispensed) and the associated inefficiency that is due to ORVR-Stage II incompatibilities. The State's review included: Permitting and enforcement data; existing EPA and CARB throughput distribution estimates; and an NJDEP-administered survey [8] of GDFs. The State examined the effect on incremental loss of a range of gasoline throughputs (*i.e.,* 29 to 71 percent) that would occur at vacuum-assist facilities from the years 2014 to 2022. Based on its analysis, the State concluded that the incremental potential loss of area wide emission control for in the five representative counties under study would be *de minimis* under the EPA Guidance. *See* summary in Appendix A in the Docket. For example, Appendix A shows that for Middlesex County in the year 2017, if 29 percent of the gasoline throughput were to occur at Stage II facilities, given widespread use of ORVR-equipped vehicles, the incremental loss of emissions would be 3.5 percent; and if 71 percent of the gasoline throughput were to occur at Stage II facilities, the incremental loss would be 0.45 percent. Thus, the incremental loss would be less than 10 percent (*de minimis* under the EPA Guidance) for 2017. The State's full analysis shows that for all the years under study (*i.e.,* 2014 to 2022) and for all five counties, the incremental loss would be *de minimis* under the EPA Guidance.

As part of the throughput distribution analysis, the State also undertook a determination of the ''crossover period,'' the timeframe over which use of Stage II Systems is expected to yield no net difference in controlled emissions and therefore represents the ideal time for the State to phase out the use of Stage II controls. The crossover period for New Jersey is from mid-2017 to mid-2021. The proposed rule amendments require decommissioning of ORVR-incompatible Stage II Systems on or before December 23, 2020, a date that is well within the projected crossover period. Therefore, the State's analysis has demonstrated that the decommissioning compliance date will not result in emission increases, hence the State will not need to adopt and implement any additional Stage II controls at GDFs or control measures capable of achieving emission reductions comparable to those achievable through Stage II Systems.

c. CAA Section 193 Anti-Backsliding

CAA Section 193 applies to nonattainment areas in states that adopt Stage II control programs into the SIP prior to November 15, 1990 and prohibits modification of any control unless the modification insures equivalent or greater emission reductions. As discussed above, the State adopted the Stage II program in 1988 and, therefore, must show that the proposed action will not result in backsliding of the ozone nonattainment requirements for the State.

[5] Attachment to the NJDEP SIP revision titled *Phase II SIP NJAC 7–27:16.3 Nov 28 2017.docx.*

[6] The years in between 2014 and 2018 were interpolated and the years after 2018 were extrapolated.

[7] The EPA Guidance defines *de minimis* as an incremental loss of 10% or less. The EPA Guidance at p. 6.

[8] NJDEP (2014). ''NJDEP survey of gasoline dispensing facilities conducted in January of 2014,'' on file with NJDEP.

To demonstrate compliance with CAA Section 193, the State used the EPA Guidance's Delta Equation 2 to show that the removal of Stage II Systems will have no impact on area-wide emissions reductions based on the difference between Stage II and ORVR efficiencies. As stated in Section V.a. above, the State demonstrated that statewide overall benefits from Stage II Systems would become zero during the mid-2017 and mid-2021 crossover period. Because Stage II decommissioning compliance date of on or before December 23, 2020 falls well within the crossover period, EPA finds no potential for backsliding.

VI. What action is EPA proposing to take?

The EPA is proposing to approve the State's November 29, 2017 SIP revision, which would incorporate into the State's SIP N.J.A.C. 7:27–16.3, ''Gasoline Transfer Operations.'' The SIP revision would allow for strengthening the Stage I vapor recovery requirements and decommissioning of Stage II Systems at GDFs. The EPA's proposal is based on the conclusion that the SIP revision conforms with the EPA Guidance, will not interfere with any applicable requirement of any NAAQS or with other applicable requirements of the CAA, and meets all applicable requirements of the CAA. The proposed gasoline transfer operation provisions will reduce emissions of gasoline vapors resulting in a reduction of VOCs, which contribute to the formation of ozone.

The State's November 29, 2017 SIP revision is approvable under CAA section 110(l) because VOC emissions increase that may have occurred between the years 2017 to 2021 are too small to interfere with attainment and reasonable further progress towards attainment of ozone NAAQS. The State's SIP submission also demonstrates that continuing a Stage II vapor recovery program would have resulted in an increase in refueling emissions due to excess emissions resulting from incompatibility between the ORVR and Stage II Systems. Preventing an increase in refueling emissions is consistent with non-interference requirements of the CAA Section 110(l).

The revision to the SIP also satisfies the ''comparable measures'' requirement of CAA section 184(b)(2), which requires OTR states proposing to remove Stage II control programs to implement measures that would achieve ''comparable,'' and not ''equivalent,'' reductions to existing Stage II programs. As stated in the EPA Guidance, ''the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis,* incremental loss of area-wide emission control.'' In this case, the State has demonstrated that any temporary emissions increase resulting from phasing out of Stage II controls during the years 2017 to 2021 would be *de minimis*.

Finally, the State has satisfied the anti-backsliding requirements of CAA Section 193. The compliance date of on or about December 23, 2020 for decommissioning Stage II Systems and removal of the Stage II program from the SIP is well within the crossover period of mid-2017 and mid-2021 timeframe.

The State's November 29, 2017 comprehensive SIP submittal also proposed amendments for the air permitting program and for t-butyl acetate emission reporting requirements. However, the EPA will act on these amendments in a separate action.

The EPA is soliciting public comments on the issues discussed in this notice. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

VII. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference revisions to NAJC 7:27–16.3, ''Gasoline Transfer Operations'' as described in this preamble.

The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov* and in hard copy at the appropriate EPA regional office, 290 Broadway, 25th floor, New York, New York, 10007–1866. Please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information.

VIII. Statutory and Executive Order Reviews

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

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

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

List of Subjects 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Volatile organic compounds, Intergovernmental relations, Ozone,

Reporting and recordkeeping requirements.

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

Dated: November 13, 2019.

Peter D. Lopez,

Regional Administrator, Region 2.

[FR Doc. 2019–25584 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2019–0013; FSES1130900000006–189–FF09E42000]

RIN 1018–BD59

Endangered and Threatened Wildlife and Plants; Removing Bradshaw's Lomatium (Bradshaw's lomatium) From the Federal List of Endangered and Threatened Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove Bradshaw's lomatium (Bradshaw's lomatium, also known as Bradshaw's desert parsley), a plant found in western Oregon and southwestern Washington, from the Federal List of Endangered and Threatened Plants due to recovery. Our review of the best available scientific and commercial data indicates that the threats to Bradshaw's lomatium have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). We request information and comments from the public regarding this proposed rule and the draft post-delisting monitoring plan for Bradshaw's lomatium.

DATES: We will accept comments received or postmarked on or before January 27, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 10, 2020.

ADDRESSES: *Written comments:* 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–R1–ES–2019–0013, 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!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: Docket No. FWS–R1–ES–2019–0013; U.S. Fish and Wildlife Service, MS: BPHC, 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, for more information).

Document availability: This proposed rule and the draft post-delisting monitoring plan are available on *http://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0013. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone: 503–231–6179.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone 503–231–6179. If you use a telecommunications device for the deaf (TDD), please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: This document consists of: (1) A summary of the most recent review of the status of Bradshaw's lomatium, resulting in a recommendation that the species be removed from the Federal List of Endangered and Threatened Plants (List); and (2) a proposal to remove Bradshaw's lomatium from the Federal List of Endangered and Threatened Plants.

Information Requested

Public Comments

Any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate as possible. Therefore, we request comments or information from other concerned governmental agencies, Tribes, the scientific community, industry, or other interested parties concerning this proposed rule. The comments that will be most useful and likely to influence our decisions are those supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information (such as scientific journal articles or other publications) with your comments to allow us to authenticate any scientific or commercial data you reference or provide. In particular, we seek comments concerning the following:

(1) Reasons why we should or should not remove Bradshaw's lomatium from the Federal List of Endangered and Threatened Plants (*i.e.,* ''delist'' the species under the Act, 16 U.S.C. 1531 *et seq.*).

(2) New biological or other relevant data concerning any threat (or lack thereof) to Bradshaw's lomatium and any existing regulations that may be addressing these or any of the stressors to the species discussed here.

(3) New information concerning the population size or trends of Bradshaw's lomatium.

(4) New information on the current or planned activities within the range of Bradshaw's lomatium that may either adversely affect or benefit the plant.

(5) New information or data on the projected and reasonably likely impacts to Bradshaw's lomatium or its habitat associated with climate change or any other factors that may affect the species in the future.

(6) Information pertaining to the requirements for post-delisting monitoring of Bradshaw's lomatium.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses, will become part of the administrative record.

You may submit your comments and materials concerning this 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*.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**, above). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

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 four appropriate and independent specialists with knowledge of the biology and ecology of Bradshaw's lomatium regarding the species status assessment report (Service 2018; see *Status Assessment for Bradshaw's lomatium,* below) that forms the basis for our 5-year review and this proposed rule. The purpose of peer review is to ensure that our determination regarding the status of the species under the Act is based on scientifically sound data, assumptions, and analyses. We received feedback from three of the four peer reviewers contacted; their comments and corrections have been incorporated into the species status assessment report, as appropriate.

Background

Status Assessment for Bradshaw's Lomatium

A thorough review of the taxonomy, life history, and ecology of Bradshaw's lomatium is presented in the document ''Species Status Assessment Report for Bradshaw's lomatium (*Lomatium bradshawii* (Rose ex. Math.) Mathias & Constance) Version 1.0'' (hereafter ''species status report''; Service 2018), which is available at *http://www.regulations.gov* in Docket No. FWS–R1–ES–2019–0013, under Supporting Documents. The species status report documents the results of our comprehensive biological status review for Bradshaw's lomatium, and has undergone peer review. The species status report does not represent any decision by the Service regarding the status of Bradshaw's lomatium under the Act. It does, however, provide the scientific basis that informed our most recent 5-year review, which resulted in a recommendation that the species should be removed from the List. The species status report also serves as one of the bases for this proposed rule and our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies.

In this proposed rule, we present only a summary of the key results and conclusions from the species status report; the full report is available at *http://www.regulations.gov,* as referenced above.

Summary of the Biology of the Species

Bradshaw's lomatium is a perennial herb in the carrot or parsley family (Apiaceae) that is endemic to wet prairie habitats in western Oregon's Willamette Valley and adjacent southwestern Washington. These seasonally wet habitats may be flooded in the spring, or have soils saturated at or near the surface due to factors such as heavy precipitation in winter and spring, flooding, and poor drainage. A high light environment is important for Bradshaw's lomatium to complete its life cycle and reproduce, as reduced sunlight is associated with lower flower and seed production (Alverson 1993, unpublished data). This species is often associated with tufted hairgrass (*Deschampsia cespitosa*), and frequently occurs on and around the small mounds created by senescent tufted hairgrass plants. In wetter areas, Bradshaw's lomatium occurs on the edges of tufted hairgrass or sedges in patches of bare or open soil. In drier areas, it is found in low areas, such as small depressions, trails, or seasonal channels, with open, exposed soils. Self-fertilization is rare in Bradshaw's lomatium (Kaye and Kirkland 1994, p. 8), indicating that pollinator-mediated outcrossing is required for reproduction. Over 30 species of solitary bees, flies, wasps, and beetles have been observed visiting the flowers (Kaye 1992, p. 3; Kaye and Kirkland 1994, p. 9; Jackson 1996, pp. 72–76). Bradshaw's lomatium does not reproduce asexually and depends exclusively on seeds for reproduction (Kaye 1992, p. 2), but does not maintain a persistent seed bank in the soil. Although some fruit survives in the soil for 1 year, the seeds are not viable (Kaye *et al.* 2001, p. 1376). Further information on the basic biology and ecology of Bradshaw's lomatium is summarized in the species status report (Service 2018, entire).

Previous Federal Actions

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of former section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. Bradshaw's lomatium was included in the July 1, 1975, notice of review and in the June 16, 1976, proposal.

The Amendments of 1978 to the Act (Pub L. 95–632, November 10, 1978) required that all proposals over 2 years old be withdrawn. A 1-year grace period was established for proposals already over 2 years old. On December 10, 1979, the Service published a document in the **Federal Register** (44 FR 70796) withdrawing the still-pending portion of the June 16, 1976, proposal, along with four other proposals that had expired. The withdrawal of the proposal to list Bradshaw's lomatium was not based on biological considerations, but instead

was the result of the administrative requirements of the Act prior to the 1982 Amendments.

An updated notice of review, published on December 15, 1980 (45 FR 82480), listed Bradshaw's lomatium in Category 1, which comprised taxa for which sufficient information was available to support the proposal of listing as endangered or threatened. On February 15, 1983, the Service published notice (48 FR 6752) of its finding that the petitioned listing of Bradshaw's lomatium may be warranted, in accordance with section 4(b)(3)(A) of the Act, as amended in 1982. On October 13, 1983, October 12, 1984, and again on October 11, 1985, the petition finding was made that listing of this taxon was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act (see 51 FR 42117; November 21, 1986). Such a finding requires that the petition be treated as a petition that is resubmitted, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore, a new finding was made; the Service found that the petitioned action was warranted, and on November 21, 1986, published a proposal to list the species as endangered (51 FR 42116). Bradshaw's lomatium was added to the Federal List of Endangered and Threatened Plants (50 CFR 17.12) as an endangered species with the publication of a final rule in the **Federal Register** on September 30, 1988 (53 FR 38448)

A recovery plan for Bradshaw's lomatium (Service 1993, entire) was first made available to the public on April 8, 1993 (58 FR 18139, pp. 18225–18226). Subsequently, a new recovery plan was developed for Bradshaw's lomatium in conjunction with several other plant and animal species found in prairie ecosystems of western Oregon and southwestern Washington. The Recovery Plan for the Prairie Species of Western Oregon and Southwest Washington, hereafter referred to as ''the recovery plan,'' constitutes the revised recovery plan for Bradshaw's lomatium, and was made available to the public on June 29, 2010 (75 FR 37460).

On July 6, 2005, we published a notice (70 FR 38972) announcing that we were conducting a 5-year review of the status of Bradshaw's lomatium under section 4(c)(2)(A) of the Act. The 5-year review, completed on September 24, 2009 (Service 2009, entire), resulted in a recommendation that Bradshaw's lomatium remain listed as an endangered species.

On February 13, 2015, we published a notice (80 FR 8100) announcing that we were conducting a new 5-year review of the status of Bradshaw's lomatium, and requested that the public provide us any new information concerning this species. We developed the species status report for the purposes of conducting this 5-year review. This most recent assessment of the status of the species led us to recommend that Bradshaw's lomatium be removed from the List, because the species is considered to be recovered. Because it is our conclusion that Bradshaw's lomatium does not now meet the definition of either an endangered or a threatened species, as summarized here, we are proposing to remove Bradshaw's lomatium from the Federal List of Endangered and Threatened Plants (50 CFR 17.12).

Recovery Planning and Recovery Criteria

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the List. However, revisions to the List (adding, removing, or reclassifying a species) must reflect determinations made in accordance with sections 4(a)(1) and 4(b) of the Act. Section 4(a)(1) requires that the Secretary determine whether a species is endangered or threatened (or not) because of one or more of five threat factors. Section 4(b) of the Act requires that the determination be made ''solely on the basis of the best scientific and commercial data available.''

While recovery plans provide important guidance to the Service, States, and other partners on methods of minimizing threats to listed species and measurable objectives against which to measure progress towards recovery, they are not regulatory documents and cannot substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species or remove a species from the Federal List of Endangered and Threatened Plants (50 CFR 17.12) is ultimately based on an analysis of the best scientific and commercial data then available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

Recovery plans may be revised to address continuing or new threats to the species as new substantive information becomes available. The recovery plan recommends site-specific management actions that will help recover the species, identifies measurable criteria that set a trigger for eventual review of the species' listing status (*e.g.,* under a 5-year review conducted by the Service), and methods for monitoring recovery progress. Recovery plans are intended to establish goals for long-term conservation of listed species and define criteria that are designed to indicate when the threats facing a species have been removed or reduced to such an extent that the species may no longer need the protections of the Act.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be met. In that instance, we may determine that the threats are minimized sufficiently to delist. In other cases, recovery opportunities may be discovered that were not known when the recovery plan was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent that criteria need to be met for recognizing recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, fully follow the guidance provided in a recovery plan.

In 2010, we finalized the revised recovery plan for Bradshaw's lomatium (Service 2010). The recovery plan states that Bradshaw's lomatium could be considered for downlisting to threatened status when there are 12 populations and 60,000 plants distributed in such a way as to reflect the species' historical geographic distribution, when the number of individuals in the populations have been stable or increasing over a period of 10 years, when sites are managed to meet established habitat quality guidelines, when a substantial portion of the species' habitat is protected for conservation, and when populations are managed to ensure maintenance of habitat and to control threats. To achieve desired habitat quality, the recovery plan provides guidelines for a variety of prairie habitat metrics. These metrics include:

(1) Sites with populations of target species should have 50 percent or more relative cover of native vegetation;

(2) Woody vegetation should make up no more than 15 percent of the absolute vegetative cover, and woody species of concern should make up no more than 5 percent;

(3) Native prairie species richness should exceed 10 species, with at least 7 forbs and 1 bunchgrass; and

(4) No single nonnative should have more than 50 percent cover, and nonnative species of particular concern should have no greater than 5 percent cover.

The recovery plan states that Bradshaw's lomatium could be considered for delisting when there are 20 populations and 100,000 plants properly distributed, in addition to the criteria described above. To reflect the historical distribution of Bradshaw's lomatium, the species' range was divided into eight recovery zones (called Southwest Washington, Portland, Salem West, Salem East, Corvallis West, Corvallis East, Eugene West, and Eugene East), and targets for number of populations and number of plants for each zone were established based on historical presence (Service 2010, pp. IV–1–IV–6, IV–31–IV–34).

Two of the recovery zones (Portland and Salem West) are within the range of Bradshaw's lomatium, but do not have population targets for the species based on a lack of historical occurrence data. These recovery zones were nonetheless retained because if any populations of Bradshaw's lomatium were to be discovered or introduced within these zones, they could be considered as contributing to the recovery criteria for the species (under the category ''additional populations'').

The expression of recovery criteria in terms of population abundance, numbers of populations, and distribution across recovery zones reflects a foundational principle of conservation biology: That there is a positive relationship between the relative viability of a species over time and the resiliency, redundancy, and representation of its constituent populations (Shaffer and Stein 2000, pp. 307–310; Wolf *et al.* 2015, entire). To look at it another way, extinction risk is generally reduced as a function of increased population abundance (resiliency), numbers of populations (redundancy), and distribution or geographic or genetic diversity (representation). The recovery criteria laid out in the recovery plan for Bradshaw's lomatium were, therefore, informative for our review of the status of the species, as that analysis leans upon these measures of viability to assess the current and future status of the species (Service 2018, pp. 1–2).

The downlisting criteria for number and distribution of populations and numbers of plants were intended to help identify the point at which imminent threats to the plant had been ameliorated so that the populations were no longer in immediate risk of extirpation; the delisting criteria for number and distribution of populations and numbers of plants were intended to identify the point at which the species was unlikely to become in danger of extinction. The estimated abundance of individuals in all populations has increased over time, from approximately 25,000 to 30,000 individuals in 11 populations at listing in 1988, to an estimated 11,277,614 individuals in at least 24 known populations at present (Service 2018, p. 39, updated based on Wilderman 2018, entire). These 24 populations occur on 71 distinct sites that are owned by a mix of Federal, State, and local governments; nongovernmental organizations (NGOs); and private citizens. Multiple sites are considered to be part of the same population when those sites are within a defined pollinator flight distance of 3 kilometers (km) (2 miles (mi)) of each other. The current population estimate is the combined count data from all sites; for some sites the plant count was the result of a full census (54 sites), while for others it was derived by visual estimate or calculated from count subsamples that were then extrapolated over the total area of the site (17 sites). The increase in known populations and number of plants over time is due to a combination of population augmentation and introductions, improved habitat management, and increased survey effort across the range of the species. Bradshaw's lomatium has been the focus of concentrated recovery efforts since it was listed in 1988. We now believe there are likely more than the recent grand total count of an estimated 11,277,614 individuals across the range of Bradshaw's lomatium because not all areas of suitable habitat within the range of the species have been surveyed, and recent visits to previously unsurveyed areas have resulted in the identification of formerly unknown populations (*e.g.,* Service 2018, p. 10).

In our species status report, we evaluated and ranked the resiliency of each population of Bradshaw's lomatium using the following criteria: (1) Population size, (2) current habitat conditions, (3) protection of the site from development, and (4) site management to restore and maintain appropriate habitat condition. Using these criteria, each population was given a rank of high, moderate, or low condition (Service 2018, pp. 26–30). The resiliency score for each population incorporates the degree to which the primary threats to the species have been addressed at each site as well as recovery criteria (population size and habitat quality), site protection (addressing habitat loss), and site management (addressing woody encroachment and invasive species). For details on evaluation and ranking of population condition, see the species status report (Service 2018, pp. 26–43).

The table below summarizes our current knowledge of the abundance and distribution of Bradshaw's lomatium relative to the downlisting and delisting criteria presented in the recovery plan for the species (from Service 2018, p. 39, updated based on Wilderman 2018, entire). Because the table below summarizes only the abundance and distribution data for the species, the information in the table must be considered in conjunction with the five-factor analysis of threats to arrive at the status determination for Bradshaw's lomatium.

Summary of recovery goals and current condition of known Bradshaw's lomatium populations.

Distribution and Abundance of Bradshaw's lomatium						
	Downlisting Goals		Delisting Goals		Current Condition	
Recovery Zone	Minimum Number of Populations per Zone	Target Number of Plants per Zone	Minimum Number of Populations per Zone	Target Number of Plants per Zone	Number of Populations Qualifying Toward Recovery Criteria*	Number of Plants in Populations Qualifying Toward Recovery Criteria*
OREGON						
Portland	0	0	0	0	NA	NA
Salem East	1	5,000	2	10,000	3	62,604
Salem West	0	0	0	0	NA	NA
Corvallis East	2	10,000	3	15,000	3	179,462
Corvallis West	2	10,000	2	10,000	2	17,485
Eugene East	1	5,000	3	15,000	2	34,451
Eugene West	3	15,000	3	15,000	6	191,593
					Subtotal	485,595
WASHINGTON						
SW Washington	1	5,000	2	10,000	1	10,790,658
					Subtotal	10,790,658
+ Additional Populations (may occur in any Recovery Zone within range of Bradshaw's lomatium)	2	10,000	5	25,000		
Total	12	60,000	20	100,000	**17***	**11,276,253***

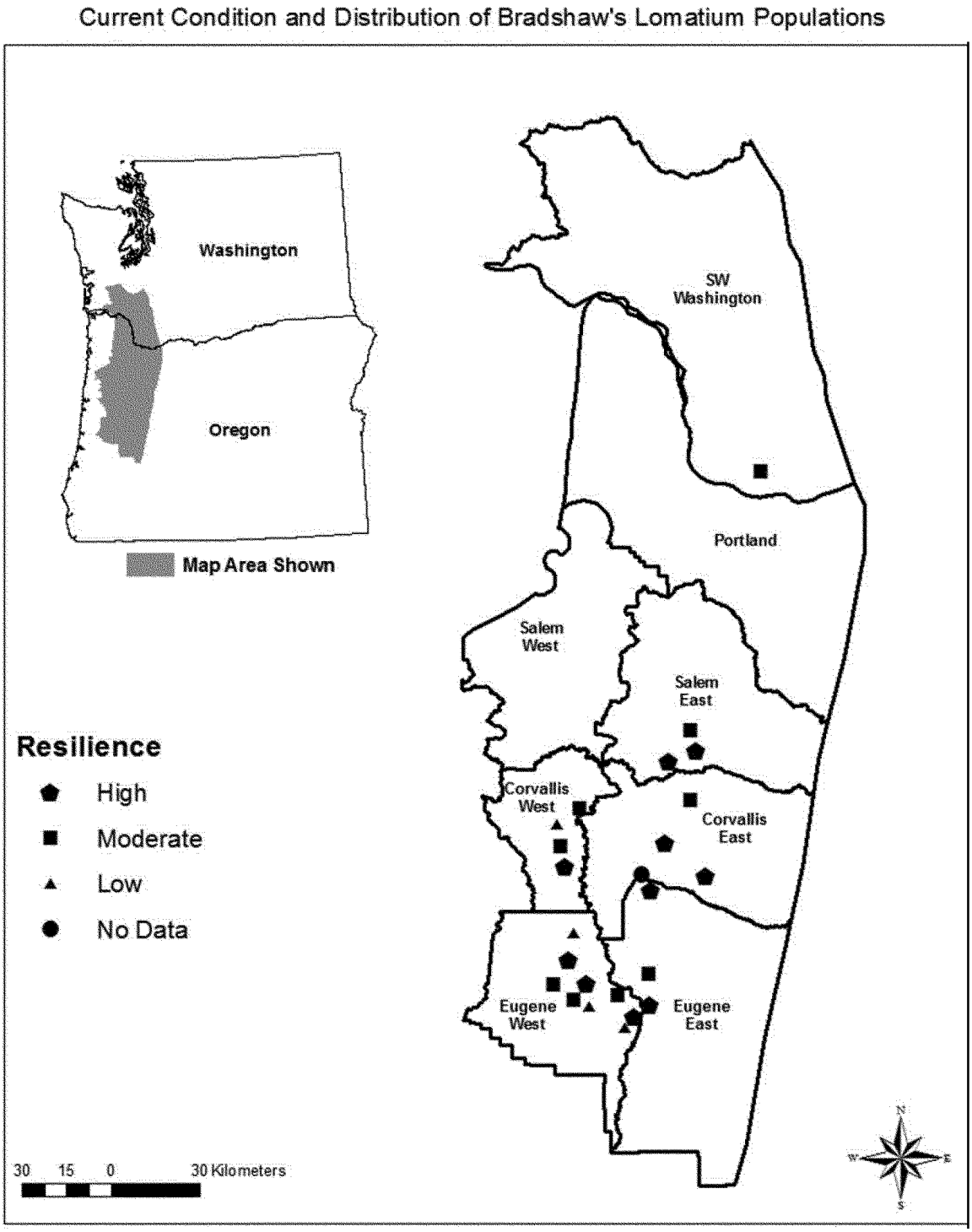
*Recovery zones highlighted in grey meet or exceed the recovery plan downlisting and delisting goals for the number of populations and target number of plants. The Eugene East and SW Washington recovery zones exceed delisting abundance targets, but are each one population short of the target number of populations. There are no recovery targets for Bradshaw's lomatium in the Portland and Salem West recovery zones. Only populations with moderate to high overall condition and with more than 200 plants were considered to have met the recovery criteria and so are included in this count, as populations with lower overall condition or number of plants were considered too high risk to contribute toward recovery. For this reason, the total number of populations and the total number of plants reported in this table (those considered to contribute toward recovery) is not equivalent to the grand total number of populations and plants known to occur throughout the range of the species.

Based on the most recent count, the grand total number of known plants is 11,277,614 (this total includes plants from populations with fewer than 200 individuals, which we did not count as contributing toward recovery). Of this total, an estimated 10,790,658 occur in a single population in southwestern Washington. The other approximately 486,956 plants are within 23 populations in Oregon. Considering only the populations in moderate or high condition, and with more than 200 plants (*i.e.,* those we are counting toward recovery and presented in the table above), we estimate there are 485,595 plants within the 23 populations in Oregon. These populations are distributed from southeast of Salem, Oregon south to Creswell, Oregon, both east and west of the Willamette River. The greatest density of populations occurs in the southern portion of the Willamette Valley near Eugene, Oregon.

Therefore, the most recent counts of Bradshaw's lomatium identify nearly 500,000 individuals in 23 known populations distributed across the historical range of the species in Oregon, and distributed among 69 known sites under various types of land ownership. We considered the abundance and distribution of Bradshaw's lomatium without the roughly 10.8 million individuals concentrated in a single population (made up of 2 sites) in southwestern Washington to ensure our evaluation considered the abundance and distribution of the species across its entire range and to ensure our evaluation was not unduly influenced by the single large population in southwestern Washington. Of the 71 known sites, 51 are in public ownership, are within a public right-of-way, or are owned by a conservation-oriented NGO. Of the 20 remaining sites, 9 are under conservation easement or are enrolled in the Service's Partners for Fish and Wildlife Program (Service 2018, pp. 30–35, 36, 38, Appendix A). The remaining 11 sites are on private

lands and are not currently under any formal protection agreements.

The figure below shows the results of this assessment across the range of the species. Of the 24 known populations, 4 are in low condition, 9 are in moderate condition, 10 are in high condition, and 1 is in unknown condition due to the lack of data (Service 2018, pp. 36–39). Populations occur in all recovery zones that have population goals. As noted above, the Portland and Salem West Recovery Zones contain no known current populations, were not assigned specific targets by the Recovery Team, and have no documented historical occurrences of the species within them.



Map of known populations of Bradshaw's lomatium and the eight recovery zones identified for the species in the recovery plan. Resiliency rankings of high, moderate, and low are based on the assessment in our species status report (Service 2019, pp. 30–35). Note: There are no recovery targets for Portland and Salem West recovery zones.

Based on this information, we conclude Bradshaw's lomatium is much more numerous than at the time of listing and is distributed throughout its known historical range. Across the 23 populations in Oregon, greater than 99 percent of known Bradshaw's lomatium plants are found on sites receiving some degree of protection from development

such as public lands, conservancy lands, or private lands with conservation easements (Service 2018, Appendix A). The single largest population of the species occurs in southwestern Washington, and is composed of individuals from two sites. The vast majority of plants in the southwestern Washington population occur on private property that is not under some type of protection, but the site is consistently managed in a manner conducive to supporting Bradshaw's lomatium. The other portion of the population in southwestern Washington contains approximately 658 plants, and this site is owned by the Washington Department of Natural Resources (WDNR). The WDNR has been actively protecting, managing, and augmenting this smaller portion of the southwestern Washington population, and they are currently working to further expand protection at this site. Furthermore, WDNR is working to conserve the sizeable Bradshaw's lomatium site that is on private land.

Due to ongoing threats from woody encroachment and the spread of nonnative invasive plants, sites containing Bradshaw's lomatium require regular management to maintain the open prairie conditions that support robust populations. Management activities may include, but are not limited to, herbicide application, mowing, and prescribed fire. Although guarantee of management into perpetuity exceeds the requirements of the Act in evaluating whether a species meets the statutory definition of endangered or threatened, it is necessary to evaluate whether current and expected future management is sufficient to maintain resilient populations of Bradshaw's lomatium into the foreseeable future. Across the range of Bradshaw's lomatium, 53 of 71 sites (75 percent) receive some form of management as described above, accounting for greater than 99 percent of known Bradshaw's lomatium plants. Of the sites with some form of management, 41 sites (58 percent of total sites) have a management plan with goals for the conservation of Bradshaw's lomatium, or with goals for maintenance of the wet prairie habitat upon which this species depends. Sites with management plans include those owned by the U.S. Army Corps of Engineers, Bureau of Land Management, U.S. Fish and Wildlife Service, The Nature Conservancy, and privately owned sites covered by the Natural Resources Conservation Service's Wetland Reserve Program (Service 2018, pp. 30–35, Appendix A).

These and other data that we analyzed indicate that most threats identified at listing and in the recovery plan are reduced in areas occupied by Bradshaw's lomatium. The status of the species has improved primarily due to: (1) Discovery of previously unknown populations; (2) reestablishment and augmentation of populations over the 30 years since the species was listed; (3) improvement in habitat management; and (4) an increase in protection from development.

Summary of Factors Affecting Bradshaw's Lomatium

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. The term ''species'' includes ''any subspecies of fish or wildlife or plants, and any distinct population segment [DPS] of any species of vertebrate fish or wildlife which interbreeds when mature'' (16 U.S.C. 1532(16)). As previously stated, a species may be determined to be an endangered species or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act. We may consider listing a species due to one or more of the following: (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 must consider these same five factors in delisting (removal from the Federal Lists of Endangered and Threatened Wildlife and Plants) or downlisting (reclassification from endangered to threatened) a species.

For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal of the Act's protections. A recovered species is one that no longer meets the Act's definition of endangered or threatened. A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a ''significant portion of its range'' and is ''threatened'' if it is likely to become an endangered species within the foreseeable future throughout all or a ''significant portion of its range.'' The word ''range'' in the ''significant portion of its range'' phrase refers to the range in which the species currently exists. For the purposes of this analysis, we first evaluate the status of Bradshaw's lomatium throughout all of its range, then consider whether this plant is in danger of extinction or likely to become so in any significant portion of its range within the foreseeable future.

The Act does not define the term ''foreseeable future.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework within which we evaluate the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. We consider 25 to 50 years to be a reasonable period of time within which reliable predictions can be made for potential stressors and responses for Bradshaw's lomatium. This period of time is sufficient to observe population trends for the species and captures the terms of many of the management plans that are in effect at Bradshaw's lomatium sites; it also provides a reasonable timeframe for the assessment of the effects of climate change. Although information exists regarding potential impacts from climate change beyond a 50-year timeframe, the projections depend on an increasing number of assumptions, and thus become more uncertain with increasingly long timeframes. We, therefore, use a maximum timeframe of 50 years to provide the best balance of scope of impacts considered versus the certainty of those impacts being realized.

In considering what factors might constitute threats, we must look beyond the exposure of the species to a particular factor to evaluate whether the species may respond to the factor in a way that causes actual impacts to the species. If there is exposure to a factor and the species responds negatively, the factor may be a threat, and during the status review, we attempt to determine the significance of a threat. The threat is significant if it drives or contributes to the risk of extinction of the species, such that the species warrants listing as endangered or threatened as those terms are defined by the Act. However, the identification of factors that could impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence sufficient to suggest that the potential threat is likely to materialize and that it has the capacity (*i.e.,* it should be of sufficient magnitude and extent) to affect the species' status such that it

meets the definition of endangered or threatened under the Act.

At the time of listing, the primary threats to Bradshaw's lomatium were habitat loss due to land use conversion for agriculture or urbanization and the invasion of prairie vegetation by various woody plant species (Factor A) (53 FR 38449–38450; September 30, 1988). The listing rule did not find that overutilization for commercial, recreational, scientific, or educational purposes (Factor B) posed a threat to Bradshaw's lomatium. The listing rule did note that several parasitic organisms (a fungus, spittle bug, and two aphids) could potentially have negative effects on smaller, stressed populations of the plant (but not the species as a whole; Factor C) and questioned whether inbreeding depression might pose a threat to the species since the populations known at the time appeared to be small and isolated from one another (Factor E). The rule noted that further study was required to determine the significance of these putative threat factors. Finally, the listing rule noted that State and Federal regulations existing at the time did not adequately protect the plant from habitat loss or other potential threats (Factor D) (53 FR 38450; September 30, 1988). By the time the recovery plan was developed in 1993, these same threats were still considered relevant (Service 1993, p. 12). There are three potential threats that were not known or considered at the time of listing: (1) Competition from nonnative, invasive plant species (Factor A); (2) potential impacts resulting from the effects of climate change (Factor E); and (3) predation by voles (*Microtus* spp.) (Factor C), which has been observed within Bradshaw's lomatium sites. Subsequently, we have conducted a 5-year status review based on the species status report for Bradshaw's lomatium that includes an analysis of all factors known to affect the viability of the species (Service 2018, entire).

As discussed in our 2018 species status report, the threat of habitat loss from land conversion for agriculture and urbanization (Factor A) has decreased since the time of listing due to land protection efforts. Although a few privately owned sites are still at risk, land use conversion is no longer considered a significant threat to the viability of Bradshaw's lomatium due to the number of sites now receiving some degree of protection from development (Service 2018, pp. 36–39, Appendix A). As described above, in Oregon, which supports 23 of the 24 known populations of the species, greater than 99 percent of known Bradshaw's lomatium plants occur on sites protected through public or NGO ownership, through designation as a right-of-way, or by conservation easements on private lands. In Washington, one of two sites that support Bradshaw's lomatium is owned by WDNR, and the State is actively working toward the conservation of the very large adjacent site that supports the majority of known individuals of the species. As the threat posed to Bradshaw's lomatium from habitat loss is no longer considered significant, we additionally no longer consider State or Federal protections to be inadequate to address this threat (Factor D).

The present threat to Bradshaw's lomatium from modification of habitat due to invasion of prairies by nonnative, invasive plants and by woody species (Factor A) has been reduced in many populations due to active habitat management using herbicides, mowing, and prescribed fire, but ongoing habitat management is required to maintain these improvements. As noted above, across the range of Bradshaw's lomatium, 75 percent of the known sites receive active management that benefits the species, and 58 percent of total sites have a management plan in place with goals for the conservation of Bradshaw's lomatium, or for maintenance of the wet prairie habitat upon which it depends (Service 2018, pp. 36–39, Appendix A). Based on the high proportion of sites protected or managed, the history of positive management observed to date, and ongoing efforts to further restore and protect wet prairie habitats, we have confidence that management of Bradshaw's lomatium sites will continue to provide adequate protection to the species in the long term. We found no evidence that negative impacts due to parasitic organisms (Factor C) constitute a threat to the viability of the Bradshaw's lomatium. Predation by voles (Factor C) appears to vary year to year, and can substantially reduce aboveground biomass and reproduction in years when vole abundance is high. However, the effect on populations is believed to be minimal over time as long as there is sufficient time for Bradshaw's lomatium to regenerate taproot reserves between vole outbreaks (Drew 2000, pp. 54–55), and no consistent long-term declines attributable to vole predation have been reported (Service 2018, p. 20).

Concerns over the possibility of inbreeding depression (Factor E) expressed at the time of listing are now reduced due to a subsequent study indicating that overall genetic diversity in Bradshaw's lomatium is relatively high for a rare species (Gitzendanner and Soltis 2001, pp. 352–353), and is greater than that found in other rare *Lomatium* species (Gitzendanner and Soltis 2000, p. 787), though the most disjunct population in southwestern Washington showed relatively lower genetic diversity than less geographically isolated populations (Gitzendanner and Soltis 2001, p. 353). The threat of inbreeding depression is further considered reduced since we now understand Bradshaw's lomatium to be primarily an outcrossing species (which promotes increased genetic diversity), rather than an obligate self-pollinating species as was believed at the time of listing (Service 2018, pp. 7, 20).

The potential threat posed to Bradshaw's lomatium from the effects of climate change (Factor E) is difficult to predict. The primary threat to the species from the effects of climate change is likely reduced moisture availability due to warmer temperatures and alterations to precipitation patterns resulting in increased evapotranspiration. The vulnerability of Bradshaw's lomatium to the effects of climate change, assessed over a range of potential future emissions scenarios, has been ranked as anywhere from low to moderate (Steel *et al.* 2011, pp. 25, 89) to highly vulnerable (Kaye *et al.* 2013, p. 20). Possible effects of climate change on Bradshaw's lomatium include a shift toward life cycle completion earlier in the growing season in response to warmer temperatures and earlier drying, and reduced population sizes due to some portions of habitat drying too much to support Bradshaw's lomatium populations. We assessed the potential impacts of climate change on Bradshaw's lomatium projected out over a period up to 50 years in the future. Published assessments provide only qualitative appraisals of the potential response of Bradshaw's lomatium to the effects of climate change; therefore, to be conservative in our analysis, we evaluated a ''worst case'' future scenario in which all populations would be reduced in size by 50 percent. Even in the face of such a severe population reduction, the species is anticipated to remain viable as indicated by appreciable levels of resiliency, redundancy, and representation. We estimated that populations currently in low condition or with very low abundance may be extirpated due to the combined effects of climate change impacts and stochastic events; this translated to an estimated loss of up to five small populations, with other populations reduced in size. However, even with a presumed 50 percent

reduction in abundance, at least 14 to 16 populations of Bradshaw's lomatium in moderate or high condition are expected to persist on the landscape with ongoing management. We do not anticipate any significant effect on representation, that is, the ability of the species to adapt to changing environmental conditions over time (Service 2018, pp. 42–46).

Cumulative Impacts

When multiple stressors co-occur, one may exacerbate the effects of the other, leading to effects not accounted for when each stressor is analyzed individually. The full impact of these synergistic effects may be observed within a short period of time, or may take many years before they are noticeable. For example, high levels of predation on Bradshaw's lomatium during vole outbreaks can cause large temporary population declines, but are not generally considered a significant threat to long-term viability; populations that are relatively large and well distributed should be able to withstand such naturally occurring events. However, the relative impact of predation by voles may be intensified when outbreaks occur in conjunction with other factors that may lessen the resiliency of Bradshaw's lomatium populations, such as prolonged woody species encroachment; extensive nonnative, invasive plant infestations; or possible hydrological alterations resulting from the effects of climate change.

Although the types, magnitude, or extent of potential cumulative impacts are difficult to predict, we are not aware of any combination of factors that are likely to co-occur with significant negative consequences for the species. We anticipate that any negative consequence of co-occurring threats will be successfully addressed through the same active management actions that have contributed to the ongoing recovery of Bradshaw's lomatium and that are expected to continue into the future. The best scientific and commercial data available indicate that Bradshaw's lomatium is composed of multiple populations, primarily in moderate to high condition, which are sufficiently resilient, well distributed, protected, and managed such that they will be robust to any potential cumulative effects to which they may be exposed.

Overall, we conclude that under current conditions, most populations of Bradshaw's lomatium are resilient, because they have abundant numbers of individuals. There are redundant populations of Bradshaw's lomatium, meaning that multiple populations occur in most recovery zones, indicating that the species has the ability to minimize potential loss from catastrophic events. The concern at the time of listing about a possible genetic bottleneck has been alleviated by genetic studies demonstrating that Bradshaw's lomatium has relatively high genetic diversity for a rare species. Also, with populations distributed across the known historical range of the species (Service 2018, p. 40), Bradshaw's lomatium has likely retained much of its adaptive capacity (*i.e.,* representation). We also considered the potential future conditions of Bradshaw's lomatium, taking into account the current condition and additional stressors not considered at the time of recovery plan development (*e.g.,* the effects of climate change). Projecting 25 to 50 years into the future, under a conservative estimate that conditions could potentially worsen such that all existing populations are reduced by half, the species would retain its resiliency and redundancy. With an estimated 14 to 16 populations in moderate or high condition expected to persist on the landscape with ongoing management; representation was not anticipated to be affected (Service 2018, p. 44). As noted earlier, the degree to which threats to the species have been successfully addressed is incorporated into the evaluation of population resiliency at each site (*i.e.,* site protection and management actions were considered in the scoring of each population's current condition; Service 2018, p. 28). The continuation of these conservation measures was an assumption of our projection.

See the species status report (Service 2018, entire) for a more detailed discussion of our evaluation of the biological status of the Bradshaw's lomatium and the influences that may affect its continued existence. Our conclusions are based upon the best available scientific and commercial data and the expert opinions of the species status assessment team members.

Determination of Bradshaw's Lomatium Species Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as 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

After evaluating threats to the species under the section 4(a)(1) factors, we found that the known range of Bradshaw's lomatium was considered dramatically reduced when we listed it as an endangered species in 1988, and we estimated that there were 11 small populations that included a total of roughly 25,000 to 30,000 individuals. In addition, the species faced threats from habitat loss due to land conversion for agriculture and urbanization, as well as natural succession to woody species dominance due to loss of historical disturbance regimes. As such, it was perceived to be upon the brink of extinction. Bradshaw's lomatium has been the subject of intensive recovery efforts since it was listed under the Act 30 years ago, and the discovery of new, previously unknown populations; success in augmentation and habitat restoration and management efforts; and the protection of Bradshaw's lomatium populations and habitats on public lands and on private lands through conservation easements and management agreements with NGOs and other parties have led to a significant reduction in threats and improvement in the status of the species since that time.

Recovery goals for delisting Bradshaw's lomatium were set at a minimum of 20 populations with a total of 100,000 individual plants distributed across its historical range. Under current conditions, there are 24 known populations of Bradshaw's lomatium distributed throughout the species' historical range; if we consider only those populations in high or moderate condition and containing at least 200 individuals as contributing to recovery, there are 17 such populations throughout the range of the species (see table above). Considering only those 17 populations in high or moderate condition and with greater than 200 plants, the most recent counts demonstrate there are an estimated

486,253 individuals known distributed throughout the historical range of the species (our evaluation does not include the southwestern Washington population to ensure our evaluation considered the abundance and distribution of the species across its entire range and that it was not unduly influenced by this single large population). Our analysis of current population condition on the basis of plant abundance, habitat quality, management, and protection from development resulted in rankings of 10 populations in high condition overall, 9 populations in moderate condition, and 4 populations in low condition. Therefore, we are significantly less concerned about small population sizes or limited distribution of the species than we were at the time of listing. The increase in known populations is due in large part to increased survey efforts and incidental discovery of more occupied habitat, leaving open the potential of finding even more populations of Bradshaw's lomatium in the future. Acquisition by conservation NGOs, or enrollment into conservation easement programs, of sites containing Bradshaw's lomatium populations has substantially reduced the risk of habitat and population losses due to land use conversion (Factor A). In addition, population augmentation or introduction, combined with ongoing active management of woody encroachment and of nonnative, invasive plant infestations, has ameliorated the threat posed by these processes (Factor A) and increased the resilience of many Bradshaw's lomatium populations on protected sites. Other potential threats identified at the time of listing have either never materialized (parasitism by other organisms (Factor C) or negative effects of inbreeding depression (Factor E)) or have been addressed through other means (*i.e.,* habitat protections and management, addressing Factor D).

Since listing, we have become aware of the potential for the effects of climate change (Factor E) to affect organisms and ecosystems, including potentially Bradshaw's lomatium. We considered the potential consequences of climate change and evaluated a future scenario with up to a 50 percent reduction in the size of all known populations across the range of the species. Even in the face of such a severe population reduction, the species retained appreciable levels of resiliency, redundancy, and representation such that we did not consider the effects of climate change to pose a significant threat (Service 2018, pp. 42–46). To be conservative, our analysis of future conditions did not consider that ongoing efforts to improve population sizes and habitat quality have the potential to further increase the number of resilient populations of Bradshaw's lomatium. Many stressors to the species are being addressed through habitat management and population augmentation, but ongoing management is necessary to maintain resilient populations throughout the species' range.

In sum, significant impacts at the time of listing such as habitat loss due to land use conversion and woody encroachment that could have resulted in the extirpation of all or parts of populations have been either eliminated or reduced since listing. An assessment of likely future conditions, including the status of known stressors, management trends, and possible impacts of climate change, finds that although populations may decline in abundance, at least 14 to 16 populations across the range of the species are expected to maintain high or moderate resiliency over a timeframe of 25 to 50 years into the future (Service 2018, pp. 42–46). We, therefore, conclude that the previously recognized impacts to Bradshaw's lomatium from present or threatened destruction, modification, or curtailment of its habitat or range (specifically, habitat development for agriculture or urbanization and invasion of prairie vegetation by various woody plant species) (Factor A); disease or predation (specifically, parasitism by insects and predation by voles) (Factor C); the inadequacy of existing regulatory mechanisms (Factor D); and other natural or manmade factors affecting its continued existence (specifically, genetic isolation, inbreeding depression, and the effects of climate change) (Factor E) do not rise to a level of significance, either individually or in combination, such that the species is in danger of extinction now or likely to become so within the foreseeable future. Overutilization for commercial, recreational, scientific, or educational purposes (Factor B) was not a factor in listing and based on the best available information, we conclude that it does not constitute a threat to the Bradshaw's lomatium now or in the foreseeable future. The Service recognizes that woody encroachment and nonnative, invasive plant species are stressors with ongoing impacts to Bradshaw's lomatium, but finds that current and expected trends in site protection and habitat management are sufficient to prevent these stressors from constituting a threat to the continued existence of the species. Thus, after assessing the best available information, we conclude that Bradshaw's lomatium is not in danger of extinction or likely to become so within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that Bradshaw's lomatium is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and, (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering both of these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more-detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more

thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

The Service's most-recent definition of ''significant'' has been invalidated by the courts (for example, *Desert Survivors* v. *Dep't of the Interior,* No. 16–cv–01165–JCS (N.D. Cal. Aug. 24, 2018)). Therefore, we determined whether the populations in Oregon and Washington could be significant under any reasonable definition of ''significant.'' To do this, we evaluated whether these populations taken together may be biologically important in terms of the resiliency, redundancy, or representation of the species.

We identified the population of Bradshaw's lomatium in southwestern Washington as a potential portion of the range warranting further detailed consideration due to its potential contributions to the resiliency, redundancy, and representation of the species. This population is the northernmost known population of the species (contributing to representation), and is separated from the majority of the range by the Columbia River and a large, historically unoccupied area in northern Oregon (contributing to redundancy). It is also the largest known population of Bradshaw's lomatium (contributing to resiliency).

The southwestern Washington population of Bradshaw's lomatium is composed of individuals occurring at two separate sites in close proximity to each other. The smaller of the two sites contained an estimated 658 Bradshaw's lomatium individuals in 2018 (Wilderman 2018, entire), and is owned and managed by the WDNR. The WDNR manages this site with an emphasis on habitat management, population augmentation, and monitoring to benefit Bradshaw's lomatium. The larger site occurs on the rough of a privately owned golf course, and contained approximately 10.8 million Bradshaw's lomatium plants at the most recent survey in 2010 (Service 2018, p. 57). Although a count was not done, a recent visit by Service biologists confirmed that expansive areas of suitable habitat remain occupied by Bradshaw's lomatium, and there was no sign of any obvious substantial stressors to the species (Brumbelow 2018, pers. obs.). Although not managed specifically for Bradshaw's lomatium, ongoing management to maintain open conditions in the rough area, primarily through mowing, appears to benefit the species, which is clearly robust. Managers of the golf course have demonstrated interest in the conservation of Bradshaw's lomatium by placing signs, which highlight the presence of a listed species, along pathways. Although the southwestern Washington population of Bradshaw's lomatium is the largest known population of the species, genetic diversity at the smaller WDNR site is lower than other sampled sites for this species (Gitzendanner and Soltis, 2001 p. 353); genetic information is not available specific to the larger site.

Analysis of Status

Having identified the southwestern Washington population as a portion of the range of Bradshaw's lomatium that warrants further consideration, we now analyze whether the species is in danger of extinction or likely to become so within the foreseeable future in this portion.

We determine the status of the species in a portion of its range the same way we determine the status of a species throughout all of its range. We consider whether threats are reasonably likely to affect the species in that portion to such an extent that the species is in danger of extinction or likely to become so in the foreseeable future in that portion.

Of the two sites that comprise the sole population of Bradshaw's lomatium in southwestern Washington, one is on the Lacamas Prairie Natural Area, a preserve owned and managed by the WDNR. Due to this ownership, there is currently no risk of loss of habitat due to development, nor is there any reason to believe this area would be at risk of such a loss within the foreseeable future. Habitat quality at the site is considered high, and the site is managed specifically for prairie habitat conditions that support Bradshaw's lomatium (Service 2018, pp. 29, 57), using a combination of manual invasive species removal, herbicide treatments, mowing, and prescribed burning (Abbruzzese 2017, entire). The other site is located on a privately owned golf course, and has high-quality habitat. Current management at the site, as in past years, supports open wet prairie conditions (Service 2018, pp. 29, 57), primarily through mowing. Although no formal protections are in place that would prevent future development, we have no information to indicate that it is likely the site would be developed or that habitat management will change in any way that would substantially impact Bradshaw's lomatium. In addition, the areas occupied by Bradshaw's lomatium are within wetlands, which may have protections from development under State or Federal law. Based on the current protections of the Lacamas Prairie Natural Area, the lack of any present threat of destruction or degradation at the privately owned golf course site, and ongoing appropriate management at both sites, we have confidence that habitat at these sites will continue to support Bradshaw's lomatium for the foreseeable future. Thus the present or threatened destruction, modification, or curtailment of habitat (Factor A) is not a concern for Bradshaw's lomatium in this portion of its range, now or within the foreseeable future.

We have no information to suggest that overutilization for commercial, recreational, scientific, or educational purposes poses a threat to Bradshaw's lomatium in any part of its range, including southwestern Washington, now or in the foreseeable future (Factor B).

We found no evidence that negative impacts due to parasitic organisms constitute a threat to the viability of Bradshaw's lomatium in any part of its range, including southwestern Washington, now or in the foreseeable future. Predation by voles appears to vary year to year, and can substantially reduce aboveground biomass and reproduction of Bradshaw's lomatium in years when vole abundance is high. However, the effect on populations is believed to be minimal over time, as long as there is sufficient time for Bradshaw's lomatium to regenerate

taproot reserves between vole outbreaks (Drew 2000, pp. 54–55), and no consistent long-term declines attributable to vole predation have been reported (Service 2018, p. 20). Predation by voles has not been previously reported in either site within the southwestern Washington population of Bradshaw's lomatium. We, therefore, have no information to indicate that predation is a threat to Bradshaw's lomatium in this portion of its range, now or within the foreseeable future (Factor C).

We do not consider State or Federal protections to be inadequate to address the loss of Bradshaw's lomatium habitat in southwestern Washington, now or within the foreseeable future (Factor D). As described above, we do not consider habitat loss to be a threat to the species in this portion of its range. Of the two known sites containing Bradshaw's lomatium in this portion of the range, one is protected through ownership by the WDNR. Although the second, larger site lacks formal protection, it faces no currently known threat of habitat loss or degradation, either now or within the foreseeable future. Additionally, the WDNR continues to make efforts to provide additional conservation at the site. Bradshaw's lomatium remains listed as endangered by the State of Washington.

Concerns over the possibility of inbreeding depression expressed at the time of listing are now reduced due to a subsequent study indicating that overall genetic diversity in Bradshaw's lomatium is relatively high for a rare species (Gitzendanner and Soltis 2001, pp. 352–353), and is greater than that found in other rare *Lomatium* species (Gitzendanner and Soltis 2000, p. 787). Although the most disjunct population in southwestern Washington showed relatively lower genetic diversity than less geographically isolated populations (Gitzendanner and Soltis 2001, p. 353), the threat of inbreeding depression is considered reduced, as we now understand Bradshaw's lomatium to be primarily an outcrossing species (which promotes increased genetic diversity), rather than an obligate self-pollinating species as was believed at the time of listing (Service 2018, pp. 7, 20).

In our species status report, we assessed the potential impacts of climate change on Bradshaw's lomatium projected up to 50 years in the future, and conservatively evaluated a future scenario in which the potential negative effects of climate change were such that all populations were reduced in size by up to 50 percent. Such an impact would reduce population numbers at Lacamas Prairie Natural Area to approximately 329 individuals. Although substantial, such losses are not expected to cause extirpation of the species from this site, especially as beneficial management actions targeted specifically at the preservation of wetland prairie habitat are anticipated to continue at this preserve area. At the privately owned golf course site, a 50 percent reduction from the most recently estimated population size would result in approximately 5.4 million plants at this site, which would still represent by far the largest known population of the species. We, therefore, have no information to indicate that other natural or manmade factors pose a threat to the continued existence of Bradshaw's lomatium (Factor E), now or within the foreseeable future.

Although the types, magnitude, or extent of potential cumulative impacts are difficult to predict, we are not aware of any combination of factors that are likely to co-occur with significant negative consequences for the species within the southwestern Washington portion of its range. We anticipate that any negative consequence of co-occurring threats will be successfully addressed through the same active management actions that have contributed to the ongoing recovery of Bradshaw's lomatium and that are expected to continue into the future.

Therefore, we have determined that Bradshaw's lomatium is not in danger of extinction, or likely to become so in the foreseeable future, within a significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Determination of Status

Our review of the best available scientific and commercial information indicates that Bradshaw's lomatium is not in danger of extinction or likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we are removing Bradshaw's lomatium from the Federal List of Endangered and Threatened Plants at 50 CFR 17.12(h) due to recovery.

Effects of This Rule

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing Bradshaw's lomatium from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Bradshaw's lomatium. There is no critical habitat designated for this species, so there would be no effect to 50 CFR 17.96.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires the Secretary of the Interior, through the Service and in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protections of the Act. If, at any time during the monitoring period, data indicate that the protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing.

We propose to delist Bradshaw's lomatium based on new information that has become available as well as recovery actions taken. Because delisting would be due to recovery, we have prepared a draft post-delisting monitoring plan. The draft post-delisting monitoring plan discusses the current status of the species and describes the methods proposed for monitoring if the species is removed from the Federal List of Endangered and Threatened Plants. Monitoring would take place for a minimum of 5 years. It is our intent to work with our partners to maintain the recovered status of Bradshaw's lomatium. We seek public and peer review comments on the draft post-delisting monitoring plan, including its objectives and procedures (see *Public Comments,* above), with the publication of this proposed rule.

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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To

better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names 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

We determined we do not need to prepare an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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, 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 Native American culture, and to make information available to Tribes.

We do not believe that any Tribes would be affected if we adopt this rule as proposed.

References Cited

A complete list of all references cited in this proposed rule is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0013 or upon request from the State Supervisor, Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff of the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

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; 4201–4245, unless otherwise noted.

§ 17.12 [Amended]

■ 2. Amend § 17.12(h) by removing the entry for ''*Lomatium bradshawii*'' under FLOWERING PLANTS from the List of Endangered and Threatened Plants.

Dated: October 28, 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. 2019–25545 Filed 11–25–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R6–ES–2019–0026; FXES11130900000C6–156–FF09E30000]

RIN 1018–BD48

Endangered and Threatened Wildlife and Plants; Reclassification of the Endangered June Sucker to Threatened With a Section 4(d) Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the June sucker (*Chasmistes liorus*) from endangered to threatened under the Endangered Species Act of 1973, as amended (Act), due to substantial improvements in the species' overall status since its original listing as endangered in 1986. This proposed action is based on a thorough review of the best scientific and commercial data available, which indicates that the June sucker no longer meets the definition of endangered under the Act. If this proposal is finalized, the June sucker would remain protected as a threatened species under the Act. We also propose a rule under section 4(d) of the Act that provides for the conservation of the June sucker. This document also constitutes our 5-year status review for this species.

DATES: We will accept comments received or postmarked on or before January 27, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below), must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 10, 2020.

ADDRESSES: *Comment submission:* You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R6–ES–2019–0026, 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 Rules link to locate this document. You may submit a comment by clicking on the blue ''Comment Now!'' box. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R6–ES–2019–0026; U.S. Fish and Wildlife Service; MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you submit written 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 for more details).

Document availability: This proposed rule and supporting documents are available on *http://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0026. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours at the Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, Utah 84119, telephone: 801–975–

3330. Persons who use a telecommunications device for the deaf may call the Federal Relay Service at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Larry Crist, Field Supervisor, telephone: 801–975–3330. Direct all questions or requests for additional information to: JUNE SUCKER QUESTIONS, U.S. Fish and Wildlife Service; Utah Ecological Services Field Office; 2369 Orton Circle, Suite 50; West Valley City, Utah 84119. Individuals who are hearing-impaired or speech-impaired may call the Federal Relay Service at 800–877–8337 for TTY assistance.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as accurate as possible. Therefore, we invite tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible. We particularly seek comments concerning:

(1) Biological or ecological reasons why we should or should not reclassify June sucker from endangered to threatened on the List of Endangered and Threatened Wildlife (*i.e.,* ''downlist'' the species) under the Act.

(2) New biological or other relevant data concerning any threat (or lack thereof) to this species or any current or planned activities in the habitat or range that may impact the species.

(3) New information on any efforts by the State or other entities to protect or otherwise conserve June sucker.

(4) New information concerning the range, distribution, and population size or trends of this species.

(5) Information on activities that may warrant consideration in the rule issued under section 4(d) of the Act (16 U.S.C. 1531 *et seq.*), including:

(a) Whether a provision should be added to the 4(d) rule that excepts take of June suckers resulting from educational or outreach activities that would benefit the conservation of June sucker.

(b) Additional provisions or information the Service may wish to consider for a 4(d) rule in order to conserve, recover, and manage the June sucker.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, may not meet the standard of information required by section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*), which directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in **DATES**.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. If you provide personal identifying information in your comment, 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Utah Ecological Services Field Office. (See **FOR FURTHER INFORMATION CONTACT**).

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270) and our August 22, 2016, Director's Memorandum ''Peer Review Process,'' we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal.

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by the date shown in DATES. We will schedule public hearings on this proposal, if any are requested, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Previous Federal Actions

On April 12, 1982, the Desert Fishes Council petitioned us to list 17 fishes, including the June sucker. On December 20, 1982, we included the June sucker in a notice of review in the **Federal Register** (47 FR 58454). On June 14, 1983, we published our finding that the petition from the Desert Fishes Council contained substantial information for us to consider the June sucker for listing (48 FR 27273).

On July 2, 1984, we proposed the June sucker for listing as endangered under the Act with proposed critical habitat (49 FR 27183). On March 31, 1986 (51 FR 10851), we published the final rule listing June sucker as an endangered species and designating critical habit comprising the lower 4.9 miles (mi) (7.8 kilometers (km)) of the Provo River in Utah County, Utah.

On June 25, 1999, we finalized a recovery plan for the June sucker (Service 1999, entire). On November 13, 2001, we published a notice in the **Federal Register** formally declaring our intention to participate in the multi-agency June Sucker Recovery Implementation Program (JSRIP) in partnership with the U.S. Bureau of Reclamation (USBR), Utah Reclamation Mitigation and Conservation Commission (URMCC), the Department of the Interior (DOI), State of Utah Department of Natural Resources (UDNR), the Central Utah Water Conservancy District (CUWCD), Provo River Water Users Association, Provo Reservoir Water Users Company, and outdoor interest groups (66 FR 56840). The JSRIP was designed to implement recovery actions for the endangered June sucker and facilitate resolution of conflicts associated with June sucker recovery in the Utah Lake and Provo

River basins in Utah. We have participated in the JSRIP since this time and remain an active program member.

On October 6, 2008, we published a notice of initiation of a 5-year review for June sucker in the **Federal Register** and requested new information that could have a bearing on the status of June sucker (73 FR 58261). This document serves as a completion of that 5-year review.

Species Information

It is our intent to discuss only those topics directly related to downlisting June sucker in this proposed rule. For more information on the description, biology, ecology, and habitat of the species, please refer to the final listing rule published in the **Federal Register** on March 31, 1986 (51 FR 10851) and the recovery plan (Service 1999). These documents will be available as supporting materials on *http://www.regulations.gov* under Docket No. FWS–R6–ES–2019–0026.

We identify the species' ecological requirements for survival and reproduction using the concepts of resiliency, redundancy, and representation (the 3Rs). Resiliency is the ability of a species to withstand stochastic events. It is associated with population size, growth rate, and habitat quality. Redundancy is the ability of a species to withstand catastrophic events for which adaptation is unlikely. It is associated with the number, distribution, and resilience of populations. Representation is the ability of a species to adapt to novel changes in its environment, as measured by its ecological and genetic diversity. It is associated with the distribution of populations of the species across its range.

Taxonomy and Description

The June sucker, a unique lake sucker named for the month in which it was known to spawn, was first collected and described by David S. Jordan in 1878, in Utah Lake, Utah County, Utah (Jordan 1878, entire). However, taxonomic questions regarding hybridization of the June sucker and co-occurring Utah sucker (*Catostomus ardens*) ultimately resulted in reclassification of the species.

The two species likely evolved together in Utah Lake. During the 1930s, a severe drought stressed the sucker populations in Utah Lake, increasing the incidence of June and Utah sucker hybridization (Miller and Smith 1981, p. 7). After this hybridization event, as sucker populations increased in abundance, the new genes that occurred in both the June sucker and Utah sucker populations resulted in hybrid characteristics within both populations (Evans 1997, p. 8). It is likely that the two species may have hybridized at multiple points in the past, in response to environmental bottlenecks (Evans 1997, pp. 9–12). As a result of the hybridization event in the 1930s, two subspecies of June sucker were originally identified—*Chasmistes liorus liorus* to sucker specimens collected in Utah Lake in the late 1800s, and *Chasmistes liorus mictus* to specimens collected after 1939, following the drought years (Miller and Smith 1981, p. 11). This classification was never corroborated, and because the June sucker maintained its distinctiveness from other lake suckers, we determined that it should be listed as a full species under the name *Chasmistes liorus* (51 FR 10851, March 31, 1986).

The June sucker has a large, robust body, a wide, rounded head, and a distinct hump on the snout (Scoppettone and Vinyard 1991, p. 1). Adults are 17–24 inches (in) (43.2–61.0 centimeters (cm)) in length (Scoppettone and Vinyard 1991, p. 1; Belk 1998, p. 2). Lake suckers are mid-water planktivores (plankton feeders). June sucker is a long-lived species, living to 40 years or more (Scoppettone and Vinyard 1991, p. 3; Belk 1998, p. 6). In the wild, June suckers reach reproductive maturity at 5 to 10 years of age. They exhibit rapid growth for the first 3 to 5 years, with intermediate growth rates between ages 8 to 10, and a further reduced growth rate after age 10. Growth between sexes does not differ within the first 10 years (Scoppettone and Vinyard 1991, p. 9).

Distribution and Habitat

The June sucker is native to Utah Lake and its tributaries, which are the primary spawning habitat for the species, and is not found outside of its native range except in man-made refuge populations. A refuge population was established in Red Butte Reservoir, Salt Lake County, Utah, and has been maintained there since 2004 (Utah Division of Wildlife Resources (UDWR) 2010, pp. 4–5). The only other population of June sucker is maintained at UDNR's Fisheries Experiment Station (FES) in Logan, Utah, as part of the JSRIP stocking program to enhance the species' population in Utah Lake. The FES also uses ponds at Rosebud, Box Elder County, Utah, as a grow-out facility to allow fish bred at FES to increase in size prior to stocking in Utah Lake (UDWR 2018, entire). Refuge populations have aided in retaining ecologic and genetic diversity in June sucker, which in turn aids the species in adapting to changing environmental conditions (*i.e.,* increases representation).

Utah Lake is a remnant of ancient Lake Bonneville, and is one of the largest natural freshwater lakes in the western United States. It covers an area of approximately 150 square miles (mi^2) (400 square kilometers (km^2)) and is relatively shallow, averaging 9 feet (ft) (2.7 meters (m)) in depth. The lake lies west of Provo, Utah, and is the terminus for several rivers and creeks, including the Provo, Spanish Fork, and American Fork Rivers and Hobble and Battle Creeks. The outflow of Utah Lake is the Jordan River, which flows north into the Great Salt Lake, a terminal basin.

Utah Lake is located in a sedimentary drainage basin dominated by erosive soils with high salt concentrations. Available geologic data indicate that Utah Lake had a sediment filling rate of about 0.03 in (1 millimeter (mm)) per year over the past 10,000 years; this rate more than doubled with the urbanization of Utah Valley (Brimhall and Merritt 1981, pp. 3–5). Faults under the lake appear to be lowering the lake bed at about the same rate as sediment is filling it (Brimhall and Merritt 1981, pp. 10–11). Inputs of nutrient-rich sediments combined with the lake's high evaporation rate cause high levels of sediment loading, high soluble salt concentrations, and high nutrient levels as a baseline condition (Brimhall and Merritt 1981, p. 11).

Shallow lakes, such as Utah Lake, are typically characterized as having one of two ecological states: A clear water state or a turbid water state (Scheffer 1998, p. 10). The clear water state is often dominated by rooted aquatic macrophytes (aquatic plants) that can greatly reduce turbidity by securing bottom sediments (Carpenter and Lodge 1986, p. 4; Madsen *et al.* 2001, p. 6) and preventing excessive phytoplankton (algae) production through a suite of mechanisms (Timms and Moss 1984, pp. 3–5). Alternatively, a shallow lake in a turbid water state contains little or no aquatic vegetation to secure bottom sediments (Madsen *et al.* 2001, p. 9). As a result, fish movement and wave action can easily suspend lake-bottom sediments (Madsen *et al.* 2001, p. 9). In addition, fish can promote algal production by recycling nutrients (both through feeding activity and excretion). Fish can also suppress zooplankton densities through predation, and the zooplankton would otherwise suppress algal abundance (Timms and Moss 1984, p. 11; Brett and Goldman 1996, p. 3).

Historically, Utah Lake existed in a clear water state dominated by rooted

aquatic vegetation, as shown in sediment cores extracted from Utah Lake (Macharia and Power 2011, p. 3). This clear water state is a habitat characteristic necessary to improve resiliency of June sucker. Sediment cores reveal a shift in the state of the lake shortly after European settlement of Utah Valley to an algae-dominated, turbid condition, lacking macrophytic vegetation that serves as refugial habitat for June sucker (Brimhill and Merritt 1981, p. 16; Scheffer 1998, p. 6; Hickman and Thurin 2007, p. 8; Macharia and Power 2011, p. 5). This shift is believed to be a result of excessive nutrient input, management-induced fluctuations in lake levels, and the introduction of common carp (*Cyprinus carpio*). The end result of compounded natural and human-caused effects is a present-day lake ecosystem that is dominated by algae, rather than the clear water state in which June sucker evolved.

The extent of ideal riverine habitat available for spawning adults and developing larval June sucker was more abundant historically than it is currently. Prior to settlement of Utah Valley, spawning tributaries, such as the Provo, Spanish Fork, and American Fork Rivers and Hobble Creek, contained large deltas with braided, slow, meandering channels and aquatic vegetation that provided suitable spawning and larval rearing habitat (Olsen *et al.* 2002, p. 4). Multiple spawning tributaries provided redundancy for June sucker. The range of diverse habitats historically present within these tributaries was essential to larval sucker survival and maintaining the species' resiliency. Most importantly, slow water pool and marsh habitats provided refuge from predation by larger fishes.

Since settlement, changes to the tributaries have decreased the available habitat for June sucker spawning and rearing, although recent restoration projects have improved conditions in the Provo River and Hobble Creek. The Provo River contains many natural characteristics that support the majority of the June sucker spawning run and also play an important role in contributing to the recovery of the species. The Provo River is the largest tributary to the lake in terms of annual flow, width, and watershed area (Stamp *et al.* 2002, p. 19). All of these characteristics contribute to higher numbers of spawning June sucker using the Provo River than the other Utah Lake tributaries. These characteristics also best support the proper timing of the June sucker spawning period and help protect against further hybridization with Utah sucker. Continued increase and improvement of available spawning and larval rearing habitat in the Provo River is necessary for recovery of the species.

Biology and Ecology

June suckers are highly mobile and can cover large portions of their range in a short period of time (Radant and Sakaguchi 1981, p. 7; Buelow 2006, p. 4; Landom *et al.* 2006, p. 13). Adult June suckers exhibit lake-wide distributional behavior throughout most of the year (Buelow 2006). However, in the fall, June suckers congregate along the western lakeshore, and in the winter, move to the eastern areas. One explanation for the easterly orientation in the winter may be the presence of relatively warm fresh-water springs along the eastern shore of Utah Lake (SWCA 2002, p. 14).

During pre-spawn staging, in April and May, June suckers congregate in large numbers near the mouths of the Provo River, Hobble Creek, Spanish Fork River, and American Fork River (Radant and Hickman 1984, p. 3; Buelow *et al.* 2006, p. 4; Hines 2011, p. 8). June suckers generally initiate a spawning migration into Utah Lake tributaries (primarily the Provo River, but also Hobble Creek and, to a lesser extent Spanish Fork River and American Fork River) during the second and third weeks of May (Radant and Hickman 1984, p. 7). Provo Bay is likely one of their primary pre-spawn and post-spawn congregation areas (Buelow 2006, p. 4).

Most spawning is completed within 5–8 days. Post-spawning suckers congregate near the mouth of Provo Bay, which could be a response to the high food productivity that remains in the bay until the fall (Radant and Shirley 1987, p. 13; Buelow 2006, p. 8). Zooplankton densities are greater in Provo Bay than in other lake areas (Kreitzer *et al.* 2011, p. 9), providing abundant food to meet the energy demands of post-spawn suckers, as well as an ideal location for the growth and survival of young-of-year June suckers recently emerged from the spawning tributaries (Kreitzer *et al.* 2011, p. 10).

June sucker spawning habitat consists of moderately deep runs and riffles in slow to moderate current with a substrate composed of 4–8 in (100–200 mm) coarse gravel or small cobble that is free of silt and algae. Deeper pools adjacent to spawning areas may provide important resting or staging areas (Stamp *et al.* 2002, p. 5).

Under natural conditions, June sucker larvae drift downstream and rear in shallow vegetated habitats near tributary mouths in Utah Lake (Modde and Muirhead 1990, pp. 7–8; Crowl and Thomas 1997, p. 11; Keleher *et al.* 1998, p. 47). Juvenile June suckers then migrate into Utah Lake and use littoral aquatic vegetation as cover and refuge (Crowl and Thomas 1997, p. 11). June sucker juveniles form schools near the water surface, presumably feeding on zooplankton in the shallows. Young-of-year suckers form shoals (aggregations of hundreds of fish) near the surface under the cover of aquatic vegetation (Billman 2008, p. 3).

However, effects from nonnative common carp, altered tributary flows, lake water level management, nutrient loading, poor water quality, and river channelization have reduced the amount of shallow, warm, and complex vegetated aquatic habitat for rearing at the tributary mouths and Utah Lake interface. This reduction in rearing habitat has reduced survival of June suckers during the early life stages (Modde and Muirhead 1990, p. 9; Olsen *et al.* 2002, p. 6). As June suckers reach the subadult stage, they begin to move offshore (Billman 2005, p. 16).

Species Abundance and Trends

Early accounts indicate that Utah Lake supported an enormous population of June sucker (Heckmann *et al.* 1981, p. 8), and was proclaimed ''the greatest sucker pond in the universe'' (Jordan 1878, p. 2). The first major reductions in the number of June suckers were in the late 1800s. Through the mid-1800s, June suckers were caught during their spawning runs and were widely used as fertilizer and food (Carter 1969, p. 7). During this period, an estimated 1,653 tons (1,500 metric tons) of spawning suckers were killed when 2.1 mi (3.3 km) of the Provo River was dewatered due to reduced water availability and high demand (Carter 1969, p. 8).

Hundreds of tons of suckers also died when Utah Lake was nearly emptied during a 1932–1935 drought (Tanner 1936, p. 3). After the drought, June sucker populations gradually increased, but due to the combined impacts of drought, overexploitation, and habitat destruction, the population did not return to its historical level (Heckmann *et al.* 1981, p. 9). June suckers were rare in monitoring surveys during the 1950s through the 1970s (Heckmann *et al.* 1981, p. 11; Radant and Sakaguchi 1981, p. 5).

By the time the species was listed under the Act in 1986, the June sucker had an estimated wild spawning population of fewer than 1,000 individuals. In 1999, we estimated the wild spawning population to be approximately 300 individuals, with no

evidence of wild recruitment (Keleher *et al.* 1998, pp. 12, 53; Service 1999, p. 5).

Due to the immediate threat of June sucker extinction at the time of listing, the UDWR began raising populations in hatcheries and at secure refuge sites. These efforts resulted in the stocking of June sucker into Utah Lake to boost population numbers beginning in the 1990s and continuing through the present day (UDWR 2018b, p. 3). As of 2017, more than 800,000 captive-bred June suckers have been stocked in Utah Lake (UDWR 2017b, p. 6). The vast majority of fish detected spawning in Utah Lake tributaries are stocked fish that have become naturalized (UDWR 2018c, p. 7).

An estimated 3,500 June suckers, most of them stocked fish, were spawning annually in Utah Lake tributaries as of 2016 (Conner and Landom 2018, p. 2).This represents a ten-fold increase in spawning fish from when the recovery plan was finalized in 1999 (Conner and Landom 2018, p. 2). For all spawning tributaries combined, the spawning population size for both sexes substantially increased from 2008 to 2016. The estimated total population size grew by 22 percent. However, this estimate may be low, as monitoring efforts in tributaries were not consistent across all years, and data were not available for one year due to high flows. We do not have a population estimate for the entire June sucker population in Utah Lake.

Additionally, monitoring of June suckers in the lower Provo River during the 2018 spawning period captured a significant portion of fish that were not PIT tagged (2018 UDWR, p. 3). It is unclear if these untagged fish were the result of wild recruitment or of hatchery origin. The natural geochemical markers (signatures) in the otoliths (ear bones) and fin rays of collected, unmarked June suckers show that 39 percent (12 of 31) of these fish likely originated from the FES hatchery, 42 percent from Red Butte Reservoir, other rearing facilities, or inconclusive; and 19 percent (6 of 31) had signatures indicating they originated in Utah Lake (Wolff and Johnson 2013, p. 9), meaning they were likely recruited naturally into Utah Lake. These results suggest that successful natural reproduction and recruitment is occurring, although the exact location and conditions that contributed to this successful natural recruitment are not known. Additional analysis of June suckers of unknown origin is planned in 2019, to determine the level of natural recruitment occurring in Utah Lake. Regardless of origin, capture of untagged fish indicates there is an unknown number of spawning June suckers that were not accounted for in the spawning population estimate.

The year-to-year survival rate of fish stocked into Utah Lake varies significantly depending on a number of factors including length of fish at stock (which correlates to age) and time of year stocked (Goldsmith *et al.* 2016, p. 5). June suckers stocked in early summer that were 11.6 in (296 mm) in length or more (usually representing an individual that was 2 years old) had a survival rate of 83 percent. June suckers stocked at age one had survival rates ranging from zero to 67 percent. The smallest June suckers, those stocked at under 7.9 in (200 mm), had a survival rate into the next year of only two percent (Goldsmith *et al.* 2016, p. 14).

Year-to-year survival rates for spawning June suckers ranged from 65 to 95 percent depending on the tributary and the year (Goldsmith *et al.* 2016, p. 3). Additionally, June suckers that were stocked more than 10 years prior were detected spawning on multiple occasions, indicating the capability for long-term survival in Utah Lake (Conner and Landom 2018, p. 3). Between 2013 and 2016, June sucker showed a positive population trend with a combined annual growth rate of 1.06 for females and 1.04 for males across three tributaries (Provo River, Spanish Fork, and Hobble Creek), with Provo River having the highest population growth rate and Hobble Creek showing an overall decline (Conner and Landom 2018, p. 3). However, as nearly 50 percent of spawning June sucker detected in Hobble Creek were of unknown origin, a decline in detected spawners in this tributary does not necessarily mean fewer fish overall are using the tributary, because naturally recruited fish that have never been tagged would not be detected by the remote electronic methods used to collect June sucker presence information at spawning locations.

In summary, the viability of June sucker in its native range—as indicated by its representation, resiliency, and redundancy—has improved significantly since the time of listing, largely due to the efforts of the JSRIP (see Recovery). Stocking of June sucker, a program designed to maximize representation through genetic diversity, has been very successful at increasing the number of fish in Utah Lake. Stocked individuals are behaving as wild fish by migrating to new habitats, surviving many years, and participating in spawning activities. The JSRIP stocking program is planned to continue until the June sucker reaches self-sustaining population levels, with a focus on stocking 2-year-old fish over 12 in (300 mm) long to increase their chances of survival. The spawning population has increased at least ten-fold since 1999; there is evidence of high year-to-year survival rates and long-term survival for spawning individuals; and the spawning population is increasing at a high rate, improving the resiliency of the wild population. The stocking program and maintenance of refuge populations both at Red Butte reservoir and FES also provided redundancy to the wild populations. Moving forward, a planned origin study using fin-rays is meant to improve our understanding of the degree of natural recruitment of June sucker in Utah Lake, which will yield more accurate population estimates and inform future stocking rates and management decisions for the purposes of further bolstering the species' representation, resiliency, and redundancy to achieve full recovery.

Recovery

Section 4(f) of the Act directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Under section 4(f)(1)(B)(ii), recovery plans must, to the maximum extent practicable, include ''objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions [of section 4 of the Act], that the species be removed from the list.'' Recovery plans provide a roadmap for full recovery success to the Service, States, and other partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all of the criteria in a recovery plan being fully met. For example, one or more criteria may be exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and the species is robust enough such that it no longer meets the definition of endangered or threatened. In other cases, recovery opportunities may be discovered that were not known when the recovery plan

was finalized. These opportunities may be used instead of methods identified in the recovery plan. Likewise, information on the species may be learned that was not known at the time the recovery plan was finalized. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. Recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

We finalized a recovery plan for June sucker in 1999, which included recovery actions and recovery criteria for downlisting and delisting of June sucker. These criteria lack specific metrics and may require updating. However, they are still relevant to the evaluation of recovery, and we discuss them in this document as one way to evaluate the change in status of June sucker.

Since 2002, the JSRIP has funded, implemented, and overseen recovery actions for the conservation of June sucker in accordance with the guidance provided by the recovery plan, including using adaptive management techniques to address new stressors as they arose. These recovery actions include: (1) Acquiring and managing water flows, (2) restoring habitat, (3) removing carp, and (4) augmenting the wild June sucker population. These efforts, and how they relate to the recovery criteria, are described in the following paragraphs.

Acquisition and Management of Water Flows

The first downlisting criterion requires that Provo River flows essential for June sucker spawning and recruitment are protected (Service 2011, p. 5). We do not have enough information to determine the exact flow level required for June sucker spawning and recruitment. However, the JSRIP provides annual recommendations for June sucker on the Provo River and Hobble Creek based on the known biology of the species and the historical flow levels to the CUWCD and other water-managing bodies. These recommendations are currently supported by several reviews under the National Environmental Policy Act performed for their most recent restoration projects (Hobble Creek in 2016 and Provo River in 2015). The JSRIP has also acquired water totaling over 21,000 acre-ft (25,903,080 cubic m (m^3)) per year to enhance flows during the spawning season on the Provo River and to supplement base flows through the summer for the benefit of larval June sucker. Approximately 13,000 acre-ft (16,035,240 m^3) of this water is permanently allocated, and the remainder is allocated through 2021. The JSRIP is pursuing additional water, permanent and temporary, to bolster June sucker allocations after 2021 (JSRIP 2018, p. 5). Additionally, the JSRIP has acquired 8,500 acre-ft (10,485,000 m^3) of permanent water for Hobble Creek (USBR 2017, pp. 3–5). These protected water sources, when delivered as additional water, provide added resiliency by improving habitat quality for the species.

The amount of water delivered to supplement flows in the Provo River and Hobble Creek and the timing of those deliveries is determined annually through a cooperative process involving multiple agencies. In 1996, the June Sucker Flow Work Group was formed by the USBR, DOI Central Utah Project Completion Act (CUPCA) Office, Provo River Water Users Association, Provo River Water Commissioner, CUWCD, UDWR, the Service, Provo City Public Works, and the URMCC. These agencies initially worked together to adjust reservoir releases to mimic a Provo River spring runoff hydrograph and improve June sucker spawning success. Since 2002, this process has been overseen by the JSRIP.

As recovery-specific water was acquired, the role of this work group has expanded to provide a forum for determining the optimal delivery pattern of supplemental flows. Based on existing conditions for a given year (*e.g.,* snow pack and reservoir storage), the multi-disciplinary work group uses operational flexibility for reservoir water delivery and runoff timing to evaluate and operate the system to deliver year-round flows to benefit June sucker recovery. Based on the meetings of the Flow Work Group, the JSRIP makes an annual recommendation for flow deliveries to the Provo River and Hobble Creek, adjusted for the available water conditions. Water managers (including USBR, CUPCA, Provo River Water Users Association, the Provo River Water Commissioner, CUWCD, and Provo City Public Works) then work to deliver water to meet that specific annual recommendation and have been successful in meeting the hydrograph scenarios agreed to by the Flow Work Group on an annual basis since 2004.

In 2004, the CUWCD, in cooperation with the Service and other members of the Flow Work Group, agreed on operational scenarios that mimic dry, moderate, and wet year flow patterns for the Provo River (CUWCD *et al.* 2004, p. 17). The Flow Work Group applied these operational scenarios in determining the spawning season flow pattern for the Provo River with the goal of benefiting June sucker recovery. In 2008, an ecosystem-based flow regime recommendation was finalized for the lower Provo River, based on available site-specific information (Stamp *et al.* 2008, p. 13). This year-round flow recommendation refined the operational scenarios identified in 2004 through the incorporation of relevant ecological functions into the in-stream flow analysis. Hydrologic variability, geomorphology, water quality, aquatic biology, and riparian biology were considered as aspects of flow recommendations, which were adjusted in consideration of these functions. The year-round flow recommendations are adaptive, with consideration of the variability within and among each water year. These include recommendations for a baseline flow, a spring runoff flow, and the duration of the rising and receding flow periods before and after runoff. As more is learned about the associations between flow and river functions, the recommendations can be adjusted (Stamp *et al.* 2008, p. 10).

In 2009, ecosystem-based flow recommendations were developed for Hobble Creek in the Lower Hobble Creek Ecosystem Flow Recommendations Report (Stamp *et al.* 2009, pp. 11–12). These recommendations were adopted by the JSRIP, included in the East Hobble Creek Restoration project Environmental Analysis (JSRIP 2009, p. 5), and are currently considered each year by April in determining the annual recommendations for delivery of flows to Hobble Creek (DOI *et al.* 2013, p. 41). Similar to the Provo River, these recommendations are intended to be adaptive.

Habitat Restoration

The second downlisting criterion for June sucker requires that habitat in the Provo River and Utah Lake be enhanced or established to provide for the continued existence of all life stages (Service 1999, p. 4). Habitat restoration projects have taken place both on the Provo River and Hobble Creek, and habitat quality has also been enhanced in Utah Lake as a result of nonnative species removal (see *Common Carp,* below).

Modifications of the Fort Field diversion structure on the Provo River, located within critical habitat, were completed in October 2009. This modification made an additional 1.2 mi (1.9 km) of spawning habitat available for the June sucker, permitting fish passage further upstream in their historical range (URMCC 2009, pp. 8–9; JSRIP 2008, p. 12). During the 2010

spawning season, June sucker were observed in the Provo River upstream of the modified Fort Field Diversion structure (UDWR 2011, pp. 7–8). In cooperation with the JSRIP, the CUWCD and URMCC are working with other diverters on the Provo River to evaluate further diversion structure removal or modification.

The JSRIP is also implementing a large-scale stream channel and delta restoration project for the lower Provo River and particularly its interface with Utah Lake to restore, enhance, and create habitat conditions in the lower Provo River for spawning, hatching, larval transport, rearing, and recruitment of the June sucker to the adult life stage, increasing the species' resiliency (Olson *et al.* 2002, p. 15; BIO–WEST 2010, p. 3). The Provo River Delta Restoration Project (PRDRP) will reestablish some of the historical delta conditions in the Provo River, thereby increasing habitat complexity and providing appropriate physical and biological conditions necessary for egg hatching, larval development, growth, young-of-year survival, and recruitment of young fish into the adult population. A Final Environmental Impact Statement for the PRDRP was released in April 2015, with a Record of Decision signed in May 2015. Federal agencies are currently acquiring lands needed for the PRDRP and developing a detailed design to provide optimal rearing habitat for June sucker (PRDRP 2017, entire).

Shortly after formation of the JSRIP, and based on delisting criteria identified in the 1999 June Sucker Recovery Plan (Service 1999, pp. 5–6), several Utah Lake tributaries were evaluated for the purpose of establishing a second spawning run of June sucker in addition to the Provo River spawning run (Stamp *et al.* 2002, p. 13). An additional spawning run would improve redundancy for the species by providing security in the event that a catastrophic event eliminated the Provo River spawning population. The study concluded that Hobble Creek provided the best opportunity, but would require habitat enhancements to make it suitable for June sucker spawning and allow for the development of quality rearing habitat for young suckers (Stamp *et al.* 2002, p. 13).

In 2008, the lower 0.5 mi (0.8 km) of Hobble Creek was relocated and reconstructed on land purchased by the JSRIP to provide June sucker spawning habitat, a more naturally functioning stream channel, and suitable nursery habitat for young suckers. The JSRIP partnered with the Utah Transit Authority to implement the habitat restoration project on the purchased property (DOI 2008, p. 14). The project re-created a functioning delta at the interface between Hobble Creek and Utah Lake and allowed the reestablishment of a June sucker spawning run. The restoration design results in more active river processes and includes numerous seasonally inundated off-channel ponds, which serve as larval nursery and rearing habitat to increase larval fish growth and survival (DOI 2008, p. 22).

In 2009, June suckers were documented spawning in the restored Hobble Creek, with verified larval production (Landom and Crowl 2010, pp. 1–12), and in 2010, juvenile June sucker (from 2009 spawning) were collected with seines in ponds within the Hobble Creek restoration area (Landress 2011, p. 4). Due to the success of the restoration, additional reaches of Hobble Creek have been selected for habitat enhancements to increase the amount of available spawning habitat. For example, directly upstream of the lower Hobble Creek restoration area, the East Hobble Creek Restoration Project was completed to enhance the stream channel by increasing sinuosity and floodplain connectivity, modify or remove diversion structures, and provide additional stream flows for Hobble Creek (JSRIP 2016b, p. 17). An age-1 June sucker was observed in this area in January 2018, indicating that June sucker are using this area for rearing (Fonken 2018, pers. comm.).

Carp Removal

The third downlisting criterion requires that nonnative species that present a significant threat to the continued existence of June sucker are reduced or eliminated from Utah Lake. Common carp was identified as the nonnative species having the greatest adverse impact on June sucker habitat and resiliency, due to the large scale changes in water quality and macrophytic vegetation caused by carp introduction (see Distribution and Habitat, above).

In 2009, a mechanical removal program was instituted to remove common carp from Utah Lake. Between 2009 and 2017, over 13,000 tons (11,750 metric tons) of common carp were removed from the lake (UDWR 2017c, p. 2). This removal resulted in a decline of the common carp population. Catch-per-unit effort of common carp has decreased over the past 4 years, while average weight of individual common carp has increased, thus indicating a trend of reduction in common carp density in Utah Lake (Gaeta and Landom 2017, p. 7).

In 2015, after 6 years of common carp removal, native macrophytes were observed in Utah Lake vegetation monitoring studies for the first time (Landom 2016, pers. comm.). As of 2017, multiple sites in the lake have native littoral vegetation, including sites with increasing complexity supporting more than four native macrophytic species at one site (Dillingham 2018, entire). Sites with more complex vegetation support a higher diversity of macroinvertebrates, which provide additional food for June sucker, provide greater opportunities for June sucker to shelter from predators, and indicate improved water quality in the lake (Dillingham 2018, entire).

The common carp removal program in Utah Lake has had a positive impact on habitat quality, which may be contributing to natural recruitment and survival rates for June sucker (Gaeta and Landom 2017, p. 8; see *Species Abundance and Trends*). Ongoing research by Utah State University is continuing to assess the relationship between common carp removal, habitat improvement, and June sucker population response as well as develop long-term recommendations for sustainable common carp management (Gaeta *et al.* 2018, entire). The JSRIP is prioritizing continued suppression of the common carp population via mechanical removal, as well as research into genetically modified sterile (YY) male technology that has the potential to reduce or eliminate carp from Utah Lake in the future (JSRIP 2018, p. 2).

Population Augmentation

The fourth and final downlisting criterion in the June sucker recovery plan is that an increasing self-sustaining spawning run of wild June sucker resulting in significant recruitment over 10 years has been reestablished in the Provo River. This criterion does not define ''significant'' recruitment. Although the spawning population of June sucker is increasing, annual stocking continues in order to support the population. The augmentation plan for the June sucker set a goal, for the purposes of meeting the recovery criterion of a self-sustaining population, of stocking 2.8 million individuals into Utah Lake (Service and URMCC 1998, entire). The goal was based on early studies of June sucker survival and the production capabilities of the facilities. As of 2017, more than 800,000 captive-bred June sucker have been stocked in Utah Lake from the various rearing locations, and a long-term, continued stocking strategy based on the most up-to-date research on stocking success and

survival rates is under development (JSRIP 2008, p. 8; UDWR 2017b, p. 6).

Although the June sucker has not met this downlisting criterion identified in the 1999 recovery plan, we find that the population increases and trends achieved thus far (see *Species Abundance and Trends*), with the addition of refuge populations to increase redundancy and genetic representation, will help prevent the species becoming endangered or extinct due to catastrophic stochastic events and provide a more realistic metric for downlisting eligibility.

Overall, recovery actions have addressed many of the threats and stressors affecting June sucker. The JSRIP has been effective in collaborating to implement a stocking program, increase June sucker spawning locations, acquire and manage water flows, remove nonnative common carp, and develop and conduct habitat restorations that target all life stages of June sucker. Studies are planned to improve understanding of the effects of other threats and stressors, including lake water quality and the impact of other invasive species on the June sucker. The JSRIP continues to be active and committed to full recovery of the June sucker.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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 must consider these same five factors in downlisting a species. We may downlist a species according to 50 CFR 424.11(d) if the best available scientific and commercial data indicate that the species no longer meets the definition of an endangered species, but that it meets the definition of a threatened species.

For the purposes of this analysis, we evaluate whether or not June sucker meets the definition of an endangered or threatened species, based on the best scientific and commercial information available. 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, 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.

The following analysis examines the five factors currently affecting June sucker or that are likely to affect it within the foreseeable future. For each factor, we examine the threats at the time of listing in 1986 (or if not present at the time of listing, the status of the threat when first detected), the downlisting criterion pertinent to the threat, what conservation actions have been taken to meet the downlisting criteria or otherwise mitigate the threat, the current status of the threat, and its likely future impact on June sucker. We also consider stressors not originally considered at the time of listing, most notably climate change.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Loss and alteration of spawning and rearing habitat were major factors leading to the listing of the June sucker (51 FR 10851, March 31, 1986) and continue to threaten the species' overall resiliency and its recovery. Suitable spawning and rearing habitat in Utah Lake and its tributaries has declined due to water development, habitat modification, introduction of common carp, nutrient loading, and urbanization.

Water Development and Habitat Modification

Water development and substantial habitat modifications have occurred in the Utah Lake drainage since the mid-1800s. These include the reduction in riverine flows (including the Provo River) from numerous water diversions, various water storage projects, channelization, and additional lake and in-stream alterations (Radant *et al.* 1987, p. 13; UDWR and UDNR 1997, p. 11; Andersen *et al.* 2007, p. 8). Many of these modifications and water depletions remain today, and continue to hinder the quantity and quality of June sucker rearing and spawning habitat, which in turn impacts species resiliency.

In 1849, settlers founded Fort Utah along the Provo River and began modifying the waters of Utah Lake and its main tributaries (USBR 1989, p. 3). In 1872, a low dam was placed across the lake outflow to the Jordan River, changing the function of Utah Lake into a storage reservoir (CUWCD 2004, p. 2). By the early 1900s, a pumping plant was constructed at the outflow to allow the lake to be lowered below the outlet elevation; this structure has since been modified and enlarged (Andersen *et al.* 2007, p. 5). The present capacity of the pumping plant is 1,050 cubic feet per second (cfs) (29.7 cubic meters per second (cms)), and it can lower the lake level 8–10 ft (2.4–3.0 m) below the compromise elevation of 4,489 ft (1,368 m) (Andersen *et al.* 2007, p. 5). The compromise elevation is a managed lake elevation target that the interested water authorities have agreed not to exceed

through the active storage of water. This compromise elevation was intended to balance the threat of flooding among lands adjacent to Utah Lake and those downstream along the Jordan River (CUWCD 2004, p. 7).

As a storage reservoir, the surface elevation of Utah Lake fluctuates widely. Prior to the influence of water development projects, annual fluctuations averaged 2.1 ft (0.6 m) per year. For approximately 50 years, under the influence of water development projects, water levels fluctuated an average of 3.5 ft (1.0 m) annually prior to the completion of the Central Utah Project. After its completion, annual lake fluctuations averaged 2.5 ft (0.8 m) (Hickman and Thurin 2007, p. 20). Fluctuation in surface elevation is one of the possible factors contributing to the marked degradation of shoreline habitat and aquatic vegetation in the lake and may contribute to a decline in June sucker refugial habitat from predators (Hickman and Thurin 2007, p. 23).

The long history of water management in the Provo River, including river alterations, dredging, and channelization efforts, have modified the historical braided and complex delta into a single trapezoidal channel (Radant *et al.* 1987, p. 15; Olsen *et al.* 2002, p. 11). The current channel lacks vegetative cover, habitat complexity, and the food sources necessary to sustain larval fishes rearing in the lower Provo River (Stamp *et al.* 2008, p. 20). Additionally, the lower 2 mi (3.2 km) of the Provo River experiences a back-water effect, where the velocity stalls under low-flow scenarios and a high seasonal lake level causes the water to back up from the lake into the Provo River (Stamp *et al.* 2008, p. 20). The slack-water substantially reduces the number of larvae drifting into the lake; as a result, the larvae, with poorly developed swimming abilities, either starve or are consumed by predators in this lower stretch of river (Ellsworth *et al.* 2010, p. 9). Because of the extensive modification of the lower Provo River, in the past June sucker larvae have not survived longer than 20 days after hatching (Ellsworth *et al.* 2010, pp. 9–10). The upcoming PRDRP is designed to increase survival of larvae by providing additional rearing habitat along the Provo (PRDRP 2017, entire).

Similar to the Provo River, Hobble Creek and other tributaries of significance (Spanish Fork River and American Fork River), have been extensively modified by human activities. The hydrological regimes have been altered by multiple dams and diversions, and the stream channels have been straightened and dredged into incised trapezoidal canals (Stamp *et al.* 2002, p. 5). As a result, the streams are isolated from their historical floodplains and have modified flow velocities and pool-riffle sequences (Stamp *et al.* 2002, p. 6). Until recent restoration efforts, the Hobble Creek channel had almost no gradient and ended without a defined connection to the lake interface in Provo Bay due to diversion structures and dredging. In the past, the channel was blocked by debris accumulation that created barriers to fish migration, preventing adult June sucker access to the main stem of Hobble Creek.

Located south of Provo Bay, the Spanish Fork River is the second largest stream inflow to Utah Lake, but the majority of the discharge is diverted during the irrigation season (June–September) (Psomas 2007, p. 12). While adult and larval June sucker occur in the Spanish Fork River (UDWR 2006, p. 2; 2007, p. 2; 2008a, p. 3; 2009a, p. 4; and 2010b, p. 2), the seasonally inadequate flows, poor June sucker rearing habitat at the Utah Lake interface, low water clarity, diversion structures, and miles of levees along the channel are obstacles to successful recruitment (Stamp *et al.* 2002, p. 5). Adult spawning habitat is limited to the lower 2.7 mi (4.3 km) of the Spanish Fork River, where it is of poor quality. Other tributaries where spawning may occur under favorable conditions include the American Fork River and Battle Creek, but streamflow to Utah Lake in these tributaries is not available most years; therefore, they are not believed to comprise a significant portion of June sucker spawning habitat.

Recovery actions for the June sucker to address impacts from water development and habitat modification have included water acquisition, water flow management, and habitat restoration (see Recovery). The availability of quality spawning habitat will improve species resiliency, and multiple spawning tributaries will improve species redundancy. The positive trend in spawning population numbers, increased number of June suckers, and observations of young-of-year and age-1 June sucker in the wild indicate that water acquisition, water flow management, and habitat restoration have had a positive impact on June sucker reproduction (JSRIP 2018, p. 1; see *Species Abundance and Trends*).

Introduction of Common Carp

Historically, Utah Lake had a rich array of rooted aquatic vegetation, which provided nursery and rearing habitat for young June sucker (Heckmann *et al.* 1981, p. 2; Ellsworth *et al.* 2010, p. 9). However, with the introduction of common carp around the 1880s (Sigler and Sigler 1996, pp. 5–6), this refugial habitat largely disappeared. Common carp physically uproot and consume macrophytes and disturb sediments, increasing turbidity and decreasing light penetration, which inhibits macrophyte establishment (Crowl and Miller 2004, pp. 11–12). Although not specifically identified at the time of listing, the successful establishment of common carp and their effect on the Utah Lake ecosystem is a threat to the persistence of the species (SWCA 2002, p. 19). However, the previously described carp removal program has reduced carp populations and increased macrophytic vegetation in the lake, improving resiliency of June sucker (see Recovery).

Urbanization

Rapid urbanization on the floodplains of Utah Lake tributaries stimulated extensive flood and erosion control activities in lake tributaries and reduced available land for the natural meandering of the historical river channels (Stamp *et al.* 2008, p. 4). Channelization for flood control and additional channel manipulation for erosion control further reduced riverine habitat complexity and reduced the total length of tributary rivers for spawning and early-life-stage use (Stamp *et al.* 2008, pp. 12–13). It is anticipated that further urban infrastructure development is likely as the populations of cities bordering Utah Lake and its tributaries continue to increase.

Among the potential impacts from continued urbanization near Utah Lake is the potential for the construction of bridges or other transportation crossings. One example is the Utah Crossing project, a causeway across Utah Lake proposed in 2009. An updated application has not been filed with Utah's Department of Transportation for the project to proceed; however, as development continues on the western side of Utah Lake, the potential need for some type of crossing may increase.

A large-scale project to dredge Utah Lake, remove invasive species, and build habitable islands for private development was proposed in 2017 and is under early stages of planning and review at the State level (ULRP 2018, entire). This project has not received any approval or necessary permits at the State or Federal level. We do not expect the Utah Lake Restoration Project or the Utah Crossing project to move forward or impact June sucker in the next 5–10 years. All development projects on Utah Lake are subject to Federal and State

laws and require consultation with the Service prior to beginning work. However, such projects could potentially impact June sucker by increasing habitat for predatory fish and restricting June sucker movement in Utah Lake (Service 2009, entire). Additional impacts to water quality due to the runoff from new structures could also pose a threat to June sucker (Service 2009, entire). The Utah Division of Water Quality (UDWQ) is partnering with the Utah Lake Commission and other stakeholders to research and provide recommendations to improve water quality and address impacts of urbanization and other factors that may negatively impact future water quality (UDWQ 2017, entire).

Summary of Factor A

Water development and habitat modification, common carp, and urbanization have been identified as threats to June sucker. Since the time of listing, the following recovery actions have been implemented: (1) 21,500 acre-feet of permanent water for instream flows has been secured to benefit the June sucker; (2) a mechanism for annually recommending and providing flows for June sucker spawning has been implemented; (3) the common carp population has been suppressed resulting in measurable habitat improvement in Utah Lake; (4) the impacts of urbanization are being considered through active research and planning; and (5) a landscape-scale stream channel and delta restoration for the Provo River is being implemented (see Recovery). We find that the severity of the threats under Factor A have decreased since the time of listing; adaptive management of these threats is ongoing, and increased resiliency and redundancy are evident as indicated by increasing survival rates and overall population numbers.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Commercial fishing, including fishing for June sucker, was historically an important use of Utah Lake (Heckman *et al.* 1981, p. 9). Some commercial fishing for June sucker occurred through the 1970s, but on a very limited basis. Shortly thereafter, commercial harvest for the species largely stopped due to the limited population size. Currently, June sucker is a prohibited species and cannot be harvested (Utah Regulation 657–14–8). Consequently, commercial or recreational fishing is no longer considered a threat to the species. Regulated collections of June sucker for scientific purposes continue at a very limited level, but do not pose a threat to the population status. We do not consider overutilization for commercial, recreational, scientific, or educational purposes a threat to June sucker.

C. Disease or Predation

Disease

Neither disease nor the presence of parasites were considered threats to June sucker at the time of listing. Although parasites likely exist in June sucker habitat, there is no evidence that June sucker at the individual or population levels are significantly compromised by the presence of parasites. Fish health inspections are regularly conducted on June sucker at the FES hatchery and in Red Butte Reservoir, and no known pathogens have been detected (JSRIP 2018c, entire). At this time, there is no information indicating that the presence of parasites or disease negatively affects June sucker.

Predation

Predation by nonnative fishes threatens the successful recruitment of young suckers into the spawning adult life stage (Radant and Hickman 1984, p. 6) and was a major factor for listing the species as endangered (51 FR 10851; March 31, 1986). The introduction of nonnative fishes significantly altered the native Utah Lake fish assemblage. Historically, Bonneville cutthroat trout (*Oncorhynchus clarkii*) was the top-level piscivore (fish-eating predator) in Utah Lake; however, 30 fish species have been introduced since the late 1800s. Twelve nonnative fish species have established self-sustaining populations, and seven of these are piscivorous (SWCA 2002, p. 14). As a result, June suckers currently face an array of predator species, including white bass (*Morone chrysops*), walleye (*Sander vitreus*), largemouth bass (*Micropterus salmoides*), black crappie (*Pomoxis nigromaculatus*), black bullhead (*Ameiurus melas*), northern pike (*Esox lucius*), and channel catfish (*Ictalurus punctatus*).

Predation by nonnative fishes primarily targets the early life stages of June sucker. Adult June sucker are larger than the gape size of the average predatory fish, and therefore, are significantly less vulnerable. At the time of listing, the effects of predation were exacerbated by the lack of vegetated refuge habitat within Utah Lake.

White bass may have the highest potential to limit recruitment of young suckers into the spawning adult population (SWCA 2002, p. 132; Landom *et al.* 2010, p. 18). White bass become piscivorous at age-0 in Utah Lake (Radant and Sakaguchi 1981, p. 12; Landom *et al.* 2010, pp. 11–12) and are the most abundant piscivore (UDWR 2010, p. 9). The white bass population in Utah Lake could consume as many as 550 million fish of various species throughout the course of 1 year (Landom *et al.* 2010, pp. 8–10). However, it appears that restored habitat with complex aquatic vegetation provides the sucker with effective refuge from white bass. Thus, habitat restoration is likely paramount to young-of-year June sucker resiliency and survival (see Recovery).

The recent illegal introduction of northern pike and its increasing population in Utah Lake raises concerns similar to white bass. Northern pike predominantly feed on juvenile fish; predation on adults is less than one percent (Reynolds and Gaeta 2017, p. 12). Thus far, the lake-wide number of northern pike has not measurably increased and active removal efforts continue to suppress populations (Reynolds and Gaeta 2017, p. 13). However, a northern pike population model shows potential for a high degree of population increase with potential for a high negative impact on the June sucker population by the year 2040 (Gaeta *et al.* 2018, entire). Despite these modeling results, unique factors impacting northern pike population dynamics in Utah Lake are still not understood. Recent habitat improvements in the lake from common carp removal (see Recovery) may help mitigate northern pike predation by providing refugia for June sucker. Additionally, high levels of total dissolved solids (TDS), similar to the levels found in Utah Lake, may suppress northern pike (Scannell and Jacobs 2001, entire; Koel 2011, p. 7). The JSRIP is funding research to clarify this relationship and to determine a course of action to prevent northern pike from becoming a greater threat to June sucker in the future.

While predation from nonnative species remains a threat, June suckers continue to persist in the lake, with spawning populations and the number of untagged fish (*e.g.,* possibly natural recruitment) increasing. Adaptive management of nonnative fish is ongoing.

D. The Inadequacy of Existing Regulatory Mechanisms

Under this factor, we examine the stressors identified within the other factors as ameliorated or exacerbated by any existing regulatory mechanisms or conservation efforts. Section 4(b)(1)(A)

of the Act requires that the Service take into account ''those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species . . .'' In relation to Factor D under the Act, we interpret this language to require the Service to consider relevant Federal, State, and Tribal laws, regulations, and other such binding legal mechanisms that may ameliorate or exacerbate any of the threats we describe in threat analyses under the other four factors or otherwise enhance the species' conservation. Our consideration of these mechanisms is described below.

As a listed species, the primary regulatory mechanism for protection of the June sucker is through section 9(a) of the Act, as administered by the Service, which broadly prohibits import, export, take (*e.g.,* to harm, harass, kill, capture), and possession of the species. Additional regulatory mechanisms are provided through section 7(a)(2) of the Act, which states that each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species that is determined by the Secretary, after soliciting comments from affected States, counties, and equivalent jurisdictions, to be critical. Section 10(a)(1)(A) of the Act provides a mechanism for research and propagation of listed species for recovery purposes through a permitting system that allows incidental take of a listed species in the course of scientific projects that will benefit the species as a whole. For non-Federal actions, section 10(a)(1)(B) of the Act authorizes the Service to issue a permit allowing take of species provided that the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Section 10(a)(2)(A) of the Act requires that a conservation plan, which is part of an application for an incidental take permit, describe the impact of the taking and identify steps to minimize and mitigate the impacts.

The Act would continue to provide protection to June sucker after downlisting to threatened status, but would not provide protection for the species after delisting. However, after delisting, the June sucker and its habitat would continue to receive consideration and some protection through other regulatory mechanisms discussed below.

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4370d) requires Federal agencies to evaluate the potential effects of their proposed actions on the quality of the human environment and requires the preparation of an environmental impact statement whenever projects may result in significant impacts. Federal agencies must identify adverse environmental impacts of their proposed actions and develop alternatives that undergo the scrutiny of other public and private organizations as a part of their decision-making process. However, impacts may still occur under NEPA, and the implementation of conservation measures is largely voluntary. Actions evaluated under NEPA only affect June sucker if they address potential impacts to the species or its habitat. Because of this, NEPA provides some protection for June sucker in the cases of projects that directly impact its habitat in Utah Lake or its tributaries.

The Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) requires that Federal agencies sponsoring, funding, or permitting activities related to water resource development projects request review of these actions by the Service and the State natural resource management agency. Similar to caveats noted for NEPA, actions considered under the Fish and Wildlife Coordination Act are only relevant if they potentially impact the species or its habitat. The Fish and Wildlife Coordination Act does not provide strong or broad protections for June sucker on its own, but does provide an additional layer of review for projects likely to directly impact June sucker and works in concert with other regulatory mechanisms.

Section 101(a) of the Federal Water Pollution Control Act (*i.e.,* Clean Water Act; 33 U.S.C. 1251–13287) states that the objective of this law is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters and provide the means to assure protection of fish and wildlife. This statute contributes in a significant way to the protection of the June sucker through provisions for water quality standards, protection from the discharge of harmful pollutants and contaminants (sections 303(c), 304(a), and 402), and discharge of dredged or fill material into all waters, including certain wetlands (section 404).

The Clean Water Act requires every State to establish and maintain water quality standards designed to protect, restore, and preserve water quality in the State. However, Utah Lake has failed to meet water quality standards due to exceedance of total phosphorus and TDS concentrations (Psomas 2007, p. 11), and it is listed as a section 303(d) ''impaired'' water (Utah Lake Commission 2018, p. 7). Poor water quality in Utah Lake could alter food availability for June sucker and contribute to increases in harmful algal bloom events and toxin concentrations from those events, which could increase the risk of large-scale June sucker mortality events. To meet Clean Water Act requirements, UDWR and the Utah Lake Commission are studying water quality in Utah Lake and have organized a steering committee and science panel for the purposes of providing recommendations to improve water quality standards in Utah Lake (Utah Lake Commission 2018, entire).

June sucker also receives some protections at the State level. Commercial or recreational fishing for June sucker is not allowed. Possession of June sucker is prohibited in the State of Utah and it cannot be harvested (Utah Regulation 657–14–8).

Improved implementation of regulatory mechanisms described above is necessary for recovery of the June sucker and to ensure long-term conservation of the species. If the species were to be delisted, there will be a need for conservation plans and agreements to provide assurances that the recovered June sucker population will be maintained. However, in the case of downlisting, the June sucker will continue to receive protection under the Act when listed as threatened. The species will also receive the same level of protection under the other aforementioned regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

At the time of listing, the impact of pollution from local communities was considered to be adversely affecting June sucker, but more information was needed to document this threat. Water quality in Utah Lake continues to be a threat to the species, and climate change is considered a new threat. Riverine water quality has improved in two of the tributaries (Provo River and Hobble Creek) due to the water acquisitions and the augmentation of stream flow for the protection of the species.

Lake Water Quality

Utah Lake is hypereutrophic, characterized by frequent algal blooms and high turbidity (Merritt 2004, p. 14; Psomas 2007, p. 12). The increased turbidity, decreased water quality, and historical change in the plant community, from macrophyte-dominated to algae-dominated, affect

the fishes of Utah Lake, including June sucker.

High turbidity can decrease the feeding ability of many species of planktivorous fish (Brett and Groot 1963, pp. 5–6; Vinyard and O'Brien 1976, p. 3), which could indicate a lack of access to sufficient food for rearing juveniles. Thus, elevated turbidity levels may decrease feeding efficiency of June sucker by limiting their ability to visually prey on preferred plankton food types.

Utah Lake is listed on Utah's 2016 section 303(d) list for exceedance of State criteria for total phosphorus and TDS concentrations (UDWQ 2018, p. 3–7). The majority of the total phosphorus load to Utah Lake is from point sources. Utah Lake also has naturally elevated salinity levels compared to other intermountain freshwater lakes, and there is anecdotal evidence that the concentrations are substantially higher today than they were before human development (Psomas 2007, p. 8). Within Utah Lake, natural salinity levels are due in part to high evaporation rates, which are a function of the lake's large surface-area-to-depth ratio and drainage basin characteristics. Evaporation naturally removes about 50 percent of the total volume of water that flows into the lake, resulting in a doubling of the mean salt concentration in water passing through the lake (Fuhriman *et al.* 1981, p. 7).

In addition, several natural mineral springs near the shore of Utah Lake contribute dissolved salts, although the magnitude and effect of these sources has not been quantitatively evaluated (Hatton 1932, p. 2). Evaporative losses continue to be the main driver of salinity concentrations in Utah Lake. However, settlement and development of the Utah Lake basin since the 1800s led to increases in irrigation return flows containing dissolved salts, which likely exacerbated natural salinity concentrations within Utah Lake (Sanchez 1904, p. 1). Despite the human influences on inflows, in recent years, salinity levels in Utah Lake have not increased markedly (Psomas 2007, p. 13). The UDWQ continues to monitor Utah Lake for any changes in salinity concentrations.

The effects of increased salinity concentrations on the various life stages of June sucker are unknown. Egg size, hatching success, and mean total length of larvae decreased as salinity levels increased for another lake sucker that occurs in Nevada, the cui-ui (*Chasmistes cujus;* Chatto 1979, p. 7). However, salinity concentrations were much higher in the cui-ui habitat than any recorded concentrations in Utah Lake.

Natural nutrient loading to the lake is high due to the nutrient- and sediment-rich watershed surrounding the lake. However, human development in the drainage increased the naturally high inflow of sediments and nutrients to the lake (Fuhriman *et al.* 1981, p. 12). Sewage effluent entering the lake accounts for 50, 76, and 80 percent of all nitrogen, total phosphorous, and ortho-phosphate, respectively (Psomas 2007, p. 12). Phosphorus inputs to the lake (297.6 tons (270.0 metric tons) per year) exceed exports (83.5 tons (75.7 metric tons) per year) during all months of the year. Thus, the lake acts as a phosphorus sink, accumulating approximately 214 tons (194.1 metric tons) annually (Psomas 2007, p. 15). These high nutrient loads increase the frequency and extent of large blue-green algal blooms, which greatly affect overall food web dynamics in Utah Lake (Crowl *et al.* 1998b, p. 13). Blue-green algae is inedible to many zooplankton species, which decreases zooplankton abundance and its availability as a food source for June sucker (Landom *et al.* 2010, p. 19). Reductions in feeding rates translate into long-term effects such as decreased condition, growth rates, and fish survival (Sigler *et al.* 1984, p. 7; Hayes *et al.* 1992, p. 9). Furthermore, the increased algal biomass limits available light for submergent vegetation (Scheffer 1998, p. 19), thus reducing refugial habitat for early life stages of June sucker. The frequency and size of algal blooms may be increasing as large-scale algal blooms occurred in 2016 and 2017 (UDWQ 2017, p. 3).

Although there is a significant amount of research indicating that algal blooms can be harmful to many types of fish, we do not have direct evidence regarding the degree or manner in which they impact June sucker in Utah Lake (Psomas 2007, p. 14; Crowl 2015, entire). No fish kills were documented during recent bloom events, but post-stocking monitoring of June sucker has noted that, during algal blooms, fish movement decreased measurably (Goldsmith *et al.* 2017, p. 13).

An average Utah Lake TDS concentration is about 900 parts per million (ppm)/milligrams per liter (mg/L), but large variations occur, depending on the water year (Hickman and Thurin 2007, p. 9). There is no evidence of direct mortality to June sucker due to higher salinity levels, but it is possible that increased salinity, when combined with increased nutrient input and turbidity, may adversely affect June sucker by reducing zooplankton and refugial habitat abundance as described above. Further study of June sucker responses during high salinity events is needed to better understand this relationship.

Water quality concerns in Utah Lake are being addressed through a large-scale study and the formation of a steering committee and science panel to develop recommendations for Utah Lake water quality for the benefit of June sucker (UDWQ 2017, entire).

Riverine Water Quality

Prior to listing, riverine water quality was heavily impacted by water withdrawal, agricultural and municipal effluents, and habitat modification. The water withdrawals reduced the ability of the rivers to effectively transport sediments and other materials from the river channel. Furthermore, withdrawals influenced temperature, dissolved oxygen, and pollutant/nutrient concentrations (Stamp *et al.* 2008, p. 18). Diverted streams with reduced, shallow summertime base flows are very susceptible to solar heating and can experience lethally warm water temperatures (over 80 °F or 27 °C, depending on life stage). High water temperature, especially if combined with stagnant flow velocities, can lead to low dissolved oxygen levels in streams where flows have been reduced (Stamp *et al.* 2008, p. 19).

Artificially high temperatures may also occur in streams where flow regime alterations and channelization have limited the recruitment of woody riparian vegetation, thereby reducing the amount of streamside shading (Stamp *et al.* 2008, p. 19). Subsequently, extensive colonization by filamentous algae can occur in warmer temperatures, creating extreme daily dissolved oxygen fluctuations that are harmful to June sucker (Service 1994, p. 12). Agricultural and municipal effluents can enrich production of algae, further impacting daily dissolved oxygen levels. These effluents can cause fish kills if significant runoff from agricultural and municipal properties occurs during low flow periods. Furthermore, heavy algal growth can cause the armoring of spawning gravels and aid in the accumulation of fine sediments that degrade spawning habitat quality (Stamp *et al.* 2008, p. 32).

The Provo River is listed on Utah's 2016 section 303(d) list for impairments harmful to cold-water aquatic life. Additionally, water quality has been considered poor in the river's lower reaches during summer low-flow periods due to low dissolved oxygen levels and elevated temperatures (Stamp *et al.* 2008, p. 34). It is likely that the recent supplementation of flows for

June sucker recovery in the Provo River are minimizing the risk of lethal temperatures and dissolved oxygen fluctuations by providing water during critical periods and maintaining base flows throughout the summer while larvae are developing. The planned Provo River Delta Restoration Project will provide additional water storage and refugial habitat (see Recovery).

Hobble Creek is not currently on the Utah section 303(d) list as being an impaired waterbody. However, there are indications that total phosphorus and temperature may be problematic in Hobble Creek during certain times of the year (Stamp *et al.* 2009, pp. 22–23). Based on review of data collected since 1999 at the water quality station on Hobble Creek at I–15 (STORET site #4996100), average total phosphorous concentration is 0.06 ppm/mg/L, which exceeds the Utah indicator value of 0.05 ppm/mg/L (Stamp *et al.* 2009, p. 24). In addition, creek temperatures exceed 68 °F (20 °C), which is the State cold-water fishery standard; this temperature increase typically occurs during summer days when air temperatures are high and flow in the channel is low (Stamp *et al.* 2009, p. 26). Similar to the Provo River, the augmentation of stream flows in Hobble Creek has likely minimized the risk of lethal temperatures by providing flows during critical periods.

Effects of Climate Change

The predicted increase in global average temperatures is expected to negatively affect water quality in shallow lakes (Mooij *et al.* 2007, p. 2). Turbid shallow lakes such as Utah Lake are likely to have higher summer chlorophyll-*a* concentrations with a stronger dominance of blue-green algae and reduced zooplankton abundance with climate change (Mooij *et al.* 2007, p. 5). This could affect June sucker food resources since zooplankton are the primary food source for the species.

In Utah, the intensity of naturally occurring future droughts are expected to increase and historically unprecedented warming is projected by the end of the 21st Century. Projected changed in winter precipitation include an increase in the fractions falling as rain, rather than snow, and potentially decreasing snowpack water storage (Frankson *et al.* 2017; p. 2). These changes in timing and amount of flow could affect June sucker spawning, because the spawning cues of increased runoff and water temperature, on which the June sucker relies to determine spawning time, would potentially occur earlier in the year.

As changes to water availability and timing occur in the future, the JSRIP will need to coordinate reservoir operations to ensure timely releases. If runoff and upstream reservoir volumes are insufficient, peak and base flows desired in spawning tributaries will be reduced. This in turn would negatively impact the early season attractant flows needed by spawning adults, and potentially limit flows needed by larval suckers to move into downstream rearing habitats. While 13,000 acre-ft (16,035,240 m^3) of permanent water have been acquired for the Provo River and 8,500 acre-ft (10,485,000 m^3) have been acquired for Hobble Creek, and flows in both systems are intensively managed with consideration for June sucker, additional permanent water acquisitions may become necessary to secure water that can be used to supplement flows during critical spawning and rearing periods as the climate shifts.

Summary of Factor E

Water quality in Utah Lake continues to be a threat to June sucker, although water acquisitions and effective water management practices to benefit the species have greatly reduced its impact and increased resiliency in the species. In the future, climate change may make addressing this threat more difficult due to increased temperatures and decreased precipitation. However, both water quality and availability of water in the future are actively being studied and prioritized by the JSRIP, UDWQ, and the Utah Lake Commission. Current conditions in the Utah lake ecosystem support an increasing population of June sucker in the lake and increasing spawning populations in key tributaries. In addition, three refuge populations exist to prevent extinction should an unforeseen catastrophic water quality event occur, thereby ensuring continued redundancy. Therefore, we find that adaptive management of the threats under Factor E, through on-going water management and acquisition for the benefit of June sucker, as well as efforts to improve water quality in Utah Lake, prevents them from rising to the level that would place June sucker in imminent danger of extinction.

Overall Summary of Factors Affecting June Sucker

As required by the Act, we considered the five factors in assessing whether the June sucker is an endangered or threatened species throughout all of its range. We carefully examined the best scientific and commercial information available regarding the past, present, and future threats faced by June sucker. We reviewed the information available in our files and other available published and unpublished information, and we consulted with recognized experts and State agencies. We evaluated the changes in resiliency, redundancy, and representation for June sucker since the time of listing.

June sucker resiliency has improved since the time of listing, with an increase in wild spawning population of at least ten-fold, a positive population trend, and increases in both the quality and quantity of habitat, which we project will continue to improve based on plans to continue successful management actions and implement new projects, such as the Provo River Delta Restoration and the Utah Water Quality Study. Redundancy in June sucker is assured by the existence of several refuge population, including a naturally self-sustaining population in Red Butte Reservoir and the stocking population maintained at FES and Rosebud Pond, as well as the presence of water flows in at least two spawning tributaries each year, with up to five spawning tributaries available in good water years. Prior to listing there were no refuge populations and in low water years there might be no available spawning tributaries with water throughout the summer. Representation for June sucker exists in the form of genetic diversity in the breeding and stocking program, which has preserved a high degree of genetic variation in the fish stocked in Utah Lake since listing. Based on these elements, we find that overall viability for June sucker has improved since the time of listing, to the point where it no longer meets the definition of endangered.

Factor B is not considered a threat to the June sucker due to the fact that harvest and collection of the species are strictly regulated and very limited. June suckers are affected by loss and degradation of habitat (Factor A), predation (Factor C), and other effects of human activities including climate change (Factor E). Existing regulatory mechanisms outside of the Act (Factor D) do not address all the identified threats to the June sucker, as indicated by the fact that these threats continue to affect the species throughout its range. However, recovery actions have significantly improved viability of the June sucker and reduced the immediacy of these threats.

Cumulative Threats

The June sucker faces threats primarily from degraded habitat and water quality, water availability, predation from nonnative species, and urbanization. Furthermore, existing

regulatory mechanisms do not adequately address these threats. The June sucker also faces a future threat of climate change, which may exacerbate other existing threats. These factors may act cumulatively on the species. For example, urbanization can result in increased pressure on existing water resources as well as degraded water quality, which when combined with rising temperatures and decreased rainfall can result in less available water, increased water temperatures, and decreased habitat quality. These factors can cause reduced availability of food for June sucker, decreased reproductive success, and increased mortality.

However, since the time of listing, all of the identified threats to June sucker have either improved measurably or are being adaptively managed according to the best available scientific information for the benefit of June sucker (see Recovery). Conservation measures, including stocking of June sucker in Utah Lake, habitat restoration projects on spawning tributaries, and nonnative fish removal, have resulted in increased numbers of June sucker in the lake, evidence of wild reproduction, and improved habitat within the lake and its tributaries. As a result, resiliency, redundancy, and representation have all improved. Continued research and monitoring provide an avenue to respond to new and evolving threats, such as the effects of climate change, to recovery progress. The existence of refuge populations ensures that, should a stochastic event or extreme combination of existing threats greatly impact the population in Utah Lake, the June sucker would not become extinct.

This resilience to the cumulative threats is due largely to the actions of an active, committed, and well-funded recovery partnership. The JSRIP has been the driving force behind the reduction in threats, habitat improvement, and population augmentation and is able to adaptively manage new stressors as they arise. The improvement of conditions and success of the recovery program can be measured via the increased number of spawning June suckers, the positive population trend, and the high level of year-to-year survival.

Proposed Determination of Species Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of ''endangered species'' or ''threatened species.'' The Act defines an ''endangered species'' as 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

After evaluating threats to the species and assessing the cumulative effects of the threats under the section 4(a)(1) factors, we find that the threats of loss and degradation of habitat (Factor A), predation (Factor C), and other effects of human activities including climate change (Factor E) are still acting on June sucker. Existing regulatory mechanisms outside of the Act (Factor D) do not address all the identified threats to the June sucker, as indicated by the fact that these threats continue to affect the species throughout its range, although with less intensity than at the time of listing. Based on the analysis above and given increases in population numbers due to recovery efforts, we conclude the June sucker no longer meets the Act's definition of an endangered species.

Although population numbers have increased and the intensity of the identified threats has decreased, our analysis indicates that, because of the remaining threats and stressors, the species remains likely to become in danger of extinction in the foreseeable future throughout all of its range.

Based solely on biological factors, we consider 25 years to be the foreseeable future within which we can reasonably determine that the future threats and the June sucker's response to those threats is likely. This time period includes multiple generations of the species and allows adequate time for impacts from conservation efforts or changes in threats to be indicated through population response. The foreseeable future for the individual threats vary. In terms of population and threats, management and recovery progress are overseen by the JSRIP. The charter of this program states that the purpose of the JSRIP is to recover June sucker to the point at which it no longer requires protections under the Act, and to do so based on recovery guidance provided by the Service using the best available scientific and biological information in an adaptive management approach. Because the JSRIP is committed to achieving full recovery and the partners have committed to providing funding through that point, threats to June sucker will continue to be adaptively managed by the JSRIP until such time as we find it no longer requires protections under the Act. For at least as long as the species remains listed, the JSRIP will continue to manage threats, stressors, and population health and trends in an adaptive way, ensuring that it is extremely unlikely to go extinct. The Service will then rely on management actions that have been put in place by the JSRIP, and other factors such as a population viability analysis, habitat improvements, and future long-term agreements, when delisting is being considered. This ensures continued stability in the absence of the protections of the Act after the June sucker reaches full recovery.

The breeding and stocking program and the nonnative fish removal program are expected to be on-going, with the development of long-term strategies to maintain recovery progress expected within the next 2 years. Permanent water acquired by the JSRIP is expected to be managed through the existing mechanisms indefinitely. Temporary water expires in 2 years, but the JSRIP is actively pursuing the acquisition of additional permanent water, which will be managed through those same mechanisms for the benefit of June sucker spawning. The Provo River Delta Restoration Project should be completed within 5 years, but it will take at least several years before the impact on June sucker recruitment can be detected, and potentially longer as the changes made by the PRDRP are likely to evolve over time as vegetation matures and hydrology adapts to the structural alterations (PRDRP 2017, entire). Models of nonnative fishes provided by Utah State University extend until 2040, but are subject to a large range of variables and are in the process of being refined (Reynolds and Gaeta 2017, entire; Gaeta et al. 2018, p. 8–10).

Thus, after assessing the best available information, we conclude that the June sucker is not currently in danger of extinction, but is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Determination of 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 June sucker 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, and our conclusion is therefore consistent with the opinion in that case.

Determination of Status

Our review of the best available scientific and commercial information indicates that the June sucker meets the definition of a threatened species. Therefore, we propose to list the June sucker as a threatened species throughout all of its range in accordance with sections 3(20) and 4(a)(1) of the Act.

Proposed 4(d) Rule

Background

Section 4(d) of the Act states that the ''Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation'' of species listed as threatened. The U.S. Supreme Court has noted that very similar statutory language demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean ''the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to [the Act] are no longer necessary.'' Additionally, section 4(d) of the Act states that the Secretary ''may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants.'' Thus, regulations promulgated under section 4(d) of the Act provide the Secretary with wide latitude of discretion to select appropriate provisions tailored to the specific conservation needs of the threatened species. The statute grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have approved rules developed under section 4(d) that include a taking prohibition for threatened wildlife, or include a limited taking prohibition (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)). Courts have also approved 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history 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'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

The Service has developed a species-specific 4(d) rule that is designed to address the June sucker's specific threats and conservation needs. Although the statute does not require the Service to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this regulation is necessary and advisable to provide for the conservation of the June sucker. As discussed in the *Overall Summary of Factors Affecting June Sucker* section, the Service has concluded that the June sucker is at risk of extinction in the foreseeable future primarily due to the identified threats of water development, habitat degradation, and the introduction of nonnative species. The provisions of this proposed 4(d) rule would promote conservation of the June sucker by encouraging management of the Utah Lake system in ways that take into consideration the stakeholders while also meeting the conservation needs of the June sucker. The provisions of this rule are one of many tools that the Service will use to promote the conservation of the June sucker. This proposed 4(d) rule would apply only if and when the Service makes final the listing of the June sucker as a threatened species.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the June sucker by prohibiting the following activities, except as otherwise authorized or permitted: Importing or exporting; possession and other acts with unlawfully taken specimens; delivering, receiving, transporting, or shipping in interstate or foreign commerce in the course of commercial activity; or selling or offering for sale in interstate or foreign commerce.

Anyone taking, attempting to take, or otherwise possessing a June sucker, or parts thereof, in violation of section 9 of the Act would still be subject to a penalty under section 11 of the Act, except for the actions that would be covered under the proposed 4(d) rule. Under section 7 of the Act, Federal agencies must continue to ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of June sucker.

As discussed under Summary of Biological Status and Threats (above), nonnative species, water development, and habitat degradation are affecting the status of the June sucker. A range of beneficial conservation activities have the potential to impact the June sucker, including: Nonnative fish removal, habitat restoration projects, monitoring of June sucker, research or educational projects, and maintaining June sucker refuges.

Under the Act, ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Some of these provisions have been further defined in regulation at 50 CFR 17.3. Take can result knowingly or otherwise, by direct and indirect impacts, intentionally or incidentally. Allowing incidental and intentional take in certain cases, such as for the purposes of scientific inquiry, monitoring, or to improve habitat or water availability and quality would help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened wildlife under

certain circumstances. Regulations governing permits are codified at 50 CFR 17.32. With regard to threatened wildlife, a permit may be issued for the following purposes: Scientific purposes, to enhance propagation or survival, for economic hardship, for zoological exhibition, for educational purposes, for incidental taking, or for special purposes consistent with the purposes of the Act. There are also certain statutory exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

The Service recognizes the special and unique relationship with our state natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Services in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Services shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve the June sucker that may result in otherwise prohibited take without additional authorization.

This proposed 4(d) rule targets activities to facilitate conservation and management of June sucker where they currently occur and may occur in the future by eliminating the Federal take prohibition under certain conditions. These activities are intended to increase management flexibility and encourage support for the conservation and habitat improvement of June sucker. Under the proposed 4(d) rule, take will generally continue to be prohibited, but the following forms of take would be allowed under the Act, provided they were approved by the Service, in coordination with any existing designated recovery program, for the purpose of June sucker conservation or recovery:

- Incidental take resulting from activities intended to reduce or eliminate nonnative fish from Utah Lake or its tributaries, including but not limited to common carp, northern pike, and white bass.
- Incidental take resulting from habitat restoration projects or projects that would allow for the increase of instream flows in Utah Lake tributaries, such as diversion removals.
- Incidental take resulting from monitoring of June sucker in Utah Lake and its tributaries.
- Incidental and limited direct take resulting from research projects approved by the Service, in coordination with any existing designated recovery program, to study factors affecting June sucker or its habitat for the purposes of providing management recommendations or improved condition of June sucker.
- Incidental and limited direct take resulting from maintaining June sucker refuges and moving June sucker from refuges for the purposes of stocking them in Utah Lake.

These forms of allowable take are explained in more detail below. For all forms of allowable take, reasonable care must be practiced, to minimize the impacts from the actions. *Reasonable care* means limiting the impacts to June sucker individuals and population by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; procuring and implementing technical assistance from a qualified biologist on projects regarding all methods prior to the implementation of those methods; ensuring the number of individuals removed or sampled minimally impacts the existing wild population; ensuring no disease or parasites are introduced into the existing June sucker population; and preserving the genetic diversity of wild populations.

Nonnative Fish Removal

Control of nonnative fish is vital for the continued recovery of June sucker. At this point in time, control of nonnative fish is primarily conducted with mechanical removal via commercial seine netting and to a limited extent through angling (for northern pike). Other methods, including the use of genetically modified nonnative fish and electrofishing to reduce existing populations, may be implemented in the future.

This proposed 4(d) rule defines nonnative fish removal excepted from incidental take as any action with the primary or secondary purpose (such as the introduction of genetically engineered nonnative fish as part of an elimination strategy) of removing nonnative fish from Utah Lake and its tributaries that compete with, predate upon, or degrade the habitat of June sucker. These removal methods must be approved by the Service, in coordination with any existing designated recovery program, for that purpose. Such methods may include but are not limited to mechanical removal, chemical treatments, or biological controls. All methods used must be in compliance with State and Federal regulations.

Whenever possible, June sucker that are caught alive as part of nonnative fish removal should be returned to their source as quickly as possible.

Habitat Restoration and Improvement of Instream Flows

Habitat restoration projects are needed to provide additional spawning and rearing habitat and refugia for June sucker. Improvements in the ability to obtain and deliver water to spawning tributaries will allow for improved spawning conditions, entrainment of June sucker larvae for development, and periodic high flows providing scouring of spawning habitats. This proposed 4(d) rule defines habitat restoration or water delivery improvement projects excepted from incidental take as any action with the primary or secondary purpose of improving habitat conditions in Utah Lake and its tributaries or improving water delivery and available in-stream flows in spawning tributaries. These projects must be approved by the Service, in coordination with any existing designated recovery program, for that purpose. Examples of planned or suggested projects excepted from incidental take include the Provo River Delta Restoration Project and the removal of water diversion structures from the Provo River and Hobble Creek.

June Sucker Monitoring

Monitoring of June sucker is vital to understanding the population dynamics, health, and trends; for measuring the success of the stocking program; for evaluating impacts from threats; and for evaluating recovery actions that address threats to the species. With the use of PIT tag technology, monitoring is becoming less disruptive to the June sucker. However, many monitoring methods, including the initial PIT tagging of individuals, may harm fish or result in death. In addition to PIT tag readers, methods that may be used to detect June sucker in the wild include trammel netting, spotlighting, minnow trapping, trap netting, gill-netting, spotlighting, electrofishing, and seining. This proposed 4(d) rule excepts incidental

take associated with any method used to detect June sucker in the wild for the purposes of better understanding population numbers, trends, or response to stressors that is not intended to be destructive, but that may unintentionally cause harm or death. Only activities conducted by UDWR, their agents, or agents (included academic researches) specifically designated and approved by the Service, in coordination with any existing designated recovery program, are excepted from take restrictions through this 4(d) rule.

Research

Additional research is needed on June sucker biology, ecology, habitat needs, predators, and response to threats in order to improve species status and provide recommendations for management, habitat improvement, and threat reduction. Research may involve capture of June suckers using methods described above, or a variety of other activities to study water quality, nonnative fishes, lake and riverine ecosystems, tributary flows, habitat, or other factors affecting June suckers that may impact individual fish inadvertently. In some cases, lethal sampling of June suckers for research purposes may be necessary and appropriate. This proposed 4(d) rule defines June sucker research excepted from take as any activity undertaken for the purposes of increasing our understanding of June sucker biology, ecology, or recovery needs under the auspices of UDWR, a recognized academic institution, or a qualified scientific contractor and approved by the Service, in coordination with any existing designated recovery program, as a necessary and productive study for June sucker recovery.

Refuges and Stocking

Maintaining refuge populations and stocking the June sucker in Utah Lake is an integral part of June sucker recovery. The process of breeding, rearing, growing, maintaining, and stocking June suckers may result in incidental take at all life stages, but the benefits to the species far outweigh any losses. At the present time, one facility (FES) breeds the June sucker for stocking in Utah Lake; this facility also functions as a refuge. FES uses offsite ponds as a grow-out facility to allow fish to reach a larger size before they are stocked in Utah Lake. An additional refuge population of June sucker exists in Red Butte reservoir and is maintained, but not actively managed, for stocking purposes. However, as fish from Red Butte consistently have the highest post-stocking success rates, Red Butte is an important source population and may be used for stocking more intensively in the future.

This proposed 4(d) rule defines June sucker stocking and refuge maintenance excepted from incidental take as any activity undertaken for the long-term maintenance of June sucker at facilities outside of Utah Lake and its tributaries or for the production of June sucker for stocking in Utah Lake. Such incidental take could occur from necessary facility maintenance or water management, including at Red Butte reservoir and its downstream drainages. Any breeding, stocking, or refuge program must be approved by the Service, in coordination with any existing designated recovery program. Any June sucker breeding program should be in compliance with all applicable regulations and best hatchery and fishery management practices as described in the American Fisheries Society's Fish Hatchery Management (Wedemeyer 2002).

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the 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 June sucker. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us with revisions to this proposed rule, your comments should be as specific as possible. For example, you should identify the sections or paragraphs that are unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations pursuant to section 4 of the 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), E.O. 13175, 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. We have determined that no Tribes will be affected by this rule because there are no tribal lands or interests within or adjacent to June sucker habitat.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R6–ES–2019–0026, or upon request from the Utah Ecological Services Field Office (see **ADDRESSES**).

Authors

The primary authors of this proposed rule are staff members of the Service's Mountain Prairie Region and the Utah Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby 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 § 17.11(h) by revising the entry for ''Sucker, June (*Chasmistes liorus*)'' under ''FISHES'' on the List of Endangered and Threatened Wildlife to read as set forth below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
FISHES				
*	*	*	*	*
Sucker, June	*Chasmistes liorus*	Wherever found	T	51 FR 10851, 3/31/1986; [**Federal Register** citation when published as a final rule]; 50 CFR 17.44(dd) [4d]; 50 CFR 17.95(e).[CH]
*	*	*	*	*

■ 3. Amend § 17.44 by adding paragraph (dd) to read as follows:

§ 17.44 Special rules—fishes.

* * * * *

(dd) June sucker (*Chasmistes liorus*).

(1) *Prohibitions.* Except as provided under paragraphs (dd)(2) of this section and §§ 17.4 and 17.5, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.21(b).

(ii) Take, unless excepted as outlined in section (2)(i–iv) below.

(iii) Possession and other acts with unlawfully taken specimens, as set forth at § 17.21(d)(1).

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.21(e).

(v) Sale or offer for sale, as set forth at § 17.21(f).

(2) *Exceptions from prohibitions.* In regard to this species, you may:

(i) Conduct activities as authorized by an existing permit under § 17.32.

(ii) Conduct activities as authorized by a permit issued prior to [effective date of the rule] under § 17.22 for the duration of the permit.

(iii) Take, as set forth at § 17.21(c)(2) through (c)(4).

(iv) Take June sucker while carrying out the following legally conducted activities in accordance with this paragraph:

(A) *Definitions.* For the purposes of this paragraph:

(*1*) *Qualified biologist* means a full-time fish biologist or aquatic resources manager employed by Utah Division of Wildlife Resources, a Department of Interior agency, or fish biologist or aquatic resource manager employed by a private consulting firm that has been approved by the Service, the designated recovery program, or the Utah Division of Wildlife resources.

(*2*) *Reasonable care* means limiting the impacts to June sucker individuals and population by complying with all applicable Federal, State, and Tribal regulations for the activity in question; using methods and techniques that result in the least harm, injury, or death, as feasible; undertaking activities at the least impactful times and locations, as feasible; procuring and implementing technical assistance from a qualified biologist on projects regarding all methods prior to the implementation of those methods; ensuring the number of individuals removed or sampled minimally impacts the existing wild population; ensuring no disease or parasites are introduced into the existing June sucker population; and preserving the genetic diversity of wild populations.

(B) *Allowable forms of take of June sucker.* Take of June sucker as a result of the following legally conducted activities is not prohibited under this paragraph section (2)(iv)(B), provided that the activity is approved by the Service, in coordination with any existing designated recovery program, for the purpose of the conservation or recovery of June sucker, and that reasonable care is practiced to minimize the impact of such activities.

(*1*) *Nonnative fish removal.* Any action with the primary or secondary purpose of removing from Utah Lake and its tributaries nonnative fish that compete with, predate, or degrade the habitat of June sucker is not prohibited take. Allowable methods of removal may include but are not limited to mechanical removal, chemical treatments, or biological controls. Whenever possible, June sucker that are caught alive as part of nonnative fish removal should be returned to their source as quickly as possible.

(*2*) *Habitat restoration and improvement of instream flows.* Any action with the primary or secondary purpose of improving habitat conditions in Utah Lake and its tributaries or improving water delivery and available in-stream flows in spawning tributaries is not prohibited take.

(*3*) *Monitoring.* Any method that is used to detect June sucker in the wild to better understand population numbers, trends, or response to stressors, and that is not intended to be destructive but that may unintentionally cause harm or death, is not considered prohibited take.

(*4*) *Research.* Any activity undertaken for the purposes of increasing understanding of June sucker biology, ecology, or recovery needs under the auspices of UDWR, a recognized academic institution, or a qualified scientific contractor and approved by the Service, in coordination with any existing designated recovery program, as

a necessary and productive study for June sucker recovery is exempted. Incidental and limited direct take resulting from research to benefit June sucker is not prohibited.

(5) *Refuges and stocking.* Any take resulting from activities undertaken for the long-term maintenance of June sucker at facilities outside of Utah Lake and its tributaries or for the production of June sucker for stocking in Utah Lake is not prohibited.

Dated: September 24, 2019.

Margaret E. Everson,

Principal Deputy Director, Exercising the Authority of the Director, for the U.S. Fish and Wildlife Service.

[FR Doc. 2019–25549 Filed 11–25–19; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2018–0062; FXES11130900000–189–FF0932000]

RIN 1018–BD02

Endangered and Threatened Wildlife and Plants; Removal of the Nashville Crayfish From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the Nashville crayfish (*Orconectes shoupi*), a relatively large crayfish native to the Mill Creek watershed in Davidson and Williamson Counties, Tennessee, from the Federal List of Endangered and Threatened Wildlife (List). This determination is based on the best available scientific and commercial data, which indicate that the threats to the species have been eliminated or reduced to the point that the species has recovered and no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft post-delisting monitoring (PDM) plan for the Nashville crayfish. We seek information, data, and comments from the public regarding this proposal to remove the Nashville crayfish from the List (*i.e.,* ''delist'' the species) and regarding the draft PDM plan.

DATES: We will accept comments received or postmarked on or before January 27, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by January 10, 2020.

ADDRESSES: *Written comments:* You may submit comments on this proposed rule by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the Search box, enter FWS–R4–ES–2018–0062, 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!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2018–0062; U.S. Fish and Wildlife Service, MS: BPHC, 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 Information Requested, below, for more information).

Document availability: This proposed rule, the draft PDM plan, and supporting documents (including the species status assessment (SSA) report, references cited, and the 5-year review) are available at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062.

FOR FURTHER INFORMATION CONTACT: Lee Andrews, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38506; telephone 931–528–6481. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments and information from other concerned governmental agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. Because we will consider all comments and information we receive during the comment period, our final determination may differ from this proposal. We particularly seek comments on:

(1) Information concerning the biology and ecology of the Nashville crayfish;

(2) Relevant data concerning any threats (or lack thereof) to the Nashville crayfish, particularly any data on the possible effects of climate change as it relates to habitat, and the extent of State protection and management that would be provided to this crayfish as a delisted species;

(3) Current or planned activities within the geographic range of the Nashville crayfish that may negatively impact or benefit the species; and

(4) The draft PDM plan and the methods and approach detailed in it.

Please include sufficient information (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. All comments submitted electronically via *http://www.regulations.gov* will be presented on the website in their entirety as submitted. For comments submitted via hard copy, we will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. You may request at the top of your document that we withhold personal information such as your street address, phone number, or email address from public review; however, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Please note that submissions merely stating support for or opposition to the listing action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*) directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

Section 4(b)(5)(E) of the Act provides for a public hearing on this proposal, if

requested. Requests must be received within 45 days after the date of publication of this proposed rule in the **Federal Register** (see **DATES**). Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the hearing.

Previous Federal Actions

On September 26, 1986, we published a final rule in the **Federal Register** (51 FR 34410) listing the Nashville crayfish as endangered due to siltation, stream alterations, and water quality deterioration resulting from urban development pressures. On February 8, 1989, we released a recovery plan for the Nashville crayfish (USFWS 1989, entire). The latest 5-year review for the species, completed in February 2017, recommended reclassifying the Nashville crayfish to a threatened species due to recovery (USFWS 2017a, entire). Based on this recommendation, a species status assessment (SSA) was initiated and completed. Six peer reviewers were requested to review the SSA and provide feedback. Reviewers were selected based on their knowledge of the species' biology and habitat. Two peer reviewers submitted feedback. One of the commenters informed us that Nashville crayfish have been observed to be active on the surface diurnally during certain times of the year and suggested we add otters as predators to the crayfish. Another commenter asked about the conservation work being done by two Tennessee agencies. This information was incorporated into the final SSA and this proposed rule.

Background

A thorough review of the taxonomy, life history, ecology, and overall viability of the Nashville crayfish is presented in the SSA report (USFWS 2017b; available at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062).

The Nashville crayfish is endemic to the Mill Creek watershed south of Nashville in Davidson and Williamson Counties, Tennessee. The species is currently known to occur in Mill Creek and its tributaries, including Collins Creek, Owl Creek, Edmonson Branch, Sims Branch, Sevenmile Creek, Sorghum Branch, Whittemore Branch, Turkey Creek, Indian Creek, Holt Creek, four unnamed tributaries to Mill Creek, and one unnamed tributary to Owl Creek (USFWS 2017b, p. 5). There has been no change in the distribution of the species within its historical range (USFWS 2016, unpublished data).

Biologists conducting the pre-listing status survey for the species surveyed 148 streams in the following central Tennessee drainages (Korgi and O'Bara 1985, entire): Collins River, Stones River, Caney Fork River, Cumberland River, Red River, Mill Creek, Harpeth River, and Elk River. Nashville crayfish were only found in Mill Creek and its tributaries.

Nonetheless, at the time of listing in 1986, the species was thought to have occurred historically in several locations outside of the Mill Creek watershed, including Big Creek in Giles County (Elk River drainage), the South Harpeth River in Davidson County (Harpeth River drainage), and Richland Creek in Davidson County (Cumberland River drainage) (USFWS 1987, entire). The Service now believes that the Big Creek and South Harpeth River records are the result of accidental introduction by anglers using the species as bait and are no longer thought to be historical locations for the crayfish (USFWS 2017b, p. 4). The Service originally believed that the Richland Creek occurrence had been displaced by a more competitive crayfish species (USFWS 2017b, p. 4). However, it was later determined that specimens of Nashville crayfish (*Orconectes shoupi*) collected from Richland Creek were misidentified, and the collections were subsequently correctly identified as the bigclaw crayfish (*Orconectes placidus*) (USFWS 1989, entire). In short, we now conclude that Mill Creek and its tributaries constitute both the historical and current ranges of the species.

The Nashville crayfish is a relatively large crayfish ranging from young-of-the-year at about 0.6 centimeters (cm) (0.24 inches (in)) total length (TL) to adults at about 17.8 cm (7 in) (TDNA 2009, p. 11; O'Bara *et al.* 1985, entire). Other *Orconectes* species reported from the Mill Creek watershed, including *O. rhoadesi* and *O. durelli,* can easily be distinguished from the Nashville crayfish by gonopod (reproductive) structure and body coloration. However, even young-of-the-year crayfish from the Mill Creek watershed often can be identified as the Nashville crayfish, as no other saddle-bearing species are present in the system. The saddle-bearing features include elongate pincers with red tips and adjacent narrow black banding, a usually light-colored ''saddle'' on the carapace extending from the posterior to the anterior and terminating as lateral stripes on both sides, and distinctive gonopods markedly different from any of its congeners.

The Nashville crayfish has been found in a wide range of environments, including gravel and cobble runs, pools with up to 10 cm (3.9 in) of settled sediment, and in small pools with intermittent flow (Stark 1986, 44 pp; Miller and Hartfield 1985, entire). The species has also been found in impoundments that include overflow pools and retention ponds adjacent to Mill Creek and its tributaries (Cook and Walton 2008, p. 121; Service 2011, entire). It is estimated that approximately 54 percent (104 stream miles) of the 192 stream miles of the Mill Creek watershed that have the potential to support Nashville crayfish is currently occupied by the species (USFWS 2017b, p. 30).

Population estimates from surveys are limited to the mainstem of Mill Creek and Sevenmile Creek, although surveys in other streams have detected Nashville crayfish and indicate consistent presence over time (USFWS 2017, pp. 29–30, 35–40). Between 1999 and 2001, surveys conducted within the mainstem and Sevenmile Creek led to overall estimates of 1,854 to 3,217 individuals and 404 to 1,425 individuals per 100 linear meters, respectively. (USFWS 2017b, p. 29). Long-term monitoring, conducted between 2011 and 2015, has documented a total of 1,763 crayfish per 100 linear meters at five main stem Mill Creek sampling sites. This long-term monitoring, conducted by the Nashville Zoo, found Nashville crayfish to be the predominant species, comprising more than 90 percent of all crayfish documented at all five sites surveyed. According to these surveys, the Nashville crayfish has remained stable throughout the Mill Creek watershed.

Summary of Biological Status and Threats

The Act directs us to determine whether any species is an endangered or a threatened species because of any factors affecting its continued existence. The SSA report documents the results of our comprehensive biological status review for the Nashville crayfish, including an assessment of the potential stressors to the species. The SSA report does not represent a decision by the Service on whether the species should be listed as an endangered or a threatened species under the Act. It does, however, provide the scientific basis for our regulatory decision, which involves the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA

report; the full SSA report can be found on the Southeast Region website at *https://www.fws.gov/southeast/* and at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062.

Summary of SSA Report

To assess the Nashville crayfish's viability, we used the three conservation biology principles of resiliency, representation, and redundancy (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years); representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes); and redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, hazardous spills). In general, the more redundant and resilient a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be divided into three sequential stages. During the first stage, we use the conservation biology principles of resiliency, redundancy, and representation (together, the 3Rs) to evaluate individual life-history needs. The next stage involves an assessment of the historical and current condition of species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involves making predictions about the species' responses to positive and negative environmental and anthropogenic influences. This process uses the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We used this information to inform our decision in this proposed rule.

Species Needs

For the Nashville crayfish to maintain viability, its populations or some portion thereof must be resilient. Stochastic factors that have the potential to affect Nashville crayfish include impacts to water quality, particularly phosphorus loading, sedimentation, and significant alterations to dissolved oxygen.

Silt deposition in streams contributes to several of the impairments in the Mill Creek watershed, and can also be a risk factor for crayfish. Stream channelization and silt deposition has been reported to be directly responsible for the permanent loss of some crayfish populations (Reynolds et al. 2013, p. 197–218). As crayfish are primarily active at night, the chief requirement of all size classes is for hiding spaces during the daytime. Where loss of hiding spaces occurs through bank reconstruction or siltation from natural or human causes, the habitat's carrying capacity for crayfish diminishes (Reynolds et al. 2013, p. 197–218). Therefore, good quality habitat for Nashville crayfish has minimal silt deposition such that availability of vital hiding spaces, and thus carrying capacity, are maximized.

Dissolved oxygen (DO) levels are an important water quality parameter for all aquatic life, including crayfish. Oxygen is dissolved into the water in streams through diffusion, aeration, and as the waste product of plants that are photosynthesizing. The amount of DO found in water can vary due to several factors including water temperature, level of pollutants and water velocity. Extended periods of supersaturation can occur in highly aerated waters, often near hydropower dams and waterfalls, or due to excessive photosynthetic activity. Algae blooms can cause air saturations of over 100% due to large amounts of oxygen as a photosynthetic byproduct. This is often coupled with higher water temperatures, which also affects saturation (Fondriest 2013, entire). High levels of DO may be stressful to crayfish because of physiological effects, such as gas bubble disease, or because higher oxygen levels allow invasion of invasive crayfish species, who better tolerate higher DO concentrations. If DO levels are very low, it is harder for individual crayfish to take in oxygen, and in extreme cases the lack of DO results in death. Although the tolerance level of Nashville crayfish for DO is not known, levels below 2.0 mg/L typically result in invertebrates abandoning the area (Fondriest 2013, entire).

Other factors that influence the resiliency of Nashville crayfish populations include population size and the presence of slab rock (TDNA 2009, entire). Influencing those factors are elements of Nashville crayfish ecology (*e.g.,* dispersal and reproductive success) that determine whether populations can grow to maximize habitat occupancy, thereby increasing resiliency of populations (USFWS 2017b, p. 22). Slab rock is defined as moderately to large sized rocks in the stream channel, typically limestone, found on top of bedrock, cobble, or gravel. Adult Nashville crayfish occur in various habitats in streams with slab rocks or other debris for cover. Adults tend to be solitary, seeking cover under large rocks, logs, debris, or rubble; the largest individuals generally selected the largest cover available (USFWS 1987, entire). Cover, particularly presence of large rocks, is also important to Nashville crayfish (Cook and Walton 2008, p. 121). Nashville crayfish were found half of the time in runs, using rocks with a surface area of 0.05 m^2 (0.54 ft^2) as cover, and half of the time in pools, when cover rock area increased to 0.10 m^2 (1.1 ft^2). Larger rock areas may be needed in pools to decrease risk of predation, whereas smaller rock areas would provide adequate protection in runs (Cook and Walton 2008, p. 121). Reproductive females are typically found under large slab rocks. Females seek out large slab rocks when they are carrying eggs and young, and these secluded places are also needed for molting. Cover rocks of at least 0.02 m^2 (2.15 ft^2) may be important habitats for females releasing broods and for protection during molting after releasing broods (USFWS 1987, entire). Gravel-cobble substrate provided good cover for juveniles (Stark 1986, Miller and Hartfield 1985, entire).

Representation can be measured by the breadth of genetic or environmental diversity within and among populations, and gauges the probability that a species is capable of adapting to environmental changes. In the absence of species-specific genetic and ecological diversity information, we evaluated representation based on the extent and variability of habitat characteristics across the geographical range of the species.

For the Nashville crayfish to maintain viability, the species as a whole also needs to exhibit some degree of redundancy. We measured redundancy for Nashville crayfish in terms of the number and distribution of resilient populations across the range of the species. It is important to note that Nashville crayfish has a naturally limited range, so measures of redundancy reflect the distribution within a relatively small area.

Current Condition

Resiliency

The Nashville crayfish is restricted to the Mill Creek watershed, which we now understand to represent the species' historical range. For this assessment, we measured resiliency at

the population segment level, but also reported resiliency in total stream miles across the species' range. Because resiliency is a population-level attribute, key to assessing it is the ability to delineate populations. Because there is insufficient information on dispersal and genetics to accurately delineate demographic populations for Nashville crayfish, we delineated population segments. These were delineated based on habitat quality (*i.e.,* presence of slab rock and qualitative assessments of water quality) and species occurrence data from natural heritage data of the Tennessee Department of Environment and Conservation (TDEC) and opinions of species experts. We identified 174 stream segments based on watershed features, stream characteristics, and expert opinion (USFWS 2017b, p. 19). This resulted in delineation of 10 population segments within 3 representative units: Upper Mill Creek, Middle Mill Creek, and Lower Mill Creek watershed catchments (Table 1; and Figure 1).

TABLE 1—LIST OF DELINEATED POPULATION SEGMENTS OF NASHVILLE CRAYFISH

Upper Mill Creek (MCW–A)	Middle Mill Creek (MCW–B)	Lower Mill Creek (MCW–C)
Upper Mill Creek Streams	Middle Mill Creek Streams	Lower Mill Creek Streams.
Upper Mill Creek and Tributaries	Owl Creek	Sevenmile Creek and Tributaries.
Mainstem Mill Creek*	Holt Creek	Mainstem Mill Creek.*
	Indian Creek.	
	Collins Creek.	
	Mainstem Mill Creek*.	

* Mainstem Mill Creek runs through all three watershed catchments.

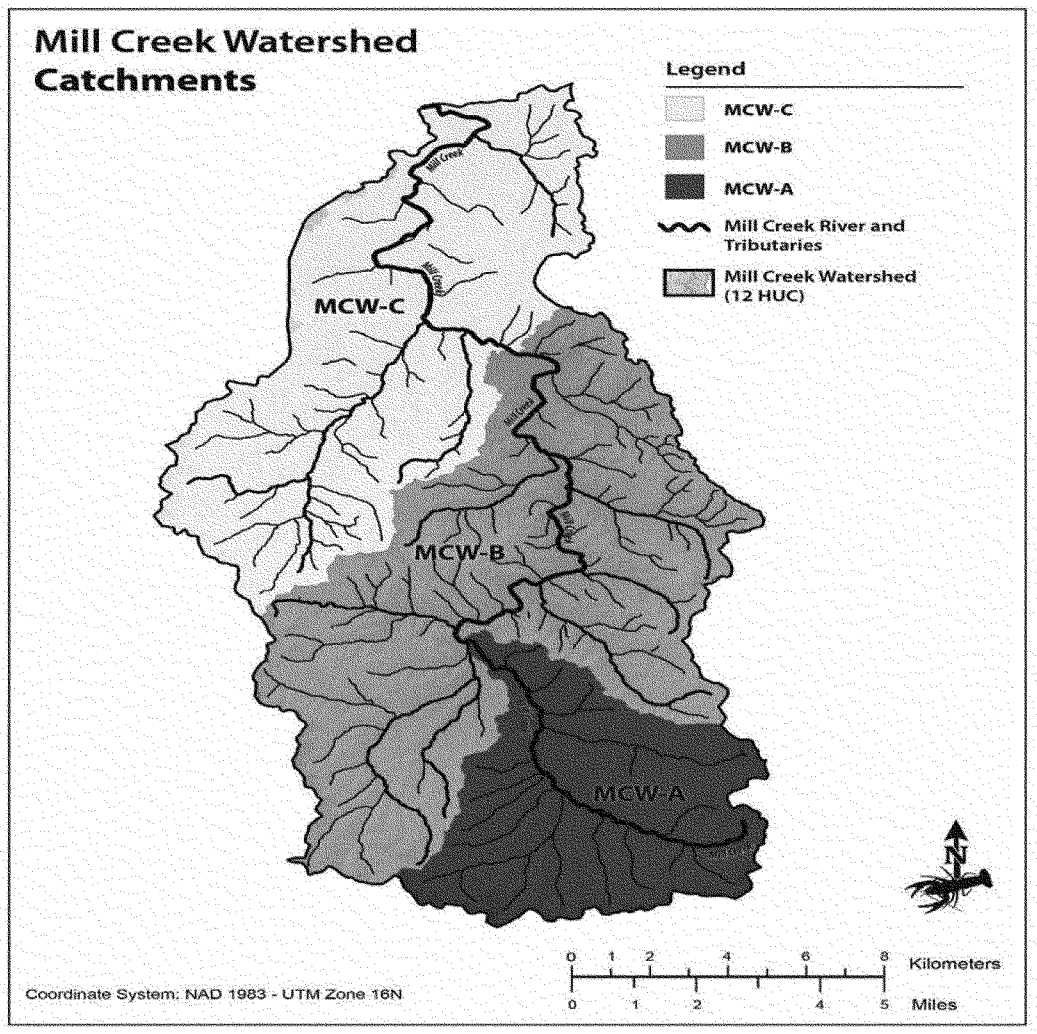


Figure 1--Nashville crayfish population segments within the Mill Creek Watershed.

Element Occurrence (EO; an area of land or water where a species is or was present) data were available through TDEC Natural Heritage Data shapefiles. These data represent survey detections for Nashville crayfish conducted since

1985, and each EO has an associated EO viability score. The EO viability scores provide a succinct assessment of the estimated viability of the species, or an estimation of the likelihood that, if current conditions prevail, a species occurrence will persist for a period of time. The EO viability scores for Nashville crayfish were delineated by Service biologists following NatureServe descriptions (Hammerson et al. 2008) as follows:

- Excellent—species occurrence exhibits optimal or at least exceptionally favorable characteristics with respect to population size and/or quantity and quality of occupied habitat, and if current conditions prevail, the occurrence is very likely to persist for the foreseeable future (*i.e.,* at least 20–30 years).
- Good—species occurrence exhibits favorable characteristics with respect to population size and/or quantity and quality of occupied habitat, and if current conditions prevail, the occurrence is very likely to persist for the foreseeable future (*i.e.,* at least 20–30 years).
- Fair—species occurrence characteristics (size, condition, and landscape context) are non-optimal such that occurrence persistence is uncertain under current conditions, but may persist for the foreseeable future with appropriate management or protection.
- Poor—If current conditions prevail, occurrence has a high risk of extirpation because of small population size or area of occupancy, deteriorated habitat, poor conditions for reproduction, or other factors.

We looked at EO viability scores based on the element occurrence data, and elicited the opinions of Nashville crayfish experts as to how we should characterize resiliency of that population segment. The EO viability scores provided a succinct assessment of the estimated viability of the species, or an estimation of the likelihood that, if current conditions prevail, a species occurrence will persist for a period of time.

The EO data, combined with other survey efforts and expert opinion resulted in the delineation of 174 stream segments. These stream segments were scaled up to the population segment scale based on watershed features such as physical hydrology and stream characteristics, and species expert opinion, resulting in identification of 10 population segments. We categorized resiliency for each of these population segments using stream segment viability scores (*e.g.,* excellent, good, fair, poor, and uncertain) and expert opinion. We considered stream segment viability scores of excellent and good as a single category, with fair, poor, and uncertain being the other three stream viability scores used in the resilience categorization. We considered populations to be high resiliency when more than 50 percent of its stream segments had EO viability scores of Excellent or Good. Populations where greater than 50 percent of stream segments had EO viability scores of Fair were considered to be moderate resiliency. We considered populations to be low resiliency if more than 50 percent of its stream segments had Poor EO viability scores. Finally, for populations where over 50 percent of stream segment viability scores were uncertain, we used a combination of EO viability scores (where this was available) and expert opinion to determine whether they were high, moderate, or low resiliency. Within each of the 10 population segments, we calculated the total stream miles within each stream segment viability category to determine the proportion of various viability ranks represented (USFWS 2017b, p. 21).

Of the 10 population segments, currently six (145 stream miles; 76 percent of the total range) display high resiliency (likely to persist for at least 20 to 30 years); two (20 stream miles; 10 percent of the total range) display moderate resiliency (may persist for at least 20 to 30 years); and two (26.5 stream miles; 14 percent of the total range) display low resiliency (high risk of extirpation in 20 to 30 years).

Representation

We lack genetic and ecological diversity data to characterize representation for Nashville crayfish. In the absence of this information, we evaluated representation based on the extent and variability of habitat characteristics across the species' geographical range. For the Nashville crayfish, we characterized representative units by using physical stream hydrology, and measured representation as the number of resilient populations within three delineated representative units as originally proposed in Jones (2006, p. 6)—MCW–A or Upper, MCW–B or Middle, and MCW–C or Lower (see discussion and Table 1 above). The three units have different stream and watershed characteristics, such as stream order, surrounding drainage landscapes, depth, and flow, but are primarily delineated based on amount of development. The landscape in unit MCW–A is primarily agricultural, unit MCW–B encompasses the suburban subwatersheds, and unit MCW–C is primarily urban (Jones 2006, p. 6). The representative units are catchments created by using flow direction, flow accumulation, and a 3-meter resolution digital elevation model (Jones 2006, entire).

Differences in hydrology in these three areas could result in differences in how the species may adapt to changing environmental conditions. Because the mainstem population segment crosses representative unit boundaries, we report representation as the percentage of stream miles categorized as low, moderate, and high within each representative unit:

- Upper (MCW–A): There are 61.8 total stream miles within this unit. Of those, 49.6 miles (80 percent) are portions of population segments classified as high resiliency; 12.2 miles (20 percent) are classified as low resiliency.
- Middle (MCW–B): There are 72.6 total stream miles within this unit. Of those, 43.6 miles (60 percent) are portions of population segments classified as high resiliency; 19.7 miles (27 percent) are classified as moderate resiliency; and 9.3 miles (13 percent) are classified as low resiliency.
- Lower (MCW–C): There are 57.1 total stream miles within this unit. Of those, 52.1 miles (91 percent) are portions of population segments classified as high resiliency; 5.0 miles (9 percent) are classified as low resiliency.

For the Nashville crayfish, our expert noted that the sub-watersheds we used were a good way to spatially delineate adaptive capacity. In fact, our spatial analysis was confirmed by a dissertation done previously that looked at variability within that watershed discussed in the SSA (Jones 2006, entire). From north to south the species clearly showed some adaptive capacity, as evidenced by the differences in habitat from north to south. Because of this we established the three representative units (upper, middle, lower).

To measure representation we then looked at the number of resilient stream segments and their resiliency score, assuming that a high number of stream segments in a high resiliency status means there is sufficient representation in that unit. If, for example, we had a representative unit with a majority of low resiliency stream segments we would then be concerned the species may lose some of its representation. As this was not the case, we believe that representation is not limiting the species' ability to maintain resilient populations. We therefore conclude that representation is high because the

majority of stream miles in each segment are highly resilient.

Redundancy

For the Nashville crayfish to maintain viability, the species needs to exhibit some degree of redundancy. Redundancy describes the ability of a species to withstand catastrophic events. Measured by the number of populations, their resiliency, and their distribution (and connectivity), redundancy gauges the probability that the species has a margin of safety to withstand or return from catastrophic events (such as a rare destructive natural event or episode involving many populations). We report redundancy for Nashville crayfish as the total number of population segments and their distribution within and among representative units.

As discussed above, there are 10 population segments distributed across the range of the Nashville crayfish between the three representative units. Six of these population segments are highly resilient; two population segments are moderately resilient; and two population segments are of low resiliency. As also discussed above, there is adequate redundancy based on the distribution in the three representative units for the Nashville crayfish to withstand catastrophic events. The catastrophic events likely to affect the Nashville crayfish are spills associated with increasing human population and urbanization (see Summary of Threats below). However, the likelihood of such events occurring is not equal across the three units: They are far more likely to occur in the lower, highly urbanized unit MCW–C (the farthest downstream) and much less likely to occur in the middle (MCW–B) and upper (MCW–A) units because these units are less developed. Therefore, if a spill were to occur, it is more likely to affect only one unit and not all three.

In any case, even in the unlikely circumstance a catastrophic event would impact the entire range of the species, the Nashville crayfish has demonstrated a high degree of resistance to disturbance. In the Mill Creek watershed, there have been frequent spills/releases of raw sewage and hazardous substances, particularly in the lower reaches (USFWS 2018, p. 50–51). However, despite these events, the species has been found in large numbers at several locations that are already heavily developed. Although the Metropolitan Nashville area is experiencing significant growth, with numerous residential, commercial, utility, and other infrastructure developments occurring in the watershed, Nashville crayfish populations have been documented to be stable or increasing in size.

Based on our analysis of these three factors, the species demonstrates high viability, indicating that it is likely to persist in the future. Since the Nashville crayfish was listed, individuals have been found in large numbers at several locations in the watershed that are heavily developed and subjected to consistent storm water and sediment inputs, as well as frequent spills and releases of raw sewage and hazardous substances. Despite these stressors, Nashville crayfish density has increased in all three representative units (McGinnity 2016, p. 3)

Summary of Threats and Conservation Measures That Affect the Species

Section 4(a)(1) of the Act directs us to 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.

In the assessment report, we reviewed the factors (*i.e.,* threats, stressors) that could be affecting the Nashville crayfish now or in the future. However, in this proposed rule, we will focus our discussion on those factors that could meaningfully impact the status of the species. The primary risk factor affecting the status of the Nashville crayfish is development in the Mill Creek watershed that results in destruction or alteration of habitat. This was a primary factor in our decision to list the species in 1986. Specifically, increased development in the watershed leads to increased impervious cover, which in turn often leads to water quality deterioration. This takes the form of siltation, stream alteration, and urban runoff (particularly of phosphorus), resulting from development in Nashville and surrounding urbanized areas, all of which have the potential to negatively impact the Nashville crayfish. Secondary risk factors include the species' limited distribution, which makes it vulnerable to catastrophic events, such as chemical spills or other contamination sources. Development in the watershed can also increase the probably of catastrophic spills as well as increase road density and create new contaminant sources. Competition with invasive crayfish species could also be problematic, but presently, this is not a known threat for the species. Similarly, climate change and its associated effects will not have a negative impact on the Nashville crayfish now or in the foreseeable future.

Factor A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The primary threat to the continued existence of the Nashville crayfish is still development in the Mill Creek watershed that results in destruction or alteration of the aquatic habitat. The population of Davidson County grew by 5.1 percent between 2010 and 2013. Adjacent Williamson County grew by 8.6 percent in the same time period (USFWS 2017a, p. 12). As Nashville and the surrounding areas have grown, commercial and residential development has increased within the Mill Creek watershed. Areas in the upper reaches of the Mill Creek watershed that were once rural agricultural areas are now being developed for residential purposes. Development often results in removal of riparian vegetation and canopy cover over the stream that may result in bank collapse. Runoff from denuded areas can result in heavy input of sediment into the stream, excessive in-stream sediment deposition, and increased water turbidity and temperatures. Sediment has been shown to break down and or suffocate bottom-dwelling algae and other organisms by clogging gills and reducing aquatic insect diversity and abundance (Waters 1995, p. 251). We anticipate population growth in the Nashville metropolitan area to continue, with associated increases in development. Five of the ten counties in Tennessee with the highest projected growth rates through 2040—Williamson, Rutherford, Wilson, Robertson, and Sumner—are in the Nashville metropolitan area. Approximately 69 percent of the population growth in Tennessee from 2010 to 2040 is expected to occur in 10 counties across the state, including Davidson and Williamson counties (Boyd Center 2015, entire). However, despite the increased development, the species has been found in several locations and in large numbers.

Highway and road construction, as well as utility line construction and right-of-way maintenance, within and adjacent to streams, may also alter or destroy habitat. Additionally, short-term dewatering to excavate trenches for utility lines could also result in temporary loss of habitat. The settling

and filling in of crevices and interstitial spaces with sediment under slab rocks is likely to result in increased biological oxygen demand and longer term or permanent loss of habitat for crayfish (Cook and Walton 2008, p. 121). These are all potential impacts to crayfish habitat. We know that these actions result in degradation of riparian areas and stream health, but there is uncertainty regarding how tolerant the Nashville crayfish is to such changes. The only area where we know the species was negatively impacted was near the airport where toxic releases caused abandonment of that stream reach. However, years later, the area was recolonized, albeit at a lower abundance (USFWS 2017b, p. 51).

To avoid direct adverse impacts to the crayfish and its habitat, developers increasingly use directional boring under the stream as a means of accomplishing crossings for utility and communication lines; however, if not done properly, boring can cause fracturing of the stream bottom. This can result in release of bentonite and other slurries as well as toxic materials from the bore hole into the stream. Dewatering of short or long reaches of the stream channel downstream from the fracture may also occur. Dewatering can be permanent if the fracture causes the entire surface flow to go underground. Materials released into the stream from bore holes range from inert slurries to potentially toxic chemicals and lubricants; however, inert slurry, if released in large amounts, could result in mortality to crayfish and other benthic fauna by smothering adults and juveniles. In 2000, during installation of fiber optic cables in the Mill Creek drainage, several incidents of fracturing occurred resulting in the release of large amounts of bentonite slurry into the streams. In 2013, a Piedmont Natural Gas Pipeline boring under Sevenmile Creek impacted its tributary, releasing a bentonite slurry that resulted in mortality of six individual crayfish. Due to these incidents, areas where known bedrock fracturing potential exists are now being trenched (surface cut) for projects involving utility line crossings (USFWSb 2017, p. 52).

Another potential threat to the species' continued existence is the improper use or overuse of lawn pesticides and fertilizers. Intentional or inadvertent application of chemicals to the stream or runoff from yards after application has resulted in significant mortality of aquatic organisms, including Nashville crayfish. We have received periodic reports of mortality of stream fauna that likely resulted from input of pesticides into streams in the Mill Creek watershed. This threat is likely to increase in the future as residential development increases (USFWS 2017b, p. 50).

Additionally, there have been consistent stormwater and sediment inputs to the Mill Creek watershed, as well as frequent spills/releases of raw sewage and hazardous substances, yet the Nashville crayfish persists in high numbers. The species exhibits a high degree of resistance to disturbance, indicating that the species has a low susceptibility to threats and high degree of stability (USFWS 2017a, p. 16).

As of 2014, numerous stream segments in Mill Creek and its tributaries were listed as impaired on the State of Tennessee's 303(d) list (TDEC 2018, entire). Impairment of stream reaches in the drainage is the result of low dissolved oxygen, siltation, removal of riparian vegetation, nutrient enrichment and high bacteria levels from stormwater discharges, sewage collection system failures, land development, and unrestricted cattle access (TDEC 2018, entire).

Our analysis of threats and risk factors, as well as the past, current, and future influences on what the Nashville crayfish needs for long term viability revealed that the most risk to future viability of the species is posed by water quality issues: The risk of a catastrophic spill and impairment of water quality associated with increasing human populations and urbanization. However, the species has been found in large numbers at several locations that are already heavily developed, and the species has been found in several additional tributaries to Mill Creek since its original listing under the ESA (USFWSb 2017, p. 73). Although the Metropolitan Nashville area is experiencing significant growth, with numerous residential, commercial, utility, and other infrastructure developments occurring in the watershed, Nashville crayfish populations have been documented to be stable or increasing in size (USFWS 2017b, entire). Additionally, there have been consistent stormwater and sediment inputs to the Mill Creek watershed, as well as frequent spills/releases of raw sewage and hazardous substances, yet the Nashville crayfish persists in high numbers. The species exhibits a high degree of resistance to disturbance, indicating the species has a low susceptibility to threats and a high degree of stability.

Factor B. Overutilization for Commercial, Sporting, Scientific, or Educational Purposes

We have received reports over the past five years (2010–2015) that fish and aquatic invertebrates, including Nashville crayfish, are being harvested from Mill Creek for food (USFWS 2016, entire). Although we do not know the full impact of harvesting on the species at this time, populations are stable or improving across the range, indicating any harvesting that is occurring is not affecting population resiliency.

Factor C. Disease or Predation

This factor was determined to not apply to the Nashville crayfish at the time of its 1986 listing. Currently, porcelain disease (*Thelohania contejeani),* known from crustaceans in Australia, may pose a threat if infected crustaceans are accidently introduced into the Mill Creek watershed from the pet trade (see Factor E discussion, below). There is anecdotal evidence that porcelain disease was observed in *Cambarus sphenoides* on the Cumberland Plateau. The Cumberland Plateau is the southern part of the Appalachian Plateau in the Appalachian Mountains of the United States. It includes much of eastern Kentucky, Tennessee, and portions of Alabama and Georgia.

Although our earlier determination that a population of Nashville crayfish was displaced by another crayfish species turned out to be incorrect (see Background, above), competition or predation by released nonnative crayfish also could potentially pose a threat to the species in the future (Bizwell and Mattingly 2010, p. 359). Urbanization may result in increased numbers of scavengers, such as raccoons, that might prey on aquatic organisms. However, we currently have no information to indicate that disease or predation are threats to this crayfish.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

In our discussions under Factors A, B, C, and E, we evaluate the significance of threats as mitigated by any conservation efforts and existing regulatory mechanisms. Where threats exist, we analyze the extent to which conservation measures and existing regulatory mechanisms address the specific threats to the species. Regulatory mechanisms, if they exist, may reduce or eliminate the impacts from one or more identified threats. The following provides an overview of the existing regulatory protections that

protect the Nashville crayfish ecosystem and the Nashville crayfish.

Tennessee Wildlife Resources Agency has regulations in place to address the collection of baitfish, including amphibians and crayfish, which specifically prohibit the taking of and possession of crayfish from Mill Creek and its tributaries in Davidson and Williamson Counties (TWRA 1994, rule 1660–1–26–.04). The Tennessee Fish and Wildlife Commission also issued a proclamation (TFWC 2014, p. 13–15) which states that the collection of crayfish from Mill Creek in Davidson and Williamson Counties is specifically prohibited. It is also prohibited to possess or use crayfish for bait in Mill Creek, which is key to preventing accidental introductions of nonnative species.

Currently there are no State laws that provide specific protection for the species' habitat. However, the CWA and the Tennessee Water Quality Control Act of 1977 provide water quality protections for streams in the State. Agencies implementing these laws routinely issue notices of violation (NOVs) when actions are reported that have adverse impacts on waters in the State. NOVs are typically issued after the fact—*i.e.,* after destruction or alteration of the species and habitat has occurred. Agencies are not staffed to oversee, supervise, or inspect all of the actions for which permits have been issued. Also, penalties levied on violators by the State are likely not severe enough to deter future violations. Even if more drastic enforcement action is taken by Federal agencies, the time between the violation and conclusion of the law enforcement action is likely long enough to suppress the deterrent effect of the penalty.

TDEC and Metropolitan Nashville Water Services (MNWS) routinely issue CWA NOVs for incidents in the Mill Creek watershed. Service Law Enforcement personnel have assisted the State in numerous investigations. As an example, in 2011, a contractor constructing a replacement sewage forcemain bypassed a section of an existing sewage forcemain by pumping past the section of forcemain to be replaced. The pump failed, releasing a significant amount of sewage into Mill Creek. Crayfish mortality was observed; however, the Service did not pursue an enforcement action under the Act because this was an accidental release. The Service will continue to provide technical assistance to the state agency to address future incidents within the Mill Creek watershed. Mill Creek is currently listed as an impaired stream with the U.S. Environmental Protection Agency (EPA).

Although numerous NOVs have been issued in the Mill Creek watershed since 2009, State and Federal water quality laws have not prevented pollution from development activities or from municipal and industrial sources. Portions of Mill Creek and some of its tributaries are currently listed on TDEC's impaired stream list (TDEC 2018, in draft). State and Federal agencies have identified impairments to address which include low dissolved oxygen, siltation, other anthropogenic habitat alterations, *Escherichia coli* (*E. coli*), total phosphorus, nitrate-nitrite, and propylene glycol.

The CWA makes it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit is obtained. Section 404 of the CWA establishes a program to regulate the discharge of dredged or fill material in waters of the United States, including wetlands. The basic purpose of the program is that no discharge of dredged or fill material may be permitted if: (1) A practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. An individual permit is required for potentially significant impacts. Individual permits are reviewed by the U.S. Army Corps of Engineers, which evaluates applications under a public interest review, as well as the environmental criteria set forth in the CWA Section 404(b)(1) Guidelines, regulations promulgated by EPA. For the Nashville crayfish, the Corps permits would still be applicable and have relevant conditions. Furthermore, through our authorities under the Fish and Wildlife Coordination Act, the Service will provide technical assistance to the Corps during the permit review process. The state would also require Aquatic Resource Alteration Permits with conditions as well.

TDEC and the Service conducted a natural resource damage assessment (NRDA) and developed specific recommendations for stormwater treatment, monitoring, and compliance to the Metropolitan Nashville Airport Authority (MNAA). The purpose of the NRDA program is to restore natural resources injured as a result of oil spills or hazardous substance releases into the environment. The NRDA process evaluates and restores wildlife, habitats, and human resources impacted by oil spills, hazardous waste sites, and vessel groundings. Damage assessments provide the basis for determining the extent of restoration needed to address the public's natural resource losses. Should a future oil spill or hazardous substance release adversely affect the Nashville crayfish, the State, acting as a natural resource trustee, would assess injury and determine appropriate restoration. Once the damages are assessed, the NRDA Restoration Program negotiates legal settlements or takes other legal actions against the responsible parties for the spill or release. Funds from these settlements are then used to restore the injured resources at no expense to the taxpayer. Settlements often include the recovery of the costs incurred in assessing the damages. These funds may also be used to fund damage assessments in future incidents. Civil penalties were also assessed by TDEC (USFWS 2017b, p. 51). In cooperation with the Service and our partners, MNAA made substantial improvements to the stormwater collection and treatment system at the airport. The Service also provided specific recommendations to TDEC in the revision of MNAA's national pollutant discharge elimination system permit.

Summary of Factor D

Factor E. Other Natural or Man-Made Factors Affecting the Species' Continued Existence

In this section, we will discuss other natural and man-made threats affecting the species including limited geographic range, vehicle accident spills, introduction of invasive crayfish and climate change.

The Nashville crayfish's limited geographic range and apparent small population size leave the species vulnerable to localized extinctions from accidental toxic chemical spills or other stochastic disturbances. Species that are restricted in range and population size are more likely to suffer loss of genetic diversity due to genetic drift, potentially increasing their susceptibility to inbreeding depression and decreasing their ability to adapt to environmental changes (Allendorf and Luikart 2007, p. 642). However, the Nashville crayfish has always occupied a small range. The crayfish is endemic to one watershed and still occupies the watershed. Highly resilient populations are more than likely to survive stochastic events and there are several highly resilient populations spread across the range.

Potential sources of such spills include accidents involving vehicles transporting chemicals over road crossings of streams and accidental or intentional release into streams of chemicals used in industrial, agricultural, or residential applications. Dead crayfish, including Nashville

crayfish, have been collected downstream from construction sites and sewage releases on numerous occasions. For instance, in 2010 and 2011, discharges of propylene glycol de-icing fluids from the runways and tarmac at the Metropolitan Nashville International Airport adversely affected Sims Branch. Response agencies located affected Nashville crayfish. An attempt to translocate these individuals to the Cumberland River Aquatic Center failed, as the specimens died during transport.

With regard to the effects of invasive species on Nashville crayfish, most crayfish experts believe the introduction of invasive crayfish species is not occurring at a rate that could negatively impact native species, especially species with small distributions. In east Tennessee, there have been several introductions; the most serious is the Kentucky River crayfish (*O. juvenilis*), which has replaced the surgeon crayfish (*O. forceps*) in most of the Holston River system above Cherokee Reservoir. Although these water bodies are not within the Mill Creek system, it is conceivable that one of these extremely aggressive species could be introduced into that system and, once established, there is no known method to remove them. A simple aquarium release of a single ovigerous (egg bearing) female or other live specimens would be detrimental to the Nashville crayfish. However, we have no information suggesting the invasive crayfish are utilized in the local pet trade or as bait for fishing in the Mill Creek watershed.

Our analyses under the Act include consideration of ongoing and projected changes in climate. A recent compilation of climate change and its effects is available from reports of the IPCC (IPCC 2014, entire).

The IPCC concluded that evidence of warming of the climate system is unequivocal (IPCC 2014, pp. 2, 40). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, ocean salinity, and aspects of extreme weather including heavy precipitation and heat waves (IPCC 2014, pp. 40–44). Since 1970, the average annual temperature across the Southeast has increased by about 0.8 degrees Celsius (°C) with the greatest increases occurring during winter months. The geographic extent of areas in the Southeast region affected by moderate to severe spring and summer drought has increased over the past three decades by 12 and 14 percent, respectively (Karl *et al.* 2009, p. 111). These trends are expected to increase. Rates of warming are predicted to more than double in comparison to what the Southeast has experienced since 1975, with the greatest increases projected for summer months. Depending on the emissions scenario used for modeling change, average temperatures are expected to increase by 2.5 °C (lower emissions scenario, or IPCC SRES B1) to 5 °C (higher emissions scenario, or A2) by the 2080s (Karl *et al.* 2009, p. 111). While there is considerable variability in rainfall predictions throughout the region, increases in evaporation of moisture from soils and loss of water by plants in response to warmer temperatures are expected to contribute to increased frequency, intensity, and duration of drought events (Karl *et al.* 2009, p. 112).

There is also a growing concern that climate change may lead to increased frequency of severe storms and droughts (McLaughlin *et al.* 2002, p. 6074; Golladay *et al.* 2004, p. 504; Cook *et al.* 2004, p. 1015). Specific effects of climate change to crayfish habitat could include changes in stream temperature regimes; the timing and levels of precipitation, causing more frequent and severe floods and droughts; and alien species introductions. The following systematic changes are expected to be realized to varying degrees in the southeastern United States (NCILT 2012, p. 27; IPCC 2013, p. 7):

- More frequent drought;
- More extreme heat (resulting in increases in air and water temperatures);
- Flooding;
- More intense storms (*e.g.,* frequency of major hurricanes increases).

Despite the recognition of potential climate effects on ecosystem processes, there is uncertainty about what the exact climate future for the southeastern United States will be and how the ecosystems and species in this region will respond. Effects from climate change may also result from synergistic effects. That is, factors associated with a changing climate may act as risk multipliers by increasing the risk and severity of more imminent threats. As a result, impacts from rapid urbanization in the region might be exacerbated under long-term climate change. However, our approach to assessing the future condition of the species (see Future Conditions, below) is focused on a 20- to 25-year projection timeframe, because beyond this time, much uncertainty remains in both the degree of climate change and the species' response to changes in precipitation and temperature. We currently do not have information on the effect of future drought on specific stream segments the species occupies within the watershed. We also do not know the species temperature tolerance in response to long-term temperature increases within those streams. While the Nashville crayfish has multiple populations, future impacts due to the effects of climate change may reduce the resiliency of the species although the long-term effects remain unknown.

Conservation Measures That Affect the Species

The Mill Creek Watershed Association (MCWA) was formed in 2009. The MCWA was strengthened in 2013 by the Cumberland River Compact with the support of the Tennessee Department of Agriculture Division of Forestry. The goal of the MCWA is to provide education and support for improving and protecting the Mill Creek Watershed. It endeavors to clean the water in Mill Creek, eliminate water pollution in local neighborhoods, and make the water safe for wildlife and human use. Focal activities for the MCWA include adopt a stream, riparian buffers, pollution prevention, rain gardens and barrels, and protecting the Nashville crayfish.

The Cumberland River Compact sponsors meetings every other month to bring all interested stakeholders together to reach a realistic approach to ensure a brighter future for the Mill Creek Watershed. These meetings provide stakeholders an opportunity to learn and provide perspective on current conditions, recommendations for improvements, and plan activities to address the current concerns and needs in the watershed. Current participants include Cumberland River Compact, Tennessee Department of Agriculture, Tennessee Division of Forestry, Metro Water Services, Nashville Zoo at Grassmere, Tennessee Department of Environment and Conservation, Tennessee Scenic Rivers Association, Tennessee Wildlife Resources Agency, the Corps, and the Service (USFWS 2017b, p. 57).

The Tennessee Stream Mitigation Program (TSMP) was established under the Tennessee Wildlife Resources Foundation in 2002, as a statewide in-lieu fee wetlands mitigation program. The TSMP provides mitigation for improving instream and riparian habitat, and overall water quality. It funds projects on significantly degraded streams to arrest bank erosion, improve water quality, and restore aquatic and riparian habitat. The TSMP has implemented 28 projects, restoring over 45 miles of degraded stream and over 800 acres of riparian habitat. One of these projects was initiated in the Mill

Creek Watershed in 2009. The project encompassed 2,385 feet of Mill Creek near Nolensville in Williamson County, in the Upper Mill Creek segment (MCW–A). The existing channel was highly degraded due to channelization, vegetation removal, and infrastructure including roadway fills, and had been listed on the 303(d) list due to impacts from unrestricted livestock access. The primary goals of the project were to restore riparian buffer function by the excluding of livestock from the channel and riparian corridor which would reduce non-point source pollutants (such as sedimentation and nutrients). This work resulted in improved water quality, channel stability, aquatic habitat, and elimination of accelerated bank erosion problems; reestablishment of instream habitat by restoring bed form diversity in the form of riffles and pools; and enhancement of the riparian zone by planting native plants. The restored riparian buffer resulted in decreased stream temperatures, which improved water quality for the crayfish. The floodplain basins helped improve water quality, decrease peak flows, and provide valuable flood plain habitat (USFWS 2017b, p. 58). All of the goals of this project were met, which has improved the habitat for the Nashville crayfish, thereby increasing the resiliency of the species.

The Nashville Zoo at Grassmere has been heavily involved in Nashville crayfish recovery efforts. In March 2017, the zoo, in collaboration with the Cumberland River Compact, Tennessee Wildlife Resource Agency, and KCI Technologies Inc., removed two dams on Cathy Jo Branch in the Lower Mill Creek segment (USFWS 2017b, p. 58). The dams, which were located on zoo property, created a barrier to crayfish, small fish, and other small aquatic life, preventing the migration of aquatic species upstream and reducing the biodiversity of the aquatic systems. Dam removal generally allows for the migration of aquatic species that were previously blocked by dams within a watershed, including the Nashville crayfish, and improves aquatic biodiversity. These dam removals opened up 3 miles of habitat and restored the stream as a free-flowing system. Nashville crayfish now have access to 10 miles of creek and improved habitat and this reach is now occupied by a highly resilient population of Nashville crayfish.

The Nashville Zoo has also implemented a stormwater management project that benefits the Nashville crayfish and other aquatic organisms. The Nashville Zoo had a stormwater detention pond on the edge of its property that captured runoff from a large office park next door to the zoo, but several times a year, excess water was discharged from the pond's outlet pipe, where it carried sediment and other pollutants into Cathy Jo Branch. Runoff from the office park also damaged the perimeter fence and carried trash and debris into the pond. The project retrofitted the detention pond to modify the two inlet structures and expand the water holding capacity. In addition, the brushy area below the outfall pipe was transformed into an infiltration zone to slow, spread, and soak in the excess water discharges after rain events. This project has directly improved water quality in known occupied Nashville crayfish habitat.

Future Conditions

In the SSA, our analysis of threats and risk factors, as well as the past, current, and future influences on what the Nashville crayfish needs for long-term viability, revealed that there are two factors that pose the largest risk to future viability of the species: The risk of a catastrophic spill and impairment of water quality (USFWS 2017b, p. 59). Both factors are primarily related to habitat changes. We did not assess overutilization for scientific and commercial purposes, disease, or competition with invasive crayfish because these risks do not appear to be occurring at levels that affect Nashville crayfish populations. Accordingly, the risk of a catastrophic spill and impairment of water quality, as well as management efforts (aside from those associated with the 2010 biological opinion with the Corps), were carried forward in our assessment of future conditions of Nashville crayfish populations.

We assessed viability under three scenarios—status quo, worst case, and conservation—projected over 20 to 25 years. We chose this timeframe as the ''foreseeable future'' for two reasons. First, the main threats influencing viability for the Nashville crayfish (the risk of a catastrophic spill and impairment of water quality) are all measurable within this timeframe. Also, the E.O. scores that underlie the resilience of the population segments were determined based on a 20–30 year future time horizon. Qualitative assessments of urban development for each population segment are based on the Slope, Land-use, Exclusion, Urban, Transportation and Hillshade (SLEUTH) model predictions (USFWS 2017b, p. 59). The next metric, element occurrence (E.O.), data were available through TDEC Natural Heritage Data shapefiles. These data represent survey detections for Nashville crayfish conducted since 1985, and each E.O. has an associated E.O. viability score. The E.O. scores provide a succinct assessment of the estimated viability or likelihood of persistence of the species; as such, the scores underlie the resilience of the population segments. These scores were determined based on a 20- to 30-year future time horizon based on Nature Serve criteria. Because occurrence ranks are used to represent the relative overall ''quality'' of an occurrence as it currently exists, they are based solely on criteria that reflect the present status of that occurrence (Hammerson et al. 2008, entire). Therefore, based on the species' lifespan and the uncertainty in the models, a 20- to 25-year time frame for ''foreseeable future'' is appropriate for determining whether threatened status is appropriate for this species.

The three scenarios are intended to capture the range of changes, likely to be observed in the Mill Creek watershed, to which the Nashville crayfish will be exposed. These scenarios considered the three elements described above: Water quality, catastrophic spill risk, and conservation effort. While we considered these scenarios to be plausible, we acknowledge that each scenario has a different probability of materializing at different times. To account for this difference in probability, a range of probabilities was used to describe the likelihood each scenario will occur. We assumed rates of increase in human population and, therefore, increase in impervious cover, to be similar across all three scenarios. The differences in the likelihood of the three scenarios represented our best assessment of: (1) The degree to which projected increases in human population and impervious cover will manifest in water quality degradation and increased spill risk; (2) how the Nashville crayfish will actually respond to these changes based on past observations; and (3) how likely conservation measures will be implemented within population segments in the Mill Creek watershed. For more information about how the scenarios were developed, please see the SSA (USFWS 2017b, pp. 60–61).

Under the status quo scenario in the SSA, we analyzed the factors that influence populations of Nashville crayfish (*e.g.,* human population growth, urban development, impervious cover, and catastrophic spills) would continue at current rates. Human population increases at currently predicted rates would lead to substantial increases in urban development and impervious cover in a

few high-intensity areas throughout the watershed (*e.g.,* MCW–B) (USFWS 2017b, p. 61). In this scenario, the risk of a contaminant spill increased in and around the high urban growth areas of development and resulted in some decreases in water quality. Impairment of stream reaches in the drainage was the result of low dissolved oxygen, siltation, removal of riparian vegetation, nutrient enrichment and high bacteria levels from stormwater discharges, sewage collection system failures, land development and unrestricted cattle access (TDEC 2014, entire). However, the species is currently thriving in very poor quality streams in downtown Nashville, it has shown since its listing that it is more resilient to the threat of development than previously thought and we would expect it to respond in the same manner to future development stressors. Therefore, under the status quo scenario, the Nashville crayfish's viability would remain high. There would be a small loss in population resiliency (Owl Creek drops from moderate to low; Upper Mill Creek System drops from high to moderate), but with no loss in redundancy. Representation would be impacted, in that the two populations predicted to lose resiliency were both in the same representative unit, but all representative units were predicted to retain the same number of populations.

Under the worst case scenario, the factors that influence populations of Nashville crayfish would continue at increased rates compared to the status quo scenario. Human population would increase at currently predicted rates, which would lead to substantial increases in urban development and impervious cover in the same high-intensity areas throughout the watershed as the status quo scenario. However, in this scenario, effects associated with increasing human populations and impervious cover (water quality degradation and catastrophic spill risk) would be much greater in magnitude compared to the status quo scenario. The risk of a contaminant spill increased significantly in the urban and suburban high-growth areas and resulted in substantial decreases in water quality in several population segments (*e.g.,* MCW–C).

We included this scenario because there is uncertainty as to the magnitude of effects on water quality, spill risk associated with a growing human population, and subsequent increases in impervious cover, as well as uncertainty concerning how fast the development will take place. However, even with this higher risk, our modeling predicted that there would only be a moderate loss in Nashville crayfish population resiliency (Mainstem, Sevenmile, Collins Creek, and Upper Mill Creek System drop from high to moderate; Owl Creek drops from moderate to low; possible extirpation of Sims Branch in the Lower Mill Creek Streams population segment), with no loss in redundancy. Also, all representative units were predicted to retain the same number of populations, although many at a lower resilience level. Therefore, under the worst case scenario, the Nashville crayfish's viability would sustain moderate losses in population resiliency (Mainstem, Sevenmile, Collins Creek, and Upper Mill Creek System drop from high to moderate; Owl Creek drops from moderate to low; possible extirpation of Sims Branch in the Lower Mill Creek Streams population segment), with no loss in redundancy. All representative units are predicted to retain the same number of populations, although many at a lower resilience level.

Under the conservation scenario, the factors that influence populations of Nashville crayfish would continue at current rates, but targeted conservation, such as the TSMP (see *Conservation Measures that Affect the* Species, above), would ameliorate some of the associated impacts of water quality degradation. Human population increases would continue at currently predicted rates, leading to increases in urban development and impervious cover in a few high-intensity areas throughout the watershed. In this scenario, the risk of a contaminant spill would increase in and around some of the urban growth areas, and increases in population and impervious cover would result in some decreases in water quality. However, this scenario assumes some targeted conservation actions would be implemented, including riparian protection and restoration; therefore, water quality degradation in some streams would be reduced (USFWS 2017b, p. 61–62). Because of the implementation of these conservation measures, our modeling predicted that there would be no losses in resiliency, redundancy, or representation for the Nashville crayfish. The Lower Mill Creek streams were predicted to increase their resiliency due to targeted conservation implemented by the City of Nashville, and minimization of spills by the nearby Nashville International airport. Upper Mill Creek Streams were predicted to increase their resiliency due, in part, to targeted conservation implemented by the TSMP. Therefore, under the conservation scenario, the Nashville crayfish's viability sustains no losses in resiliency, redundancy, or representation. In fact, the Lower Mill Creek Streams are predicted to increase their resiliency due to targeted conservation implemented by the City of Nashville, and minimization of spills by the nearby Nashville International airport. Upper Mill Creek Streams are predicted to increase their resiliency due, in part, to targeted conservation implemented by the Tennessee Stream Mitigation Program.

Recovery and Recovery Plan Implementation

The Nashville Crayfish Recovery Plan was issued by the Service on August 12, 1987, and revised on February 8, 1989. The recovery plan did not contain delisting criteria, as it was thought unlikely that the species would be sufficiently protected from all threats associated with the rapid development occurring in the Nashville area such that it could be delisted. Furthermore, no quantitative recovery level was defined due to the lack of data on historical population levels, population trends, and apparent historical population size. However, the recovery plan provided the following criteria that were to be met before reclassification to a threatened species could be considered (USFWS 1989, p. 4):

• *Criterion 1. Through protection of the existing Mill Creek basin population and by reintroduction of the species into some as yet unknown historic habitat or by discovery of an additional distinct population, there must exist two distinct viable populations.* This criterion has been partially met due to implementation of monitoring of water quality and, where needed, initiation of enforcement actions by State and local agencies to ensure the protection of the existing Mill Creek Basin population. However, we believe this criterion is not appropriate given the best available information concerning the historical range of the species. At the time of listing, the species was thought to exist in multiple locations outside the Mill Creek drainage, but subsequently those determinations were found to be in error (see Background, above). Current information indicates that the species is endemic to the Mill Creek drainage. Thus, we have determined that it is no longer appropriate to introduce or recover the species in locations outside of the Mill Creek drainage. Within the Mill Creek watershed, the species is present throughout the drainage; therefore, if some portion of the range was impacted by a catastrophic event, the impacted area could be repopulated. Therefore, we also have determined that

the intent of this criterion—to provide an additional refuge—is not necessary.

• *Criterion 2. A newly discovered or reintroduced population must (a) have been established or be self-sustaining for a minimum of 10 years without augmentation from an outside source, (b) represent a significant component of the crayfish fauna throughout most of that creek, and (c) be stable or increasing in numbers.* For the same reason as for Criterion 1, this criterion has not been met and is likely unachievable. No new populations of the species have been reintroduced. A population of the species has not been discovered outside of the Mill Creek drainage (USFWS 2017b, p. 14). As described above, we have determined that the establishment of a second population outside of the Mill Creek drainage is not appropriate. The Nashville crayfish has faced stressors from degraded water quality and potential catastrophic spills associated with increasing human populations and urbanization. However, the species has been found in large numbers at several locations that are already heavily developed. The Nashville crayfish population is stable or increasing throughout its range despite significant human population growth, consistent storm water drainage, and frequent spills. Furthermore, our analysis of possible future scenarios demonstrated that, even under a worst-case scenario, the species will remain viable in the Mill Creek watershed within the foreseeable future.

• *Criterion 3. The species and its habitat in the Mill Creek system and one other system are protected from human-related and natural threats that would be likely to cause the species' extinction in the foreseeable future.* This criterion has been partially met. Service biologists have worked with other agencies, groups, and individuals to protect the species and its habitat from human-related threats within the Mill Creek watershed. During project reviews for routine Corps' section 404 permits and TDEC aquatic resource alteration permits, recommended measures to protect the species are included as permit conditions. These permits will remain applicable upon the delisting of the species. Furthermore, we have authority under the FWCA to provide technical assistance to the Corps during permit reviews. We also routinely interact with Metro Water Services on stormwater best management practices and compliance activities for project developments in the watershed. This, too, will continue upon delisting. Finally, the Service is also actively involved with nongovernmental organizations to address potential habitat loss for the species. (USFWS 2017a, p. 16).

In summary, we consider the recovery plan to be outdated. We now know the species is endemic only to the Mill Creek watershed; therefore, establishing a population outside of the Mill Creek watershed is not appropriate, and we will not find additional populations outside of the watershed. The SSA highlights that Nashville crayfish exhibits a high degree of resistance to disturbance, indicating the species has a low susceptibility to threats and a high degree of stability. In fact, the Nashville crayfish is widely distributed, stable and increasing throughout most of its range. The species is also more resilient to poor water quality conditions that we understood at the time the recovery plan was developed.

Determination

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.'' We may determine that a species is an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (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 must consider these same five factors in reclassifying or delisting a species. In other words, for species that are already listed as endangered or threatened, the analysis for a delisting due to recovery must include an evaluation of the threats that existed at the time of listing, the threats currently facing the species, and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal of the Act's protections.

Status Throughout All of Its Range

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the Nashville crayfish is not in danger of extinction throughout all of its range. As discussed above, the Service has applied these listing factors to the Nashville crayfish. The Service finds that the present or threatened destruction, modification, or curtailment of its habitat (Factor A), which was the basis for listing the species when it was thought to have been extirpated from three of the four watersheds in which it historically occurred, is no longer a threat to the continued existence of the Nashville crayfish, and we do not expect it to be a threat in the future. The Nashville crayfish has faced and will face stressors from degraded water quality and potential catastrophic spills associated with increasing human populations and urbanization. However, the species has been found in large numbers at several locations that are already heavily developed. The Nashville crayfish population is stable or increasing throughout its range despite significant human population growth, consistent storm water drainage and frequent spills. Targeted conservation has ameliorated many threats associated with reductions in water quality, and under a best-case scenario will continue to do so, but even without these efforts, all population segments are predicted to at least persist within the foreseeable future.

Overutilization for commercial, sporting, scientific, or educational purposes is considered to be a potential threat to the Nashville crayfish (Factor B). Over the period from 2010 to 2015 we received reports that fish and aquatic invertebrates, including the Nashville crayfish, have been harvested from Mill Creek for food. We currently do not know the extent to which this is occurring; however, we conclude that harvesting presently is not a threat to the species because the species possesses multiple resilient populations across its range.

Disease and predation (Factor C) were not considered to be threats to the Nashville crayfish at the time of listing. We have no new information indicating that disease or predation has become a significant threat to the species.

The Nashville crayfish and its habitat have been and will continue to be protected under the CWA, Tennessee Water Quality Control Act, and the Tennessee Nongame and Endangered or Threatened Wildlife Species Conservation Act. These existing regulatory mechanisms (Factor D) are adequate to protect the Nashville crayfish now and in the future based on the crayfish populations continuing to

be stable throughout the Mill Creek watershed.

The Nashville crayfish has demonstrated the ability to adapt to changing environmental conditions over time (resiliency) from both anthropogenic and natural disturbances. Since the species was listed as an endangered species in 1986, it has demonstrated a high degree of viability even in stream segments that are impaired. Based on the biology of the species and the documented responses to the development in the Nashville metropolitan area since listing, we expect the species to respond the same way in the foreseeable future. In addition, although there is no genetic information available for the Nashville crayfish, there are no indications of a decreased fitness or that a lack of representation is adversely affecting species mortality or limiting its ability to adapt. Although the Nashville crayfish is an endemic species, residing only in the Mill Creek watershed, no immediate risk of extirpation has been identified. The fact that the species is found throughout Mill Creek watershed and persists even in stream segments of poor water quality indicates a large, well-represented population with demonstrated resiliency to threats.

Because the Nashville crayfish is considered self-sustaining, contains a relatively large number of individuals, and has demonstrated high resilience and viability, we expect this population to persist into the future. The species is considered abundant within its habitat, which consists of adequate area and quality to maintain survival and reproduction in spite of disturbances. It appears to have highly resilient population attributes (*e.g.,* ability to use storm water detention ponds). Nashville crayfish are represented across the entire watershed, and no extirpations have been recorded anywhere in the species' historical range; therefore, we conclude it has high redundancy across the historical and current range.

Even with continued risks from degraded water quality and catastrophic spills (Factor E), the best scientific and commercial information indicates that this species is viable and will remain viable in the foreseeable future. Therefore, this species is no longer in danger of extinction, nor is it likely to become in danger of extinction in the foreseeable future. Based on the analysis above and after considering the best available scientific and commercial information, we conclude that the Nashville crayfish does not currently meet the Act's definition of either an endangered or a threatened species throughout its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). Where the best available information allows the Services to determine a status for the species rangewide, that determination should be given conclusive weight because a rangewide determination of status more accurately reflects the species' degree of imperilment and better promotes the purposes of the Act. Under this reading, we should first consider whether the species warrants listing ''throughout all'' of its range and proceed to conduct a ''significant portion of its range'' analysis if, and only if, a species does not qualify for listing as either an endangered or a threatened species according to the ''throughout all'' language.

Having determined that the Nashville crayfish is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in an SPR. The range of a species can theoretically be divided into portions in an infinite number of ways, so we first screen the potential portions of the species' range to determine if there are any portions that warrant further consideration. To do the ''screening'' analysis, we ask whether there are portions of the species' range for which there is substantial information indicating that: (1) The portion may be significant; and, (2) the species may be, in that portion, either in danger of extinction or likely to become so in the foreseeable future. For a particular portion, if we cannot answer both questions in the affirmative, then that portion does not warrant further consideration and the species does not warrant listing because of its status in that portion of its range. We emphasize that answering these questions in the affirmative is not a determination that the species is in danger of extinction or likely to become so in the foreseeable future throughout a significant portion of its range—rather, it is a step in determining whether a more detailed analysis of the issue is required.

If we answer these questions in the affirmative, we then conduct a more thorough analysis to determine whether the portion does indeed meet both of the SPR prongs: (1) The portion is significant and (2) the species is, in that portion, either in danger of extinction or likely to become so in the foreseeable future. Confirmation that a portion does indeed meet one of these prongs does not create a presumption, prejudgment, or other determination as to whether the species is an endangered species or threatened species. Rather, we must then undertake a more detailed analysis of the other prong to make that determination. Only if the portion does indeed meet both SPR prongs would the species warrant listing because of its status in a significant portion of its range.

At both stages in this process—the stage of screening potential portions to identify any portions that warrant further consideration and the stage of undertaking the more detailed analysis of any portions that do warrant further consideration—it might be more efficient for us to address the ''significance'' question or the ''status'' question first. Our selection of which question to address first for a particular portion depends on the biology of the species, its range, and the threats it faces. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the second question for that portion of the species' range.

For Nashville crayfish we chose to evaluate the status question (*i.e.,* identifying portions where the Nashville crayfish may be in danger of extinction or likely to become so in the foreseeable future) first. To conduct this screening, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Human population growth, urban development, impervious cover, and catastrophic spills including cumulative effects. We found no concentration of threats in any portion of the Nashville crayfish range at a biologically meaningful scale.

If both (1) a species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range and (2) the threats to the species are essentially uniform throughout its range, then the species could not be in danger of extinction or likely to become so in the foreseeable future in any biologically meaningful portion of its range. For the Nashville crayfish, we found both: The species is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, and there is no geographical concentration of threats so the threats to the species are essentially uniform throughout its range. Therefore, no portions warrant further consideration through a more

detailed analysis, and the species is not in danger of extinction or likely to become so in the foreseeable future in any significant portion of its range. Our approach to analyzing SPR in this determination is consistent with the court's holding in *Desert Survivors* v. *Department of the Interior,* No. 16–cv–01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018).

Determination of Status

Our review of the best available scientific and commercial information indicates that the Nashville crayfish is not in danger of extinction nor likely to become endangered within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that the Nashville crayfish does not meet the Act's definition of an endangered species or of a threatened species, and we propose to remove the Nashville crayfish from the List of Endangered and Threatened Wildlife.

Effects of This Proposed Rule

This proposal, if made final, would revise 50 CFR 17.11(h) to remove the Nashville crayfish from the Federal List of Endangered and Threatened Wildlife. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Nashville crayfish. There is no critical habitat designated for this species.

Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us to monitor for not less than 5 years the status of all species that are delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as an endangered or a threatened species is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if relisting, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section 4(g) of the Act and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting.

Concurrent with this proposed delisting rule, we announce the draft plan's availability for public review at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062. Copies can also be obtained from the U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). We seek information, data, and comments from the public regarding this proposed delisting of the Nashville crayfish and the PDM plan. We are also seeking peer review of the draft PDM plan concurrently with this comment period. We anticipate finalizing the PDM plan, considering all public and peer review comments, prior to making a final determination on the proposed delisting rule.

Required Determinations

Clarity of the Proposed 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:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **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

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of 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, 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. There are no tribal interests associated with this proposed rule.

References Cited

A complete list of references cited is available on the internet at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2018–0062 and upon request from the Field Supervisor, Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this proposed rule are staff members of the Service's Southeastern Region Recovery Team and the Tennessee Ecological Services Field 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.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Crayfish, Nashville'' under CRUSTACEANS from the List of Endangered and Threatened Wildlife.

Dated: September 24, 2019.

Margret 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. 2019–25548 Filed 11–25–19; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 84, No. 228
Tuesday, November 26, 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

Submission for OMB Review; Comment Request

November 21, 2019.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by December 26, 2019 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Electronic Import Inspection.

OMB Control Number: 0583–0159.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et. seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et. seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031). These statues mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

Need and Use of the Information: FSIS requires foreign governments to submit additional information when submitting both the foreign establishment certificate and the foreign inspection certificate to FSIS in order for foreign establishments to be permitted to import product to the United States. The information that is required with the Foreign Establishment Certificate includes: The type of operation(s) conducted at the establishment (*e.g.,* slaughter, processing, storage, exporting warehouse); the establishment's eligibility status (*e.g.,* new or relisted (if previously delisted)); and, slaughter and processing establishment certifications that address the species and type of product(s) produced at the establishment and the process category. Additional information that is required with the Foreign Inspection Certificate includes: The species used to produce the product and the source country and foreign establishment number; whether the source materials originate from a country other than the exporting country; the product's description, including the process category, the product category, and the product group; the address of the consignor; the address of the consignee; the name and address of the exporter; the name and address of the importer; and, any additional information the Administrator requests to determine whether the product is eligible to be imported into the U.S. FSIS also requires official import inspection establishments to develop, implement, and maintain written Sanitation Standard Operating Procedures (SSOPs), as provided in 9 CFR 416.11 through 416.17. The Import Inspection Application (FSIS Form 9540–1) is available to applicants that do not file this information electronically. When FSIS inspected and passed product is exported and then returned to this country, the owner, broker, or agent of the product arranges for the product's entry and notifies FSIS. As part of this process, the applicant completes the FSIS Form 9010–1, Application for the Return of Exported Products to the United States. To conduct the information collection less frequently would inhibit the ability of FSIS to ensure that imported products are safe, wholesome and not adulterated.

Description of Respondents: Business or other for-profit.

Number of Respondents: 939.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 49,385.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2019–25611 Filed 11–25–19; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–45–2019]

Foreign-Trade Zone (FTZ) 38—Spartanburg County, South Carolina; Authorization of Production Activity; ZF Chassis Systems Duncan, LLC (Automotive Suspension Systems), Duncan, South Carolina

On July 23, 2019, ZF Chassis Systems Duncan, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 38, in Duncan, South Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 36886, July 30, 2019). On November 20, 2019, the applicant was notified of the FTZ Board's decision that no further review

of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: November 20, 2019.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2019–25652 Filed 11–25–19; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–890]

Emulsion Styrene-Butadiene Rubber From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that emulsion styrene-butadiene (ESB rubber) from the Republic of Korea (Korea) is being, or is likely to be, sold, at less than normal value in the United States during the period of review (POR) February 24, 2017 through August 31, 2018. We invite all interested parties to comment on these preliminary results.

DATES: Applicable November 26, 2019.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

Commerce is conducting an administrative review of the antidumping duty order on ESB rubber from Korea in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act).[1] On November 15, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering seven companies.[2] On December 3, 2018, Commerce selected LG Chem, Ltd. (LG Chem) as the mandatory respondent for this review.[3] Commerce exercised its discretion to toll all deadlines affected by the partial federal government closure from December 22, 2018, through the resumption of operations on January 28, 2019.[4] On June 20, 2019, Commerce postponed the preliminary results of this review. The revised deadline for the preliminary results is November 7, 2019.[5]

Scope of the *Order*

The product covered by this *Order* is ESB rubber from Korea. For a full description of the scope, *see* the Preliminary Decision Memorandum.[6]

Methodology

Commerce is conducting this review in accordance with 751 of the Act. Export price and constructed export price are calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of our methodology underlying the preliminary results, *see* the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Rates for Non-Examined Companies

As a result of this review, we calculated a preliminary weighted-average dumping margin for LG Chem. Accordingly, Commerce has preliminarily assigned to the companies not selected for individual examination the margin calculated for LG Chem.

Preliminary Results of Review

We preliminarily determine that the following weighted average dumping margins exist, for the period of February 24, 2017 through August 31, 2018:

Exporter/producer	Weighted-average dumping margin (percent)
LG Chem, Ltd	2.83
Daewoo International Corporation[7]	2.83
Kumho Petrochemical Co. Ltd	2.83
Sungsan International Co, Ltd	2.83
WE International Co., Ltd	2.83
Kukje Trading Corp	2.83
Hyundai Glovis Co., Ltd	2.83

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. If LG Chem's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review, we will calculate an importer-specific *ad valorem* antidumping duty assessment rate based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If LG Chem's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of

[1] *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part,* 82 FR 33045, July 19, 2017 (*Order*).

[2] *See Initiation of Antidumping or Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018) (*Initiation Notice*).

[3] *See* Memorandum, ''Administrative Review of Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Respondent Selection,'' dated December 3, 2018.

[4] *See* Memorandum to the Record from Gary Taverman, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties to the Assistant Secretary for Enforcement and Compliance, ''Deadlines Affected by the Partial Shutdown of the Federal Government,'' dated January 28, 2019. All deadlines in the segment of the proceeding have been extended by 40 days.

[5] *See* Memorandum, ''Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review, 2017–2018,'' dated June 20, 2019.

[6] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Emulsion Styrene-Butadiene Rubber from the Republic of Korea; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[7] We note that in the *Initiation Notice,* we spelled Daewoo International Corporation as ''Daewoo International Corporatin.'' However, the spelling should have been ''Daewoo International Corporation.'' *See* Lion Elastomers LLC's Letter, ''Antidumping Duty Order on Emulsion Styrene Butadiene Rubber From Korea (A–580–890): Request for First Administrative Review,'' dated September 28, 2018.

antidumping duties on entries of merchandise covered by this review where applicable.

In accordance with our practice, for entries of subject merchandise during the POR produced by LG Chem for which the company did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies under review will be the rate established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, or the original investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 9.66 percent, the all-others rate established in the investigation.[8] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed to interested parties in these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) whether any participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case briefs. If a request for a hearing is made, Commerce intends to hold the hearing at the U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, at a time and date to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and increase the subsequent assessment of the antidumping duties by the amount of the antidumping duties reimbursement.

Notification to Interested Parties

The preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(4).

Dated: November 6, 2019.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Companies Note Selected for Individual Examination
V. Comparisons to Normal Value
VI. Date of Sale
VII. U.S. Price
VIII. Normal Value
IX. Currency Conversion
X. Recommendation

[FR Doc. 2019–25654 Filed 11–25–19; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Order.*

[9] *See* 19 CFR 351.310(c).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XT029

Schedules for Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2020. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2020 and will be announced in a future notice.

DATES: The Atlantic Shark Identification Workshops will be held on January 9, February 6, and March 12, 2020. The

Safe Handling, Release, and Identification Workshops will be held on January 6, January 17, February 3, February 13, March 3, and March 17, 2020. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Kenner, LA; Norfolk, VA; and Fort Pierce, FL. The Safe Handling, Release, and Identification Workshops will be held in Portsmouth, NH; Largo, FL; Charleston, SC; Gulfport, MS; Manahawkin, NJ; and Houston, TX. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399.

SUPPLEMENTARY INFORMATION: The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark ID and Safe Handling, Release, and ID workshops are posted on the internet at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2017 will be expiring in 2020. Approximately 166 free Atlantic Shark Identification Workshops have been conducted since April 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit which first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, trucks or other conveyances that are extensions of a dealer's place of business must possess a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate.

Workshop Dates, Times, and Locations

1. January 9, 2020, 12 p.m.–4 p.m., La Quinta Inn, 2610 Williams Boulevard, Kenner, LA 70062.
2. February 6, 2020, 12 p.m.–4 p.m., La Quinta Inn, 1387 North Military Highway, Norfolk, VA 23502.
3. March 12, 2020, 12 p.m.–4 p.m., Hampton Inn, 1985 Reynolds Drive, Fort Pierce, FL 34945.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2017 will be expiring in 2020. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 334 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to certifying vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits that uses longline or gillnet gear.

Workshop Dates, Times, and Locations

1. January 6, 2019, 9 a.m.–5 p.m., Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801.

2. January 17, 2019, 9 a.m.–5 p.m., Holiday Inn, 210 Seminole Boulevard, Largo, FL 33770.

3. February 3, 2019, 9 a.m.–5 p.m., Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414.

4. February 13, 2019, 9 a.m.–5 p.m., Holiday Inn, 9515 U.S. Route 49, Gulfport, MS 39503.

5. March 3, 2019, 9 a.m.–5 p.m., Holiday Inn, 151 Route 72, Manahawkin, NJ 08050.

6. March 17, 2019, 9 a.m.–5 p.m., Holiday Inn Express, 9300 South Main Street, Houston, Texas 77025.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification.
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification.
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, and smalltooth sawfish, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

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

Dated: November 21, 2019.

Jennifer M. Wallace,

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

[FR Doc. 2019–25673 Filed 11–25–19; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR066]

Takes of Marine Mammals Incidental To Specified Activities; Taking Marine Mammals Incidental to Alaska Marine Lines Lutak Dock Project, Haines, Alaska

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Alaska Marine Lines, Inc. (AML) for authorization to take marine mammals incidental to Lutak Dock project in Haines, Alaska. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in *Request for Public Comments* at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than December 26, 2019.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITPMeadows@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments received electronically, including all attachments, must not exceed a 25-megabyte file size. Attachments to electronic comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Dwayne Meadows, Ph.D., 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 the 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 the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On 9 July 2019, NMFS received a request from AML for an IHA to take marine mammals incidental to Lutak Dock project in Haines, Alaska. The application was deemed adequate and complete on October 23, 2019. AML's request is for take of seven species of marine mammals by Level B harassment and/or Level A harassment. Neither AML nor NMFS expects serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

The project consists of the demolition, re-construction, and improvement of a commercial barge cargo dock in Lutak Inlet near Haines, Alaska adjacent to the Haines Ferry Terminal. The project includes the following in-water components: Removal (by vibratory pulling or cutting off at the mudline) of 12 steel pipe piles (16″ diameter) of two berthing dolphins associated with the existing steel cargo bridge; fill 4,000 yards of gravel and 1,000 yards of riprap to construct a causeway below the new dock; installing below mean high water (MHW) a 46-foot long by 15-foot wide steel float; installing below MHW (using vibratory or impact pile driving or down-the-hole (DTH) drilling) four 24-inch diameter steel pipe piles to construct two float strut dolphins, six 36-inch diameter steel pipe piles to construct two breasting dolphins; and construction of a 40-foot wide by 40-foot long, pile supported (three 30-inch diameter steel pipe piles), concrete abutment within the proposed causeway to support a 120-foot long by 24-foot wide steel bridge over navigable waters.

The pile driving or DTH drilling can result in take of marine mammals from sound in the water which results in behavioral harassment or auditory injury. The footprint of the project is approximately one square mile around the project site. The project will take no more than 8 days of pile-driving/pulling or DTH drilling.

Dates and Duration

The work for which take will be authorized will occur between June 15, 2020 and June 14, 2021. The duration of the pile driving would be from approximately mid- to late June through October 2020. Noise generating activities will not overlap with high densities of marine mammal prey that occur March 1 through May 31. The daily construction window for pile removal and driving would begin no sooner than 30 minutes after sunrise and would end 30 minutes prior to sunset to allow for marine mammal monitoring.

Specific Geographic Region

The project site is located at Lutak Dock near the mouth of Lutak Inlet, approximately 4 miles north of Haines in northern southeastern Alaska. The Chilkat, Chilkoot, Lutak, and Taiya inlets compose the northern part of Lynn Canal (see Figure 1–1 in application). The project area is situated on the shore of Lutak Inlet between the Chilkoot and Chilkat rivers. Lutak Inlet is a glacial scoured fjord with an estuary that is five miles long and one mile wide from Tanani Point and Taiya Point to its confluence with the Chilkoot River. The Inlet has depths generally less than 275 feet, with depths at the mouth of about 400 feet (Haines, 2007).

Several seasonally available prey species are abundant and densely aggregated within the project area. In Southeast Alaska, spawning of eulachon (*Thaleichtys pacificus*) (Marston *et al.,* 2002; Sigler *et al.,* 2004) and herring (*Clupea pallasii*) (Womble *et al.,* 2005) play an important role in the seasonal foraging ecology of sea lions in the area (Marston *et al.,* 2002; Sigler *et al.,* 2004; Womble *et al.,* 2005; Womble and Sigler, 2006). Eulachon are anadromous smelt that spawn primarily from March to May (Marston *et al.,* 2002; Womble, 2003).

The underwater acoustic environment in the project area is dominated by ambient noise from day-to-day ferry terminal, port, and vessel activities. Haines Borough operates two harbor facilities (Portage Cove and Letnikof Cove), a float moored at Swanson Harbor in Couverden, two docks (Lutak and Port Chilkoot), and three boat launch ramps (at Lutak Dock, Portage Cove and Letnikof Cove) (Haines Borough Comprehensive Plan (2012)). Lutak Dock is the second busiest port for the Alaska Marine Highway System. Delta Western (tug and barge business) also operates out of this area.

Detailed Description of Specific Activity

An existing steel cargo bridge with steel floats and associated berthing dolphins currently used for cargo barge operations would be removed. The structure is currently supported by twelve 16-inch diameter steel piles. These 12 piles would be removed utilizing a crane-mounted vibratory hammer located on a barge or on land. If piles cannot be removed using vibratory methods, they would be cut at the mudline using an underwater shielded metal-arc cutter or left in place. Removal of the existing piles is expected to take one day.

To facilitate the project, a causeway will be constructed below the new dock using approximately 4,000 yards of gravel and 1,000 yards of riprap fill, and a 46-foot long by 15-foot wide steel float will be installed below MHW. Neither of these project components are expected to impact marine mammals, their habitat, or their subsistence use, so these components will not be considered further.

To support the new 120 foot by 24 foot long steel bridge and associated dolphins, four 24-inch diameter and six 36-inch diameter steel pipes would be driven into the marine sand and gravel at the project location. Three additional 30-inch diameter steel pipes would be installed to support a concrete abutment (see Figure 1–2 of application). The pipe piles would be installed to a depth of 40 feet or more below the surface using a crane-mounted vibratory and/or impact hammer located on a barge. It may take up to about 60 minutes per pile of vibratory driving to set each pile. If impact hammering is used, about 700 strikes would be needed to drive each of the piles to a sufficient depth which may require about 15 minutes of hammering. It is estimated that about 3 hours (maximum) would be required to drive each pile and they would be proofed the same day.

Bedrock may be encountered before the full required pile depth is achieved. Where bedrock is present, piles would be installed using both vibratory and DTH drilling. Initially a vibratory hammer would be used to drive the sediment until bedrock is reached (~60 minutes). A DTH hammer (*e.g.,* Numa) would be used to drill and socket the pile into bedrock. This could take up to an additional 180 minutes.

In summary, vibratory and impact driving would take up to three hours for each pile. Multiple piles would not be concurrently driven. Under the best-case scenario, using solely vibratory and impact driving, five piles would be set in a day. If DTH drilling is needed, it would be used the same day following vibratory driving, with the worst case scenario being only two piles could be set and drilled in one day. Therefore, the duration of drilling activity for the 13 piles could be as short as three days or as long as seven days. Thus in the worst case, the entire project would take a total of eight days of pile driving/drilling.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see *Proposed Mitigation* and *Proposed Monitoring and Reporting*).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in Haines, Alaska and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2016). PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Alaska SARs (*e.g.,* Muto *et al.* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2019 SARs (Muto *et al.,* 2019).

TABLE 1—MARINE MAMMALS POTENTIALLY PRESENT IN THE VICINITY OF THE STUDY AREAS

Common name	Scientific name	Stock	ESA/MMPA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	PBR	Annual M/SI [3]
Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)						
Family Physeteridae:						
Sperm whale	*Physeter macrocephalus*	North Pacific	–; N	N/A (see SAR, N/A, 2015), see text.	See SAR	4.4
Family Balaenopteridae (rorquals):						
Humpback Whale	*Megaptera novaeangliae*	Central North Pacific	–; N (Hawaii DPS)	10,103 (0.3, 7,890, 2006)	83	25
		Central North Pacific	T,D,Y (Mexico DPS)	3264	N/A	N/A
Minke whale [4]	*Balaenoptera acutorostrata*	Alaska	–; N	N/A, see text	N/A	0
Superfamily Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Killer whale [5]	*Orcinus orca*	Alaska Resident		2347	24	1
		Northern Resident	–; Y.	261	1.96	0
		West Coast transient		243	2.4	0
Family Phocoenidae (porpoises):						
Dall's porpoise [4]	*Phocoenoides dalli*	Alaska	–; N	83,400 (0.097, N/A, 1991)	N/A	38
Harbor porpoise	*Phocoena phocoena*	Southeast Alaska	–; Y	975 (2012)	8.9	34
Order Carnivora—Superfamily Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California sea lion	*Zalophus californianus*	U.S	–; N	257,606 (N/A,233,515, 2014).	14,011	>320
Steller sea lion	*Eumetopias jubatus*	Eastern U.S	–; N	41,638 (n/a; 41,638; 2015)	2,498	108
Steller sea lion	*Eumetopias jubatus*	Western U.S	E,D,Y	54,268 (see SAR, 54,267, 2017).	326	247
Family Phocidae (earless seals):						
Harbor seal	*Phoca vitulina richardii*	Lynn Canal/Stephens Passage.	–; N	9,478 (see SAR, 8,605, 2011).	155	50

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (–) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; Nmin is the minimum estimate of stock abundance. In some cases, CV is not applicable

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[4] The most recent abundance estimate is >8 years old, there is no official current estimate of abundance available for this stock.

[5] NMFS has preliminary genetic information on killer whales in Alaska which indicates that the current stock structure of killer whales in Alaska needs to be reassessed. NMFS is evaluating the new genetic information. A complete revision of the killer whale stock assessments will be postponed until the stock structure evaluation is completed and any new stocks are identified'' (Muto, Helker et al. 2018). For the purposes of this IHA application, the existing stocks are used to estimate potential takes.

All species that could potentially occur in the proposed survey areas are included in Table 1. As described below, all seven species (with ten managed stocks) temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have proposed authorizing it.

In addition, the northern sea otter may be found in the project vicinity. However, that species is managed by the U.S. Fish and Wildlife Service and is not considered further in this document.

Sperm Whale

Sperm whales (*Physeter macrocephalus*) are considered extralimital in the project area. However, on March 20, 2019, a dead sperm whale was found washed up in Lynn Canal. Based on NOAA's Whale alert system (NOAA 2019), the Alaska State Ferry reported seeing four sperm whales in December 2018 off False Point Retreat, and two near Point Howard in lower Lynn Canal early in March 2019. Despite these recent sightings, sperm whales are very rare in the area. Due to the low probability of these species occurring in the project area, exposure of these cetaceans to project impacts is considered unlikely and take is not requested for these species and they are not considered further.

Humpback Whale

Humpback whales (*Megaptera novaeangliae*) in the North Pacific migrate from low-latitude breeding and calving grounds to form geographically distinct aggregations on higher-latitude feeding grounds. They occur in Chilkoot Inlet and have been observed infrequently near the mouth of Lutak Inlet during the spring eulachon and herring runs; they generally vacate the area by July to feed on aggregations of herring in lower Lynn Canal. In recent years, however, a few whales have been observed at the entrance to Taiya Inlet throughout the fall months (NMFS 2019) and at the mouth of Lutak Inlet (K. Hastings, (Alaska Department of Fish and Game (ADF&G), personal communication). Hastings observed from one to three humpback whales at Gran Point in May of 2015 and 2018. Individuals have been observed in the same area intermittently throughout the summer months, but most whales move further south and are absent from the Action Area during summer.

In 2016 NMFS revised the ESA listing of humpback whales (81 FR 62259; September 8, 2016). NMFS is in the process of reviewing humpback whale stock structure and abundance under the MMPA in light of the ESA revisions. The MMPA stock in Alaska is considered to be the Central North Pacific stock. Humpbacks from two of the 14 newly identified Distinct Population Segments (DPSs) occur in the project area: The Mexico DPS, which is a threatened species; and the Hawaii DPS, which is not protected under the ESA. NMFS considers humpback whales in Southeast Alaska to be 94 percent comprised of the Hawaii DPS and 6 percent of the Mexico DPS (Wade *et al.,* 2016). While the range of the Mexico DPS extends up to Southeast Alaska, this DPS has never been reported as far north as Sitka. The likelihood that an individual from the Mexico DPS is part of the relatively few humpback whales that move to extreme northern Lynn Canal in July is extremely low; nevertheless, we use the 6 percent estimate to be conservative in this analysis.

On October 9, 2019, NMFS published a proposed rule to designate critical habitat for the humpback whale (84 FR 54354). Areas proposed as critical habitat include specific marine areas off the coasts of California, Oregon, Washington and Alaska, including near the project area. AML expects to complete this project before the critical habitat designation is effective, therefore we do not consider it further in this analysis.

Estimates of humpback whale abundance for the Mexico DPS are from the ESA listing process. Local abundances were calculated from data provided by K. Hastings (ADF&G), who reported humpback whales at Gran Point in 2015 and 2018.

Minke Whale

There are three stocks of minke whales (*Balaenopera acutorostrata*) recognized in U.S. waters of the Pacific Ocean; only members of the Alaska stock could potentially occur within the project area. This stock has seasonal movements associated with feeding areas that are generally located at the edge of the pack ice (Muto et al., 2019). Minke whales are considered to be rare in northern parts of Lynn Canal (Dahlheim *et al.,* 2009). However, minke whales forage on schooling fish and may rarely enter the project area in Upper Lynn Canal. In 2015, one minke whale was sighted in Taiya Inlet, northeast of the Project Area (K. Gross, personal communication, as cited in 84 FR 4777).

No comprehensive estimates of abundance have been made for the Alaska stock or near the project area, but a 2010 survey conducted on the eastern Bering Sea shelf produced a provisional abundance estimate of 2,020 whales (Friday *et al.,* 2013).

Killer Whale

NMFS recognizes eight killer whale (*Orcinus orca*) stocks throughout the Pacific Ocean. However, only three of these stocks can be found in Southeast Alaska: (1) The Alaska Resident stock ranges from southeastern Alaska to the Aleutian Islands and Bering Sea; (2) the Northern Resident stock occurs from Washington State through part of southeastern Alaska; and (3) the West Coast Transient stock ranges from California through southeastern Alaska (Muto *et al.,* 2019). Resident and transient killer whales are sporadically and seasonally attracted to Lutak Inlet during the spring to feed on the large aggregations of fishes and pinnipeds.

Killer whale abundance estimates are determined by a direct count of individually identifiable animals. While killer whales occurring in Lynn Canal can belong to one of three stocks, photoidentification studies since 1970 have catalogued most individuals observed in this area as belonging to the Northern Resident stock. The occurrence of transient killer whales in Upper Lynn Canal increases in summer, with lower numbers observed in spring and fall.

Dall's Porpoise

Dall's porpoise (*Phocoenoides dalli*) are widely distributed throughout the region and have been observed in Lynn Canal (Dahlheim *et al.,* 2009). They were observed more frequently in the spring, tapering off in summer and fall. The Alaska stock is the only Dall's porpoise stock found in Alaska waters.

Harbor Porpoise

Harbor porpoise (*Phocoena phocoena*) are common in coastal waters of Alaska. There are three harbor porpoise stocks in Alaska, but only the Southeast Alaska stock occurs in the project area (Muto *et al.,* 2019). Individuals from the Southeast Alaska stock of harbor porpoise are infrequently observed in Upper Lynn Canal, though they have been observed as far north as Haines during the summer months (Dahlheim *et al.,* 2015).

California Sea Lion

Several California sea lions (*Zalophus californianus*) were observed at Gran Point in May 2005 (K. Hastings, ADF&G); however they have not been observed since that date and will not be considered further in this analysis.

Steller Sea Lion

Steller sea lions (*Eumetopias jubatus*) range along the North Pacific Rim from northern Japan to California, with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands. Large numbers of individuals widely disperse when not breeding (late May to early July) to access seasonally important prey resources (Muto *et al.,* 2019). In 1997 NMFS identified two DPSs of Steller sea lions under the ESA: A Western DPS and an Eastern DPS (62 FR 24345, May 5, 1997). The Eastern DPS is not ESA-listed, the Western DPS is. For MMPA purposes the Eastern DPS is called the Eastern U.S. stock and the Western DPS is called the Western U.S. stock. For simplicity we will refer to them by their DPS name in this analysis. Most of the Steller sea lions in southeastern Alaska have been determined to be part of the Eastern DPS, however, in recent years there has been an increasing trend of the Western DPS animals occurring and breeding in southeastern Alaska (Muto *et al.,* 2019).

Steller sea lions have been observed in the project vicinity throughout the year in Chilkoot Inlet; they seasonally occupy Lutak Inlet. They follow spring foraging runs of eulachon into Lutak Inlet up to the mouth of the Chilkoot River, then move farther south to forage on herring in late-summer and fall. Salmon increase in importance as prey for sea lions from late-October and December in the Chilkat River. The closest haulout to the project area is Gran Point, about 14 miles southeast. During the spring eulachon run, a temporary seasonal haulout site is also located on Taiya Point at the southern tip of Taiya Inlet (approximately 3.1 miles from the project site).

Branded individuals from the Western DPS have been observed at the Gran Point haulout. Three individual Western DPS sea lions were observed repeatedly at Gran Point from 2003 through 2012 (NMFS, 2013). The most recent assessment of branded or marked Western DPS sea lions at the Gran Point haul out was provided by Hastings (ADF&G, personal communication) and Jemison *et al.* (2018). The percentage of Western DPS animals in the recent time period was 1.7 percent; for the rest of this analysis we conservatively assume that 2 percent of the Steller sea lions in the project area are from the Western DPS.

Data from almost two decades of surveys and research on distribution, abundance and seasonal foraging behavior of Steller sea lions from the Gran Point haul out are used in to estimate take. These data, with sightings through 2018, have been provided through personal communication to the applicants with key marine mammal researchers in the region (K. Hastings ADF&G; Tom Gelatt, NMFS Alaska Fisheries Science Center). The average monthly densities for Steller sea lions at Gran Point were estimated using this database as a proxy for the monthly abundance of sea lions within the project area.

Harbor Seal

Harbor seals (*Phoca vitulina*) inhabit coastal and estuarine waters off Alaska. They haul out on rocks, reefs, beaches, and drifting glacial ice. They are opportunistic feeders and often adjust their distribution to take advantage of locally and seasonally abundant prey (Womble *et al.,* 2009, Allen and Angliss, 2015). Harbor seals occurring in the project area belong to the Lynn Canal/Stephens Passage (LC/SP) stock. Harbor seals are common in Lutak Inlet and in Chilkat Inlet where there is a small haulout at Pyramid Island. They are abundant in the Chilkat and Chilkoot rivers in late fall and winter during spawning runs of salmon (*Onchorhynchus spp.*) and in the spring (mid-March through mid-May) when eulachon (*Thaleichtys pacificus*) are present. As many as about 100 individuals have been observed actively feeding in Lutak Inlet near the mouth of the Chilkoot River, and at up-river locations during these fish runs (K. Hastings ADF&G, 2016 and J. Womble, 2016 personal communication).

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.

TABLE 2—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)—Continued

Hearing group	Generalized hearing range *
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.*, all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall et al. 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Seven marine mammal species (five cetacean and two pinniped (one otariid and one phocid) species have the reasonable potential to co-occur with the proposed survey activities (see Table 1). Of the cetacean species that may be present, two are classified as low-frequency cetaceans (*i.e.,* all mysticete species), one is classified as a mid-frequency cetacean (*i.e.,* all delphinid and ziphiid species and the sperm whale), and two are classified as high-frequency cetaceans (*i.e.,* harbor porpoise, Dall's porpoise and *Kogia* spp.).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The *Estimated Take by Incidental Harassment* section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The *Negligible Impact Analysis and Determination* section considers the content of this section, the *Estimated Take by Incidental Harassment* section, and the *Proposed Mitigation* section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far (ANSI 1994, 1995). The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10–20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include impact pile driving, vibratory pile driving and removal, and DTH drilling. The sounds produced by these activities fall into one of two general sound types: Impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (ANSI, 1986; NIOSH, 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI 1995; NIOSH 1998; NMFS 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward 1997 in Southall *et al.,* 2007).

Two types of pile hammers would be used on this project: Impact and vibratory. Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. Vibratory hammers produce significantly less sound than impact hammers. Peak Sound pressure Levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

DTH drilling would be conducted using a down-the-hole drill inserted through the hollow steel piles. A down-the-hole drill is a drill bit that drills through the bedrock using a pulse mechanism that functions at the bottom of the hole. This pulsing bit breaks up rock to allow removal of debris and insertion of the pile. The head extends so that the drilling takes place below the pile. The pulsing sounds produced by the down-the-hole drilling method are continuous, however this method likely increases sound attenuation because the noise is primarily contained within the steel pile and below ground as opposed to impact hammer driving methods which occur at the top of the pile.

The likely or possible impacts of AML's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors.

Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to primarily be acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal and drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving and removal and DTH drilling is the primary means by which marine mammals may be harassed from AML's specified activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). *G*enerally, exposure to pile driving and drilling noise has the potential to result in auditory threshold shifts and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses such an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving and drilling noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced threshold shift (TS) as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of threshold shift is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing and vocalization frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS 2018). Available data from humans and other terrestrial mammals indicate that a 40 dB threshold shift approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson and Hu, 2008). PTS levels for marine mammals are estimates, with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals, largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—A temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (see Southall *et al.,* 2007), a TTS of 6 dB is considered the minimum threshold shift clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2016), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin (*Tursiops truncatus*), beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocoena asiaeorientalis*)) and five species of pinnipeds exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (Finneran, 2015). TTS was not observed in trained spotted (*Phoca largha*) and ringed (*Pusa hispida*) seals exposed to impulsive noise at levels matching previous predictions of TTS onset (Reichmuth *et al.,* 2016). In general, harbor seals and harbor porpoises have a lower TTS onset than other measured pinniped or cetacean species (Finneran, 2015). The potential for TTS from impact pile driving exists. After exposure to playbacks of impact pile driving sounds (rate 2760 strikes/hour) in captivity, mean TTS increased from 0 dB after 15 minute exposure to 5 dB after 360 minute exposure; recovery occurred within 60 minutes (Kastelein *et al.,* 2016). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. No data are available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Southall *et al.* (2007), Finneran and Jenkins (2012), Finneran (2015), and Table 5 in NMFS (2018).

Installing piles requires a combination of impact pile driving, vibratory pile driving, and DTH drilling. For the project, these activities would not occur at the same time and there would likely be pauses in activities producing the sound during each day. Given these pauses and that many marine mammals are likely moving through the action

area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal and drilling also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; NRC, 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); avoidance of areas where sound sources are located. Pinnipeds may increase their haul-out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see Appendices B and C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

In 2016, the Alaska Department of Transportation and Public Facilities (ADOT&PF) documented observations of marine mammals during construction activities (*i.e.,* pile driving and down-hole drilling) at the Kodiak Ferry Dock (see 80 FR 60636, October 7, 2015). In the marine mammal monitoring report for that project (ABR 2016), 1,281 Steller sea lions were observed within the Level B disturbance zone during pile driving or drilling (*i.e.,* documented as Level B harassment take). Of these, 19 individuals demonstrated an alert behavior, 7 were fleeing, and 19 swam away from the project site. All other animals (98 percent) were engaged in activities such as milling, foraging, or fighting and did not change their behavior. In addition, two sea lions approached within 20 meters of active vibratory pile driving activities. Three harbor seals were observed within the disturbance zone during pile driving activities; none of them displayed disturbance behaviors. Fifteen killer whales and three harbor porpoise were also observed within the Level B harassment zone during pile driving. The killer whales were travelling or milling while all harbor porpoises were travelling. No signs of disturbance were noted for either of these species. Given the similarities in activities and habitat and the fact the same species are involved, we expect similar behavioral responses of marine mammals to AML's specified activity. That is, disturbance, if any, is likely to be temporary and localized (*e.g.,* small area movements). Monitoring reports from other recent pile driving and DTH drilling projects in Alaska have observed similar behaviors (for example, the Biorka Island Dock Replacement Project).

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Lutak Dock and the Haines area contains active commercial shipping and ferry operations as well as numerous recreational and commercial vessels; therefore, background sound levels in the area are already elevated.

Airborne Acoustic Effects—Pinnipeds that occur near the project site could be exposed to airborne sounds associated with pile driving and removal and DTH drilling that have the potential to cause behavioral harassment, depending on their distance from pile driving activities. Cetaceans are not expected to be exposed to airborne sounds that would result in harassment as defined under the MMPA.

Airborne noise would primarily be an issue for pinnipeds that are swimming or hauled out near the project site within the range of noise levels elevated above the acoustic criteria. We recognize that pinnipeds in the water could be exposed to airborne sound that may result in behavioral harassment when looking with their heads above

water. Most likely, airborne sound would cause behavioral responses similar to those discussed above in relation to underwater sound. For instance, anthropogenic sound could cause hauled-out pinnipeds to exhibit changes in their normal behavior, such as reduction in vocalizations, or cause them to temporarily abandon the area and move further from the source. However, these animals would previously have been 'taken' because of exposure to underwater sound above the behavioral harassment thresholds, which are in all cases larger than those associated with airborne sound. Thus, the behavioral harassment of these animals is already accounted for in these estimates of potential take. Therefore, we do not believe that authorization of incidental take resulting from airborne sound for pinnipeds is warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

AML's construction activities at Lutak Dock could have localized, temporary impacts on marine mammal habitat and their prey by increasing in-water sound pressure levels and slightly decreasing water quality. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During impact pile driving, elevated levels of underwater noise would ensonify Lutak Inlet where both fish and mammals occur and could affect foraging success.

Construction activities are of short duration and would likely have temporary impacts on marine mammal habitat through increases in underwater and airborne sound. These sounds would not be detectable at Gran Point.

In-water pile driving, pile removal, and drilling activities would also cause short-term effects on water quality due to increased turbidity. Local strong currents are anticipated to disburse suspended sediments produced by project activities at moderate to rapid rates depending on tidal stage. AML would employ standard construction best management practices (BMPs; see section 11 in application), thereby reducing any impacts. Therefore, the impact from increased turbidity levels is expected to be discountable.

In-Water Construction Effects on Potential Foraging Habitat

The area likely impacted by the project is relatively small compared to the available habitat in Lynn Canal (*e.g.,* most of the impacted area is limited to the Lutak Dock area) and does not include any BIAs or ESA-designated critical habitat. Pile installation/removal and drilling may temporarily increase turbidity resulting from suspended sediments. Any increases would be temporary, localized, and minimal. AML must comply with state water quality standards during these operations by limiting the extent of turbidity to the immediate project area. In general, turbidity associated with pile installation is localized to about a 25-foot radius around the pile (Everitt *et al.,* 1980). Cetaceans are not expected to be close enough to the project pile driving areas to experience effects of turbidity, and any pinnipeds would be transiting the area and could avoid localized areas of turbidity. Therefore, the impact from increased turbidity levels is expected to be discountable to marine mammals. Furthermore, pile driving and removal at the project site would not obstruct movements or migration of marine mammals.

Avoidance by potential prey (*i.e.,* fish) of the immediate area due to the temporary loss of this foraging habitat is also possible. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity in Lynn Canal and the project would occur outside the peak eulachon and salmonid runs.

The duration of the construction activities is relatively short. The construction window is for a maximum of 4–5 months with only a maximum of 8 days of pile drilling/removal. During each day, construction activities would only occur during daylight hours. Impacts to habitat and prey are expected to be minimal based on the short duration of activities.

In-water Construction Effects on Potential Prey (Fish)—Construction activities would produce continuous (*i.e.,* vibratory pile driving and DTH drilling) and pulsed (*i.e.* impact driving) sounds. Fish react to sounds that are especially strong and/or intermittent low-frequency sounds. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Sound pulses at received levels of 160 dB may cause subtle changes in fish behavior. SPLs of 180 dB may cause noticeable changes in behavior (Pearson *et al.,* 1992; Skalski *et al.,* 1992). SPLs of sufficient strength have been known to cause injury to fish and fish mortality.

The most likely impact to fish from pile driving and drilling activities at the project area would be temporary behavioral avoidance of the area. The duration of fish avoidance of this area after pile driving stops is unknown, but a rapid return to normal recruitment, distribution and behavior is anticipated. In general, impacts to marine mammal prey species are expected to be minor and temporary due to the short timeframe for the project.

Construction activities, in the form of increased turbidity, have the potential to adversely affect forage fish and juvenile salmonid outmigratory routes in the project area. Both herring and salmon form a significant prey base for Steller sea lions, herring is a primary prey species of humpback whales, and both herring and salmon are components of the diet of many other marine mammal species that occur in the project area. Increased turbidity is expected to occur in the immediate vicinity (on the order of 10 feet or less) of construction activities. However, suspended sediments and particulates are expected to dissipate quickly within a single tidal cycle. Given the limited area affected and high tidal dilution rates any effects on forage fish and salmon are expected to be minor or negligible. In addition, best management practices would be in effect, which would limit the extent of turbidity to the immediate project area. Finally, exposure to turbid waters from construction activities is not expected to be different from the current exposure; fish and marine mammals in the Lynn Canal region are routinely exposed to substantial levels of suspended sediment from glacial sources.

In summary, given the short daily duration of sound associated with individual pile driving and drilling events and the relatively small areas being affected, pile driving and drilling activities associated with the proposed action are not likely to have a permanent, adverse effect on any fish habitat, or populations of fish species. Thus, we conclude that impacts of the specified activity are not likely to have more than short-term adverse effects on any prey habitat or populations of prey species. Further, any impacts to marine mammal habitat are not expected to result in significant or long-term consequences for individual marine

mammals, or to contribute to adverse impacts on their populations.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* vibratory or impact pile driving or DTH drilling) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for mysticetes, high frequency species and pinnipeds because predicted auditory injury zones are larger than for mid-frequency species. Auditory injury is unlikely to occur for mid-frequency species. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for non-explosive sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 microPascal (μPa) (root mean square (rms)) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* impact pile driving) or intermittent (*e.g.,* scientific sonar) sources.

AML's proposed activity includes the use of continuous (vibratory pile-driving, drilling) and impulsive (impact pile-driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) thresholds are applicable.

Level A harassment for non-explosive sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). AML's activity includes the use of impulsive (impact pile-driving) sources.

These thresholds are provided in Table 3. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset 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.

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT—Continued

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.*, varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

Even though multiple pile sizes will be used, to be conservative for calculation of take, we assumed all piles would be the largest size pile (36 inch). It is also likely that impact and vibratory pile driving will occur on the same day, so we calculate Level B take assuming the larger vibratory disturbance isopleths for every day of activity. For vibratory pile driving we assumed a source level of 175 dB (RMS SPL) based on Caltrans (2015) with a maximum of 5 piles per day and 60 minutes per pile. For DTH drilling we used a source level of 171 dB (RMS SPL); this is derived from Denes *et al.* (2016), where we used the more conservative 90 percent median value. We assumed no more than 2 piles per day with DTH drilling as the duration per pile was assumed to be 3 hours. For impact pile driving activities we used source levels of 210 dB (PK SPL) or 183 dB (single strike SEL) based on Caltrans (2015). We assumed no more than 5 piles per day and 700 strikes per pile. In all cases we used a propagation loss coefficient of 15 logR as most appropriate for these stationary, in-shore sources. Because DTH would only be used in combination with vibratory pile driving, we also used a combined scenario that assumed four hours of vibratory pile driving plus six hours of DTH drilling in a single day. For this scenario the source level was calculated as a log average of the sources.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources, such as pile driving and drilling in this project, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

NMFS User spreadsheet input scenarios for vibratory pile driving, impact pile driving, and the combined DTH drilling and vibratory pile driving scenario discussed above are shown in Table 4. These input scenarios lead to PTS isopleth distances (Level A thresholds) of anywhere from 7 to 2742 meters, depending on the marine mammal group and scenario (Table 5). Table 5 also shows the daily ensonified areas (Level A harassment zones) to the PTS threshold distances for each scenario and marine mammal group; these vary from just a few square meters to 8.736 km².

TABLE 4—NMFS USER SPREADSHEET INPUTS

User spreadsheet input			
	Vibratory pile driving	Impact pile driving	DTH/vibratory pile driving
Spreadsheet Tab Used	A.1) Vibratory pile driving	E.1) Impact pile driving	A.1) Vibratory pile driving.
Source Level (RMS SPL or single strike SEL)	175	183	173.
Weighting Factor Adjustment (kHz)	2.5	2	2.5.
(a) Number of strikes per pile	N/A	700	N/A.
(a) Activity Duration (h) within 24-h period	60	N/A	10.
Propagation (xLogR)	15	15	15.
Distance of source level measurement (meters)	10	10	10.
Number of piles per day	5	5	2.

TABLE 5—NMFS USER SPREADSHEET OUTPUTS: PTS ISOPLETHS AND DAILY ENSONIFIED AREA

User spreadsheet output					
Source type	PTS isopleth (meters)				
	Low-frequency cetaceans	Mid-frequency cetaceans	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds
Vibratory pile driving	171	15	253	104	7
Impact pile driving	2302	82	2742	1232	90
DTH/vibratory pile driving	200	18	296	122	9
	Daily ensonified area (km²)				
Vibratory pile driving	0.056	0.001	0.113	0.025	0
Impact pile driving	6.899	0.017	8.736	2.369	0.02
DTH/vibratory pile driving	0.074	0.001	0.151	0.032	0

The distances to the Level B threshold of 120 dB RMS are 28.8 miles for vibratory pile driving and 1.1 miles for impact driving. The enclosed nature of Lutak Inlet restricts the propagation of noise in all directions before noise levels reduce below the Level B threshold for continuous source types (*i.e.,* vibratory pile driving, DTH). Therefore, the area ensonified to the Level B threshold is truncated by land in all directions. Measurements of the ensonified areas show that 5.179 km² are ensonified to the Level B threshold for impact pile driving and 22.164 km² are ensonified to the Level B threshold for vibratory pile driving. Note that thresholds for behavioral disturbance are unweighted with respect to marine mammal hearing and therefore the thresholds apply to all species.

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. The density of the seven marine mammal species for which take will be proposed is calculated by month in the project area (see Table 6–4 in the application) for months when project activity is planned to occur (June through October). Density was estimated using available survey data, literature, sightings from protected Species observers (PSOs) from other projects, personal communication from researchers, state and federal biologists, average group size (*i.e.,* killer whales, Dall's porpoise) and the data underlying the IHA issued by NMFS for the ADOT&PF Haines Ferry Terminal Project (NMFS, 2018b). Density estimates were calculated by dividing the estimated monthly abundance for each species by the area of marine mammal habitat near the project, which is approximately 91.3 km and extends from Lutak Inlet/Chilkat River south down Lynn Canal to the Gran Point haulout. In order to be conservative, even though pile driving could occur at any period from June through October, for purposes of requesting takes, we used the highest monthly density for each species to calculate take. For killer whales and Dall's porpoises we calculated density by assuming a minimum group size of 5 and 10 animals, respectively, might enter the ensonified area, rather than their lower density value, because of the social nature of these species. Thus the species densities used in our take calculations are shown in Table 6.

TABLE 6—SPECIES DENSITY VALUES USED TO CALCULATE TAKE

Species	Density (#/km²)
Humpback Whale	0.055
Minke Whale	0.022
Killer Whale	0.055

TABLE 6—SPECIES DENSITY VALUES USED TO CALCULATE TAKE—Continued

Species	Density (#/km²)
Harbor Porpoise	0.055
Dall's Porpoise	0.11
Harbor Seal	1.095
Steller Sea Lion	7.382

Take Calculation and Estimation

Here we describe how the information provided above is brought together to produce a quantitative take estimate. We estimated Level A take for the project by multiplying the maximum monthly species density from Table 6 by the daily ensonified area for PTS for Level A from Table 5 above and then multiplying by the maximum possible number of work days (8) and finally rounding to the next whole number (Table 7). We similarly estimated Level B take for the project by multiplying the maximum monthly species density from Table 6 by the ensonified area for Level B (22.164 km²) and then multiplying by the maximum possible number of work days (8) and finally rounding to the next whole number. Estimated Level A takes from Table 7 were then subtracted from the preliminary Level B takes to get the total number of unique Level B takes that do not double-count the Level A takes (Table 7).

TABLE 7—PROPOSED AUTHORIZED LEVEL A AND B TAKE AND PERCENT OF MMPA STOCK PROPOSED TO BE TAKEN

Species	Proposed authorized take		Percent of stock
	Level B	Level A	
Humpback Whale [1]	7	3	0.1
Minke Whale	2	2	N/A
Killer Whale [2]	10	0	0.35
Harbor Porpoise	6	4	1.03
Dall's Porpoise	12	8	N/A
Harbor Seal	174	21	2.06

TABLE 7—PROPOSED AUTHORIZED LEVEL A AND B TAKE AND PERCENT OF MMPA STOCK PROPOSED TO BE TAKEN—Continued

Species	Proposed authorized take		Percent of stock
	Level B	Level A	
Steller Sea Lion (Eastern DPS)[2 3]	1283	0	3.08
Steller Sea Lion (Western DPS)[2 3]	26	0	0.05

[1] Distribution of proposed take by ESA status is 6 Level B takes and 3 Level A takes for Hawaii DPS and 1 Level B take for Mexico

[2] The potential for these species to experience PTS due to vibratory/impact driving or from DTH drilling is very low considering the distances to the PTS thresholds and the species behavior. Shutdown for all species is proposed at 200 m (see below) which would further decrease possibility of Level A takes for these species. Therefore, Level A takes are not proposed or requested by the applicant.

[3] Total estimated take of Steller sea lions was 1309 individuals. Distribution between the stocks was calculated assuming 2% Western DPS and rounding to nearest whole number.

Effects of Specified Activities on Subsistence Uses of Marine Mammals

The availability of the affected marine mammal stocks or species for subsistence uses may be impacted by this activity. The subsistence uses that may be affected and the potential impacts of the activity on those uses are described below. The information from this section is analyzed to determine whether the necessary findings may be made in the *Unmitigable Adverse Impact Analysis and Determination* section.

No records exist of subsistence harvests of whales and porpoises in Lynn Canal (Haines, 2007). Subsistence harvest of harbor seals and Steller sea lions by Alaska Natives is not prohibited by the MMPA. The ADF&G has regularly conducted surveys of harbor seal and Steller sea lion subsistence harvest in Alaska and the number of animals taken for subsistence in this immediate area is low when compared to other areas in Southeast Alaska (Wolfe *et al.* 2013). Marine mammals comprise less than 1 pound per capita of all resources harvested by Haines residents (Household Survey of Wildfoods Resources Harvest in Haines, as cited in Haines, 2007). Construction activities at the project site would be expected to cause only short term, non-lethal disturbance of marine mammals. Impacts on the abundance or availability of either species to subsistence hunters in the region are not anticipated.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses. 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 the 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, as well as subsistence uses. 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.

The following mitigation measures are proposed in the IHA:

- *Schedule:* No pile driving or removal would occur from March 1 through May 31 to avoid peak marine mammal abundance periods and critical foraging periods;
- *Pile Removal:* If possible, piles would be removed by using a direct pull method or by cutting piles off at the mudline instead of using a vibratory hammer;
- *Pile Driving Delay/Shut-Down:* For use of in-water heavy machinery/vessel (*e.g.,* dredge), AML will implement a minimum shutdown zone of 10 m radius around the pile/vessel. For vessels, AML must cease operations and reduce vessel speed to the minimum required to maintain steerage and safe working conditions. In addition, if an animal comes within 200 m of a pile being driven or removed, AML would shut down. The 200 m shutdown zone would only be reopened when a marine mammal has not been observed within the shutdown zone for a 30-minute period. If pile driving is stopped, pile installation would not commence if pile any marine mammals are observed anywhere within the Level A harassment zone. Pile driving activities would only be conducted during daylight hours when it is possible to visually monitor for marine mammals. If poor environmental conditions restrict visibility (*e.g.,* from excessive wind or fog, high Beaufort state), pile installation would be delayed. If a species for which authorization has not been granted, or if a species for which authorization has been granted but the authorized takes are met, AML would delay or shut-down pile driving if the marine mammal approaches or is observed within the Level A and/or B harassment zones. In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA, such as serious injury or mortality, the PSO on watch would immediately call for the cessation of the specified activities and immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and NMFS Alaska Regional Office;
- *Soft-start:* For all impact pile driving, a ''soft start'' technique will be used at the beginning of each pile installation day, or if pile driving has ceased for more than 30 minutes, to

allow any marine mammal that may be in the immediate area to leave before hammering at full energy. The soft start requires AML to provide an initial set of three strikes from the impact hammer at reduced energy, followed by a one-minute waiting period, then two subsequent 3–strike sets. If any marine mammal is sighted within the 200-m Level A shutdown zone prior to pile-driving, or during the soft start, AML will delay pile-driving until the animal is confirmed to have moved outside and is on a path away from the Level A harassment zone or if 15 minutes have elapsed since the last sighting; and

• *Other best management practices:* AML will drive all piles with a vibratory hammer to the maximum extent possible (*i.e.,* until a desired depth is achieved or to refusal) prior to using an impact hammer and will use DTH drilling prior to using an impact hammer. AML will also use the minimum hammer energy needed to safely install the piles.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and

• Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving and removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than thirty minutes.

A primary PSO would be placed at Lutak Dock where pile driving would occur. The primary purpose of this observer is to monitor and implement the 200 m Level A shutdown zone. Two additional observers would focus on monitoring large parts of the Level B harassment zone as well as visible parts of the Level A shutdown and harassment zones. The second observer would be placed at a vantage point near Tanani Point that allows monitoring of the area offshore from Lutak Dock and across the inlet, a width of about 0.6 miles (see application Figure 11–1). This location is near the edge of the Level A harassment zone for low-frequency cetaceans during impact pile driving. The third PSO would be placed northwest of the dock near the edge of the Level A harassment zone for low-frequency cetaceans. Therefore, the outer edge of the largest Level A harassment zone and a majority of the Level B harassment zone would be monitored by these other two PSOs. These two PSOs would also assess movement of animals within Level A harassment zones, including time spent at various distances from the sound source to help us gather needed information on the dynamics of marine mammal behavior around pile driving activities. Since not all of the level B harassment zone will be observable by PSOs, they will calculate take for the project by extrapolating the observable area to the total size of the Level B harassment zone. PSOs would scan the waters using binoculars, and/or spotting scopes, and would use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. The following measures also apply to visual monitoring:

(1) Monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Qualified observers are trained biologists, with the following minimum qualifications:

(a) Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;

(b) Advanced education in biological science or related field (undergraduate degree or higher required);

(c) Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);

(d) Experience or training in the field identification of marine mammals, including the identification of behaviors;

(e) Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

(f) Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals

observed within a defined shutdown zone; and marine mammal behavior; and

(g) Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary; and

(2) AML shall submit observer CVs for approval by NMFS.

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities, or 60 days prior to a requested date of issuance of any future IHAs for projects at the same location, whichever comes first. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated marine mammal observation data sheets. Specifically, the report must include:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* percent cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity, and estimated time spent within the Level A harassment zone;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Locations of all marine mammal observations; and
- Other human activity in the area.
- Estimated take.

If no comments are received from NMFS within 30 days, the draft final report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, AML would immediately cease the specified activities and report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinator. The report would include the following information:

- Description of the incident;
- Environmental conditions (*e.g.,* Beaufort sea state, visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

Activities would not resume until NMFS is able to review the circumstances of the prohibited take. NMFS would work with AML to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. AML would not be able to resume their activities until notified by NMFS via letter, email, or telephone.

In the event that AML discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), AML would immediately report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with AML to determine whether modifications in the activities are appropriate.

In the event that AML discovers an injured or dead marine mammal and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), AML would report the incident to the Chief of the Permits and Conservation Division, Office of Protected Resources, NMFS, and the NMFS Alaska Stranding Hotline and/or by email to the Alaska Regional Stranding Coordinator, within 24 hours of the discovery. AML would provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.,* intensity, duration), the context of any responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS'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, the discussion of our analyses applies to all the species listed in Table 7, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity. Pile driving/removal and drilling activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal and DTH drilling. Potential takes could occur if individuals of these species are present in the ensonified zone when these activities are underway.

The takes from Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No mortality is anticipated given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Level A harassment is only anticipated for humpback whales, minke whales, Dall's porpoise, harbor porpoise, and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the

planned mitigation measures (see *Proposed Mitigation* section).

The Level A harassment zones identified in Table 5 are based upon an animal exposed to impact pile driving five piles per day. Considering duration of impact driving each pile (up to 15 minutes) and breaks between pile installations (to reset equipment and move pile into place), this means an animal would have to remain within the area estimated to be ensonified above the Level A harassment threshold for multiple hours. This is highly unlikely given marine mammal movement throughout the area. If an animal was exposed to accumulated sound energy, the resulting PTS would likely be small (*e.g.,* PTS onset) at lower frequencies where pile driving energy is concentrated. Nevertheless, we propose authorizing a small amount of Level A take for five species which is considered in our analysis.

Behavioral responses of marine mammals to pile driving and removal at the Dock, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities (as noted during modification to the Kodiak Ferry Dock) or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the short duration of noise-generating activities per day and that pile driving and removal would occur on 8 days across 4–5 months, any harassment would be temporary. In addition, AML would not conduct pile driving or removal during the spring eulachon and herring runs, when marine mammals are in greatest abundance and engaging in concentrated foraging behavior. There are no other areas or times of known biological importance for any of the affected species.

In addition, although some affected humpback whales and Steller sea lions may be from a DPS that is listed under the ESA, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' ability to recover. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality is anticipated or authorized;
- Authorized Level A harassment would be very small amounts and of low degree;
- AML would avoid pile driving and removal during peak periods of marine mammal abundance and foraging (*i.e.,* March 1 through May 31 eulachon and herring runs);
- AML would implement mitigation measures such as vibratory driving piles to the maximum extent practicable, soft-starts, and shut downs; and
- Monitoring reports from similar work in Alaska have documented little to no effect on individuals of the same species impacted by the specified activities.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(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 amount of take NMFS proposes to authorize is 0.05 to 3.1 percent of any stock's best population estimate. These are all likely conservative estimates because they assume all pile driving occurs the month which has the highest marine mammal density and assumes all takes are of individual animals which is likely not the case. The Alaska stock of Dall's porpoise has no official NMFS abundance estimate as the most recent estimate is greater than eight years old. Nevertheless, the most recent estimate was 83,400 animals and it is highly unlikely this number has drastically declined. Therefore, the 20 authorized takes of this stock clearly represent small numbers of this stock. The Alaska stock of minke whale has no stock-wide abundance estimate. The stock ranges from the Bering and Chukchi seas south through the Gulf of Alaska. Surveys in portions of the range have estimated abundances of 2,020 on the eastern Bering Sea shelf and 1,233 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Thus there appears to thousands of animals at least in the stock and clearly the 2 authorized takes of this stock represent small numbers of this stock.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. As discussed above, subsistence harvest of harbor seals and Steller sea lions comprise less than 1 pound per capita of all resources harvested by Haines residents. Therefore, NMFS has preliminarily determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the Alaska Region Protected Resources Division Office, whenever we propose to authorize take for endangered or threatened species.

NMFS is proposing to authorize take of Western DPS Steller sea lion (*Eumetopias jubatus*) and Mexico DPS of humpback whales (*Megaptera novaeangliae*), which are listed under the ESA. The Permit and Conservation Division has requested initiation of Section 7 consultation with the Alaska

Region for the issuance of this IHA. NMFS will conclude the ESA consultation prior to reaching a determination regarding the proposed issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to AML for conducting the Lutak Dock project in Haines, Alaska between June 15, 2020 and June 14, 2021, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for the proposed Lutak Dock project. We also request at this time comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent Renewal.

On a case-by-case basis, NMFS may issue a one-year IHA renewal with an additional 15 days for public comments when (1) another year of identical or nearly identical activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to expiration of the current IHA.
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take because only a subset of the initially analyzed activities remain to be completed under the Renewal); and

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized;

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: November 21, 2019.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2019–25642 Filed 11–25–19; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XV137]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Ecosystem and Ocean Planning (EOP) Committee and Advisory Panel (AP) of the Mid-Atlantic Fishery Management Council (Council) will hold a meeting.

DATES: The meeting will be held on Tuesday, December 17, 2019, from 2 p.m. through 4 p.m. See **SUPPLEMENTARY INFORMATION** for agenda details.

ADDRESSES: The meeting will take place over webinar with a telephone-only connection option. Details on how to connect to the webinar by computer and by telephone will be available at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; website: *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for the EOP Committee and AP to provide initial feedback and input on a new research project the Council is collaborating on with a research team from Rutgers University. The project will develop forecast models to predict short-term (1–10 years) distribution changes for four economically important Mid and South Atlantic species. Short-term projections should provide for greater management utility and application since most management considerations and decisions operate at similar timescales. The EOP Committee and AP will provide feedback on the utility of these types of models, data availability, and potential outcomes.

A detailed agenda and background documents will be made available on the Council's website (*www.mafmc.org*) prior to the meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: November 21, 2019.

Tracey L. Thompson,

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

[FR Doc. 2019–25665 Filed 11–25–19; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Market Risk Advisory Committee

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of meeting.

SUMMARY: The Commodity Futures Trading Commission (CFTC) announces that on December 11, 2019, from 9:30 a.m. to 1:00 p.m., the Market Risk Advisory Committee (MRAC) will hold a public meeting in the Conference Center at the CFTC's Washington, DC, headquarters. At this meeting, the MRAC will receive status reports from its subcommittees (Climate-related Market Risk, Central Counterparty (CCP) Risk and Governance, Market Structure, and Interest Rate Benchmark Reform) and discuss other issues involving the transition from the London Inter-bank Offered Rate to alternative risk-free reference rates (RFRs), including the International Swaps and Derivatives Association's recent consultation on the final parameters for the spread and term adjustments that will apply to RFRs if derivatives fallbacks are triggered.

DATES: The meeting will be held on December 11, 2019, from 9:30 a.m. to 1:00 p.m. Members of the public who

wish to submit written statements in connection with the meeting should submit them by December 18, 2019.

ADDRESSES: The meeting will take place in the Conference Center at the CFTC's headquarters, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. You may submit public comments, identified by ''Market Risk Advisory Committee,'' by any of the following methods:

- *CFTC website: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Comments Online process on the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail, above.

Any statements submitted in connection with the committee meeting will be made available to the public, including publication on the CFTC website, *http://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia L. Lewis, MRAC Designated Federal Officer, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5862.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone by calling a domestic toll-free telephone or international toll or toll-free number to connect to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name, and affiliation.

Domestic Toll Free: 1–877–951–7311.

International Toll and Toll Free: Will be posted on the CFTC's website, *http://www.cftc.gov,* on the page for the meeting, under Related Links.

Pass Code/Pin Code: 1869090.

The meeting agenda may change to accommodate other MRAC priorities. For agenda updates, please visit the MRAC committee site at: *https://www.cftc.gov/About/CFTCCommittees/MarketRiskAdvisoryCommittee/mrac_meetings.html.*

After the meeting, a transcript of the meeting will be published through a link on the CFTC's website, *http://www.cftc.gov.* All written submissions provided to the CFTC in any form will also be published on the CFTC's website. Persons requiring special accommodations to attend the meeting because of a disability should notify the contact person above.

Authority: 5 U.S.C. app. 2 section 10(a)(2).

Dated: November 21, 2019.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2019–25613 Filed 11–25–19; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants)

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

ACTION: Notice.

SUMMARY: The Department of Education (Department) is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for CSP—CMO grants, Catalog of Federal Domestic Assistance (CFDA) number 84.282M. This notice relates to the approved information collection under OMB control number 4040–0004.

DATES:

Applications available: November 26, 2019.

Date of pre-application webinar: December 5, 2019.

Deadline for transmittal of applications: January 10, 2020.

Deadline for intergovernmental review: March 10, 2020.

Pre-application webinar information: The Department will hold a pre-application meeting via webinar for prospective applicants on December 5, 2019, Eastern time.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Katherine Cox, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E207, Washington, DC 20202–5970. Telephone: (202) 453–6886. Email: *charterschools@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program:[1] Through *charter management organizations (CMOs)* grants, the Department provides funds to *CMOs* on a competitive basis to enable them to *replicate* or *expand* one or more *high-quality charter schools.* Grant funds may be used to *expand* the enrollment of one or more existing *high-quality charter schools,* or to *replicate* one or more new *charter schools* based on an existing *high-quality charter school* model.

Background: A major purpose of this program is to *replicate* and *expand high-quality charter schools* that serve *educationally disadvantaged students.* Students living in *rural communities* are too often faced with a relative dearth of high-quality educational options, and our experience implementing this, and other, grant competitions has taught us that students in these communities experience unique disadvantages. Similarly, we believe it is critical to ensure that students who are *individuals from low-income families,* and particularly such students that attend schools with high percentages of students who are *individuals from low-income families,* have access to a myriad of high-quality education options. As such, in order to receive a grant under this competition, *CMOs* must either demonstrate that they will *replicate* or *expand high-quality charter schools* in a *rural community* or that they operate or manage charter schools with student bodies that are comprised of at least 40 percent students who are *individuals from low-income families.* Accordingly, applicants must choose to submit their applications under one of two absolute priorities—*Absolute Priority 1—Rural Community* and *Absolute Priority 2—Low-Income Demographic.*

Priorities: This competition includes two absolute priorities and five competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(iv), the absolute priorities and Competitive Preference Priorities 2, 3, 4, and 5 are from the notice of final priorities, requirements, definitions, and selection criteria for this program published in the **Federal Register** on November 30, 2018 (2018 NFP) (83 FR 61532). Competitive Preference Priority 1 is from the notice of final priority for discretionary grant programs relating to the Administration's Opportunity Zones initiative, published in the **Federal Register** (OZ NFP).

[1] The terms in the text of this notice that are in italics are defined in the Definitions section.

Absolute Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of these priorities.

Each of these absolute priorities constitutes its own funding category. Applicants may propose projects that address both absolute priorities, but must clearly indicate under which absolute priority they are officially applying. The Secretary intends to award grants under each absolute priority for which applications of sufficient quality are submitted.

The priorities are:

Absolute Priority 1—Rural Community.

Under this priority, applicants must propose to *replicate* or *expand* one or more *high-quality charter schools* in a *rural community.*

Absolute Priority 2—Low-Income Demographic.

Under this priority, applicants must demonstrate that at least 40 percent of the students across all of the *charter schools* the applicant operates or manages are *individuals from low-income families,* and that the applicant will maintain the same, or a substantially similar, percentage of such students across all of its *charter schools* during the grant period.

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities.

Under 34 CFR 75.105(c)(2)(i) we award up to an additional seven points to an application, depending on how well an application meets one or both elements of Competitive Preference Priority 1; an additional five points to an application that meets Competitive Preference Priority 2; up to an additional two points to an application, depending on how well an application meets Competitive Preference Priority 3; up to an additional four points to an application, depending on how well an application meets Competitive Preference Priority 4; and up to an additional two points to an application, depending on how well an application meets Competitive Preference Priority 5. The maximum number of competitive preference priority points an application can receive under this competition is 20.

These priorities are:

Competitive Preference Priority 1—Spurring Investment in Qualified Opportunity Zones. (Up to 7 points)

Under this priority, an applicant must demonstrate one or both of the following:

(a) The area in which the applicant proposes to provide services overlaps with a Qualified Opportunity Zone, as designated by the Secretary of the Treasury under section 1400Z–1 of the Internal Revenue Code (IRC). An applicant must—

(1) Provide the census tract number of the Qualified Opportunity Zone(s) in which it proposes to provide services; and

(2) Describe how the applicant will provide services in the Qualified Opportunity Zone(s) (Up to 4 points).

Note: In order to meet paragraph (a) of this priority, one or more charter schools included in the application must be located in a Qualified Opportunity Zone. If the area in which the applicant proposes to provide services overlaps with a Qualified Opportunity Zone by—

(i) 25 percent or less, then the applicant will receive 1 point;

(ii) 26 percent to 50 percent, then the applicant will receive 2 points;

(iii) 51 to 75 percent, then the applicant will receive 3 points; or

(iv) 76 percent to 100 percent, then the applicant will receive 4 points.

(b) The applicant has received, or will receive by January 10, 2020, an investment, including access to real property, from a Qualified Opportunity Fund under section 1400Z–2 of the IRC for a purpose directly related to its proposed project. An applicant must—

(1) Identify the Qualified Opportunity Fund from which it has received or will receive an investment; and

(2) Describe how the investment is or will be directly related to its proposed project (0 or 3 points).

Competitive Preference Priority 2—Number of Charter Schools Operated or Managed by the Eligible Applicant. (0 or 5 points)

Under this priority, applicants must demonstrate that they currently operate or manage two to five *charter schools.*

Competitive Preference Priority 3—High School Students. (Up to 2 points)

Under this priority, applicants must propose to—

(a) *Replicate* or *expand high-quality charter schools* to serve high school students, including *educationally disadvantaged students;*

(b) Prepare students, including *educationally disadvantaged students,* in those schools for enrollment in postsecondary education institutions through activities such as, but not limited to, accelerated learning programs (including Advanced Placement and International Baccalaureate courses and programs, dual or concurrent enrollment programs, and early college high schools), college counseling, career and technical education programs, career counseling, internships, work-based learning programs (such as apprenticeships), assisting students in the college admissions and financial aid application processes, and preparing students to take standardized college admissions tests;

(c) Provide support for students, including *educationally disadvantaged students,* who graduate from those schools and enroll in postsecondary education institutions in persisting in, and attaining a degree or certificate from, such institutions, through activities such as, but not limited to, mentorships, ongoing assistance with the financial aid application process, and establishing or strengthening peer support systems for such students attending the same institution; and

(d) Propose one or more project-specific *performance measures,* including aligned leading indicators or other interim milestones, that will provide valid and reliable information about the applicant's progress in preparing students, including *educationally disadvantaged students,* for enrollment in postsecondary education institutions and in supporting those students in persisting in and attaining a degree or certificate from such institutions. An applicant addressing this priority and receiving a CMO grant must provide data that are responsive to the measure(s), including *performance targets,* in its annual performance reports to the Department.

(e) For purposes of this priority, postsecondary education institutions include *institutions of higher education,* as defined in section 8101(29) of the Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act (ESEA), and one-year training programs that meet the requirements of section 101(b)(1) of the Higher Education Act of 1965, as amended (HEA).

Competitive Preference Priority 4—Replicating or Expanding High-Quality Charter Schools To Serve Native American Students. (Up to 4 points)

Under this priority, applicants must—

(a) Propose to *replicate* or *expand* one or more *high-quality charter schools* that—

(1) Utilize targeted outreach and recruitment in order to serve a *high proportion* of *Native American* students, consistent with nondiscrimination requirements contained in the U.S. Constitution and Federal civil rights laws;

(2) Have a mission and focus that will address the unique educational needs of *Native American* students, such as through the use of instructional programs and teaching methods that reflect and preserve *Native American language,* culture, and history; and

(3) Have a governing board with a substantial percentage of members who are members of *Indian Tribes* or *Indian organizations* located within the area to be served by the *replicated* or *expanded charter school;*

(b) Submit a letter of support from at least one *Indian Tribe* or *Indian organization* located within the area to be served by the *replicated* or *expanded charter school;* and

(c) Meaningfully collaborate with the *Indian Tribe(s)* or *Indian organization(s)* from which the applicant has received a letter of support in a timely, active, and ongoing manner with respect to the development and implementation of the educational program at the *charter school.*

Competitive Preference Priority 5—Reopening Academically Poor-Performing Schools as Charter Schools. (Up to 2 points)

Under this priority, applicants must—

(a) Demonstrate past success working with one or more *academically poor-performing public schools* or schools that previously were designated as persistently lowest-achieving schools or priority schools under the former School Improvement Grant program or in States that exercised ESEA flexibility, respectively, under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001; and

(b) Propose to use grant funds under this program to restart one or more *academically poor-performing public schools* as charter schools during the project period by—

(1) Replicating one or more *high-quality charter schools* based on a successful charter school model for which the applicant has provided evidence of success; and

(2) Targeting a demographically similar student population in the replicated charter schools as was served by the *academically poor-performing public schools.*

Definitions: The following definitions are from sections 4310 and 8101 of the ESEA, 34 CFR 77.1, and the 2018 NFP.

Academically poor-performing public school means:

(a) A school identified by the State for comprehensive support and improvement under section 1111(c)(4)(D)(i) of the ESEA; or

(b) A public school otherwise identified by the State or, in the case of a charter school, its authorized public chartering agency, as similarly academically poor-performing. (2018 NFP)

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure. (34 CFR 77.1)

Authorized public chartering agency means a State educational agency, local educational agency, or other public entity that has the authority pursuant to State law and approved by the Secretary to authorize or approve a *charter school.* (Section 4310(1) of the ESEA)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization, or *CMO,* means a nonprofit organization that operates or manages a network of *charter schools* linked by centralized support, operations, and oversight. (Section 4310(3) of the ESEA)

Charter school means a public school that—

(1) In accordance with a specific State statute authorizing the granting of charters to schools, is exempt from significant State or local rules that inhibit the flexible operation and management of public schools, but not from any rules relating to the other requirements of this definition;

(2) Is created by a developer as a public school, or is adapted by a developer from an existing public school, and is operated under public supervision and direction;

(3) Operates in pursuit of a specific set of educational objectives determined by the school's developer and agreed to by the *authorized public chartering agency;*

(4) Provides a program of elementary or secondary education, or both;

(5) Is nonsectarian in its programs, admissions policies, employment practices, and all other operations, and is not affiliated with a sectarian school or religious institution;

(6) Does not charge tuition;

(7) Complies with the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), section 444 of the General Education Provisions Act (20 U.S.C. 1232g) (commonly referred to as the ''Family Educational Rights and Privacy Act of 1974''), and part B of the Individuals with Disabilities Education Act;

(8) Is a school to which parents choose to send their children, and that—

(i) Admits students on the basis of a lottery, consistent with section 4303(c)(3)(A), if more students apply for admission than can be accommodated; or

(ii) In the case of a school that has an affiliated charter school (such as a school that is part of the same network of schools), automatically enrolls students who are enrolled in the immediate prior grade level of the affiliated charter school and, for any additional student openings or student openings created through regular attrition in student enrollment in the affiliated charter school and the enrolling school, admits students on the basis of a lottery as described in clause (i);

(9) Agrees to comply with the same Federal and State audit requirements as do other elementary schools and secondary schools in the State, unless such State audit requirements are waived by the State;

(10) Meets all applicable Federal, State, and local health and safety requirements;

(11) Operates in accordance with State law;

(12) Has a written performance contract with the authorized public chartering agency in the State that includes a description of how student performance will be measured in charter schools pursuant to State assessments that are required of other schools and pursuant to any other assessments mutually agreeable to the authorized public chartering agency and the charter school; and

(13) May serve students in early childhood education programs or postsecondary students. (Section 4310(2) of the ESEA)

Child with a disability means—

(1) In general—

The term *child with a disability* means a child—

(i) With intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as emotional disturbance), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) Who, by reason thereof, needs special education and related services.

(2) Child aged 3 through 9

The term *child with a disability* for a child aged 3 through 9 (or any subset of that age range, including ages 3 through 5), may, at the discretion of the State and the local educational agency, include a child—

(i) Experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in 1 or more of the following areas: Physical development; cognitive development; communication development; social or emotional development; or adaptive development; and

(ii) Who, by reason thereof, needs special education and related services. (Section 8101(4) of the ESEA)

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, students who are *children with disabilities,* migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care. (2018 NFP)

Expand, when used with respect to a *high-quality charter school,* means to significantly increase enrollment or add one or more grades to the *high-quality charter school.* (Section 4310(7) of the ESEA)

High proportion, when used to refer to *Native American* students, means a fact-specific, case-by-case determination based upon the unique circumstances of a particular charter school or proposed charter school. The Secretary considers *high proportion* to include a majority of *Native American* students. In addition, the Secretary may determine that less than a majority of *Native American* students constitutes a *high proportion* based on the unique circumstances of a particular charter school or proposed *charter school,* as described in the application for funds. (2018 NFP)

High-quality charter school means a *charter school* that—

(1) Shows evidence of strong academic results, which may include strong student academic growth, as determined by a State;

(2) Has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance;

(3) Has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the *charter school;* and

(4) Has demonstrated success in increasing student academic achievement, including graduation rates where applicable, for each of the subgroups of students, as defined in section 1111(c)(2), except that such demonstration is not required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4310(8) of the ESEA)

Indian organization means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, by-laws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction or by charter of the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any *institution of higher education;* and

(6) Is not an agency of State or local government. (2018 NFP)

Indian Tribe means a federally recognized or a State-recognized Tribe. (2018 NFP)

Individual from a low-income family means an individual who is determined by a State educational agency or local educational agency to be a child from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition. (2018 NFP)

Institution of higher education means an educational institution in any State that—

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 484(d)of the HEA;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time. (2018 NFP)

Logic model (also referred to as a theory of action) means a framework that identifies key project components of the proposed project (*i.e.,* the active ''ingredients'' that are hypothesized to be critical to achieving the relevant outcomes) and describes the theoretical and operational relationships among the key project components and relevant outcomes. (34 CFR 77.1)

Native American means an Indian (including an Alaska Native), Native Hawaiian, or Native American Pacific Islander. (2018 NFP)

Native American language means the historical, traditional languages spoken by *Native Americans.* (2018 NFP)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Replicate, when used with respect to a *high-quality charter school,* means to open a new *charter school,* or a new campus of a *high-quality charter school,* based on the educational model of an existing *high-quality charter school,* under an existing charter or an additional charter, if permitted or required by State law. (Section 4310(9) of the ESEA)

Rural community means a community that is served by a local educational agency that is eligible to apply for funds under the Small Rural School Achievement (SRSA) program or the Rural and Low-Income School (RLIS) program authorized under title V, part B of the ESEA. Applicants may determine

whether a particular local educational agency is eligible for these programs by referring to information on the following Department websites. For the SRSA program: *https://www2.ed.gov/programs/reapsrsa/eligibility.html.* For the RLIS program: *www2.ed.gov/programs/reaprlisp/eligibility.html.* (2018 NFP)

Application Requirements: Applications for CSP CMO grant funds must address the following application requirements. These requirements are from the 2018 NFP and sections 4303(f)(1)[2] and 4305(b)(3) of the ESEA. The source of each requirement is provided in parentheses following each requirement. An applicant must respond to requirement (a) in a stand-alone section of the application or in an appendix. For all other application requirements, an applicant may choose to respond to each requirement separately or in the context of the applicant's responses to the selection criteria in section V.2 of this notice.

Applicants for funds under this program must—

(a) Describe the applicant's objectives in running a quality *charter school* program and how the program will be carried out, including—

(1) A description of how the applicant will ensure that *charter schools* receiving funds under this program meet the educational needs of their students, including *children with disabilities* and English learners (Section 4303(f)(1)(A)(x) of the ESEA); and

(2) A description of how the applicant will ensure that each *charter school* receiving funds under this program has considered and planned for the transportation needs of the school's students (Section 4303(f)(1)(E) of the ESEA);

(b) For each *charter school* currently operated or managed by the applicant, provide—

(1) Student assessment results for all students and for each subgroup of students described in section 1111(c)(2);

(2) Attendance and student retention rates for the most recently completed school year and, if applicable, the most recent available four-year adjusted cohort graduation rates and extended-year adjusted cohort graduation rates; and

(3) Information on any significant compliance and management issues encountered within the last three school years by any school operated or managed by the eligible entity, including in the areas of student safety and finance (Section 4305(b)(3)(A) of the ESEA);

(c) Describe the educational program that the applicant will implement in each *charter school* receiving funding under this program, including—

(1) Information on how the program will enable all students to meet the challenging State academic standards;

(2) The grade levels or ages of students who will be served; and

(3) The instructional practices that will be used (Section 4305(b)(3)(B)(ii) of the ESEA);

(d) Demonstrate that the applicant currently operates or manages more than one charter school. For purposes of this program, multiple *charter schools* are considered to be separate schools if each school—

(1) Meets each element of the definition of *charter school* under section 4310(2) of the ESEA; and

(2) Is treated as a separate school by its *authorized public chartering agency* and the State in which the charter school is located, including for purposes of accountability and reporting under title I, part A of the ESEA (2018 NFP);

(e) Provide information regarding any compliance issues, and how they were resolved, for any *charter schools* operated or managed by the applicant that have—

(1) Closed;

(2) Had their charter(s) revoked due to problems with statutory or regulatory compliance, including compliance with sections 4310(2)(G) and (J) of the ESEA; or

(3) Had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (2018 NFP);

(f) Provide a complete *logic model* for the grant project. The *logic model* must include the applicant's objectives for *replicating* or *expanding* one or more *high-quality charter schools* with funding under this program, including the number of *high-quality charter schools* the applicant proposes to *replicate* or *expand* (2018 NFP);

(g) If the applicant currently operates, or is proposing to *replicate* or *expand* a single-sex *charter school* or coeducational *charter school* that provides a single-sex class or extracurricular activity (collectively referred to as a ''single-sex educational program''), demonstrate that the existing or proposed single-sex educational program is in compliance with title IX of the Education Amendments of 1972 (20 U.S.C. 1681, *et seq.*) and its implementing regulations, including 34 CFR 106.34 (2018 NFP);

(h) Describe how the applicant currently operates or manages the *high-quality charter schools* for which it has presented evidence of success and how the proposed *replicated* or *expanded charter schools* will be operated or managed, including the legal relationship between the applicant and its schools. If a legal entity other than the applicant has entered or will enter into a performance contract with an *authorized public chartering agency* to operate or manage one or more of the applicant's schools, the applicant must also describe its relationship with that entity (2018 NFP);

(i) Describe how the applicant will solicit and consider input from parents and other members of the community on the implementation and operation of each *replicated* or *expanded charter school,* including in the area of school governance (2018 NFP);

(j) Describe the lottery and enrollment procedures that will be used for each *replicated* or *expanded charter school* if more students apply for admission than can be accommodated, including how any proposed weighted lottery complies with section 4303(c)(3)(A) of the ESEA (2018 NFP);

(k) Describe how the applicant will ensure that all eligible *children with disabilities* receive a free appropriate public education in accordance with Part B of the Individuals with Disabilities Education Act (2018 NFP);

(l) Describe how the proposed project will assist *educationally disadvantaged students* in mastering challenging State academic standards (2018 NFP);

(m) Provide a budget narrative, aligned with the activities, target grant project outputs, and outcomes described in the *logic model,* that outlines how grant funds will be expended to carry out planned activities (2018 NFP);

(n) Provide the applicant's most recent independently audited financial statements prepared in accordance with generally accepted accounting principles (2018 NFP);

(o) Describe the applicant's policies and procedures to assist students enrolled in a *charter school* that closes or loses its charter to attend other high-quality schools (2018 NFP); and

(p) Provide—

(1) A request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the *charter schools* to be *replicated* or *expanded;* and

(2) A description of any State or local rules, generally applicable to public schools, that will be waived, or

[2] Per section 4305(c) of the ESEA, CMO grants shall have the same terms and conditions as grants awarded to State entities under section 4303. For clarity, the Department has replaced the term ''State entity'' with ''applicant'' in the requirements that derive from section 4303.

otherwise not apply, to such schools (2018 NFP).

Assurances: Applications for CSP *CMO* grant funds must provide the following assurances. These assurances are from sections 4303(f)(2) and 4305(b)(3)(C) of the ESEA. The source of each assurance is provided in parentheses following each assurance.

Applicants for funds under this program must provide the following assurances:

(a) The grantee will support *charter schools* in meeting the educational needs of their students, as described in section 4303(f)(1)(A)(x) of the ESEA. (Section 4303(f)(2)(B) of the ESEA)

(b) The grantee will ensure that each *charter school* receiving funds under this program makes publicly available, consistent with the dissemination requirements of the annual State report card under section 1111(h) of the ESEA, including on the website of the school, information to help parents make informed decisions about the education options available to their children, including—

(1) Information on the educational program;

(2) Student support services;

(3) Parent contract requirements (as applicable), including any financial obligations or fees;

(4) Enrollment criteria (as applicable); and

(5) Annual performance and enrollment data for each of the subgroups of students, as defined in section 1111(c)(2) of the ESEA, except that such disaggregation of performance and enrollment data shall not be required in a case in which the number of students in a group is insufficient to yield statistically reliable information or the results would reveal personally identifiable information about an individual student. (Section 4303(f)(2)(G) of the ESEA)

(c) The eligible entity has sufficient procedures in effect to ensure timely closure of low-performing or financially mismanaged *charter schools* and clear plans and procedures in effect for the students in such schools to attend other high-quality schools. (Section 4305(b)(3)(C) of the ESEA)

Program Authority: Title IV, Part C of the ESEA.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The 2018 NFP. (e) The OZ NFP.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $65,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Estimated Range of Awards: $250,000–$15,000,000 per year.

Estimated Average Size of Awards: $2,000,000 per year.

Maximum Award: For this competition, the maximum limit of grant funds that may be awarded per new or expanded charter school is $1,500,000.

Estimated Number of Awards: 15–20 awards.

Note: The Department is not bound by any estimates in this notice. The estimated range and average size of awards are based on a single 12-month budget period. We may use available funds to support multiple 12-month budget periods for one or more grantees.

Project Period: Up to 60 months.

A grant awarded by the Secretary under this competition may be for a period of not more than five years, of which the grantee may use not more than 18 months for planning and program design. (Section 4303(d)(1)(B) of the ESEA)

III. Eligibility Information

1. *Eligible Applicants: CMOs.* Eligible applicants may apply individually or as part of a group or consortium.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Subgrantees:* A grantee under this program may not award subgrants.

4. *Authorized Costs:* Applicants must ensure that all costs included in the proposed budget are authorized under the CSP and are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unauthorized, or otherwise unreasonable or unnecessary, will be removed from the final approved budget.

5. *Other CSP Grants:* A *charter school* that previously received funds for *replication* or *expansion* under this program, or that has been awarded a subgrant or grant for opening or preparing to operate a new *charter school, replication,* or *expansion* under the CSP Grants to State Entities (State Entities) program (CFDA number 84.282A) or CSP Grants to Developers for the Opening of New *Charter Schools* and for the *Replication* and *Expansion* of *High-quality Charter Schools* (Developers) program (CFDA numbers 84.282B and 84.282E), may not receive funds under this grant to carry out the same activities. However, such a *charter school* may be eligible to receive funds through a *CMO* grant awarded under this competition to *expand* the *charter school* beyond the existing grade levels or student count.

Likewise, a *charter school* that is included in an approved application for funding under this competition is ineligible to receive a subgrant or grant to carry out the same activities under the State Entities program (CFDA number 84.282A) or Developers program (CFDA numbers 84.282B and 84.282E), including for opening or preparing to operate a new *charter school* or for *replication* or *expansion* of a *high-quality charter school.*

IV. Application and Submission Instructions

1. *Application Submission Instructions:* For information on how to submit an application please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for the CMO grant competition, your application may include business information that you consider proprietary. In 34 CFR 5.11, we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information.

For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

4. *Funding Restrictions:* Grantees under this program must use the grant funds to *replicate* or *expand* the *charter school* model or models for which the applicant has presented evidence of success. Specifically, grant funds must be used to carry out allowable activities, as described in section 4305(b)(1) of the ESEA. In addition, grant funds must be used to carry out one or more of the activities described in section 4303(h), which include—

(a) Preparing teachers, school leaders, and specialized instructional support personnel, including through paying costs associated with—

(1) Providing professional development; and

(2) Hiring and compensating, during the applicant's planning period specified in the application for funds, one or more of the following:

(i) Teachers.

(ii) School leaders.

(iii) Specialized instructional support personnel;

(b) Acquiring supplies, training, equipment (including technology), and educational materials (including developing and acquiring instructional materials);

(c) Carrying out necessary renovations to ensure that a new school building complies with applicable statutes and regulations, and minor facilities repairs (excluding construction);

(d) Providing one-time, startup costs associated with providing transportation to students to and from the charter school;

(e) Carrying out community engagement activities, which may include paying the cost of student and staff recruitment; and

(f) Providing for other appropriate, non-sustained costs related to the *replication* or *expansion* of *high-quality charter schools* when such costs cannot be met from other sources.

Further, under section 4305(b)(1) of the ESEA, *CMO* grant funds must be used to open and prepare for the operation of one or more *replicated high-quality charter schools* or to *expand* one or more *high-quality charter schools.* Within the context of opening and preparing for the operation of one or more *replicated high-quality charter schools* or *expanding* one or more *high-quality charter schools,* a portion of grant funds can be used for appropriate, non-sustained costs associated with the expansion or improvement of the grantee's oversight or management of its *charter schools,* provided that (i) the specific *charter schools* being *replicated* or *expanded* under the grant are the intended beneficiaries of such expansion or improvement; (ii) such expansion or improvement is intended to improve the grantee's ability to manage or oversee the *charter schools* being *replicated* or *expanded* under the grant; and (iii) the costs cannot be met from other sources. In order to use grant funds for this purpose, an applicant must describe how the proposed costs are necessary to meet the objectives of the project and reasonable in light of the overall cost of the project.

We reference additional regulations outlining funding restrictions in the Applicable Regulations section of this notice.

5. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 60 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative.

V. Application Review Information

1. *Selection Criteria.* The selection criteria are from the 2018 NFP and 34 CFR 75.210. The source of each selection criterion is included in parentheses. The maximum possible score for addressing all of the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application, the Secretary considers the following criteria:

(a) Quality of the eligible applicant and adequacy of resources (40 points).

In determining the quality of the eligible applicant, the Secretary considers the following factors:

(1) The extent to which the academic achievement results (including annual student performance on statewide assessments, annual student attendance and retention rates, and, where applicable and available, student academic growth, high school graduation rates, college attendance rates, and college persistence rates) for *educationally disadvantaged students* served by the *charter schools* operated or managed by the applicant have exceeded the average academic achievement results for such students served by other public schools in the State (10 points). (2018 NFP)

(2) The extent to which one or more *charter schools* operated or managed by the applicant have closed; have had a charter revoked due to noncompliance with statutory or regulatory requirements; or have had their affiliation with the applicant revoked or terminated, including through voluntary disaffiliation (10 points). (2018 NFP)

(3) The extent to which one or more *charter schools* operated or managed by the applicant have had any significant issues in the area of financial or operational management or student safety, or have otherwise experienced significant problems with statutory or regulatory compliance that could lead to revocation of the school's charter (10 points). (2018 NFP)

(4) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support (10 points). (34 CFR 75.210)

(b) Significance of contribution in assisting *educationally disadvantaged students* (20 points).

In determining the significance of the contribution the proposed project will make in *expanding* educational opportunities for *educationally disadvantaged students* and enabling those students to meet challenging State academic standards, the Secretary considers the following factors:

(1) The extent to which *charter schools* currently operated or managed by the applicant serve *educationally disadvantaged students,* particularly *students with disabilities* and English learners, at rates comparable to surrounding public schools or, in the

case of virtual *charter schools,* at rates comparable to public schools in the State (10 points). (2018 NFP)

(2) The quality of the plan to ensure that the *charter schools* the applicant proposes to *replicate* or *expand* will recruit, enroll, and effectively serve *educationally disadvantaged students,* particularly *students with disabilities* and English learners (10 points). (2018 NFP)

(c) Quality of the project design and evaluation plan for the proposed project (30 points).

In determining the quality of the evaluation plan for the proposed project, the Secretary considers the following factors:

(1) The extent to which there is a conceptual framework underlying the proposed research or demonstration activities and the quality of that framework (5 points). (34 CFR 75.210)

(2) The extent to which the methods of evaluation include the use of objective *performance measures* that are clearly related to the intended outcomes of the proposed project, as described in the applicant's *logic model,* and that will produce quantitative and qualitative data by the end of the grant period (10 points). (2018 NFP)

(3) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable (5 points). (34 CFR 75.210)

(4) The extent to which the design for implementing and evaluating the proposed project will result in information to guide possible replication of project activities or strategies, including information about the effectiveness of the approach or strategies employed by the project (10 points). (34 CFR 75.210)

(d) Quality of the project personnel and management plan (10 points).

(1) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(2) In addition, in determining the quality of project personnel and management plan, the Secretary considers:

(i) The qualifications, including relevant training and experience, of key project personnel (5 points). (34 CFR 75.210)

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project (5 points). (34 CFR 75.210)

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications under any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this competition the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management. You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Open Licensing Requirements:* Unless an exception applies, if you are awarded a grant under this competition, you will be required to openly license to the public grant deliverables created in whole, or in part, with Department grant funds. When the deliverable consists of modifications to pre-existing works, the license extends only to those modifications that can be separately identified and only to the extent that open licensing is permitted under the terms of any licenses or other legal restrictions on the use of pre-existing works. Additionally, a grantee or subgrantee that is awarded competitive grant funds must have a plan to disseminate these public grant deliverables. This dissemination plan can be developed and submitted after your application has been reviewed and selected for funding. For additional information on the open licensing requirements please refer to 2 CFR 3474.20.

4. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit annual performance reports that provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

5. *Performance Measures:* (a) Program Performance Measures. The program *performance measures* are: (1) The number of *charter schools* in operation around the Nation; (2) the percentage of fourth- and eighth-grade *charter school* students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts; and (3) the Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) *Project-Specific Performance Measures.* Applicants must propose project-specific *performance measures* and *performance targets* consistent with the objectives of the proposed project. Applicants must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) *Performance measures.* How each proposed *performance measure* would accurately measure the performance of the project and how the proposed *performance measure* would be consistent with the *performance measures* established for the program funding the competition.

(2) *Baseline data.* (i) Why each proposed *baseline* is valid; or (ii) if the applicant has determined that there are no established *baseline* data for a particular *performance measure,* an explanation of why there is no established *baseline* and of how and when, during the project period, the applicant would establish a valid *baseline* for the *performance measure.*

(3) *Performance targets.* Why each proposed *performance target* is *ambitious* yet achievable compared to the *baseline* for the *performance measure* and when, during the project period, the applicant would meet the *performance target(s).*

(4) *Data collection and reporting.* (i) The data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data; and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

All grantees must submit annual performance reports with information that is responsive to these *performance measures.*

6. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things, whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the *performance targets* in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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

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

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

Dated: November 21, 2019.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2019–25739 Filed 11–25–19; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 19–125–LNG]

Sabine Pass Liquefaction, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on September 27, 2019, by Sabine Pass Liquefaction, LLC (SPL). The Application requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of approximately 152.64 billion cubic feet per year (Bcf/yr) of natural gas. SPL seeks to export this LNG from the Sabine Pass Liquefaction Project and the Liquefaction Expansion Project located in Cameron Parish, Louisiana. SPL filed the Application under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 26, 2019.

ADDRESSES: *Electronic Filing by email: fergas@hq.doe.gov.*

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and

Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387 or (202) 586–2627.

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION: SPL requests long-term, multi-contract authorization to export LNG from both the Sabine Pass Liquefaction Project (Trains 1 through 4) and the Liquefaction Expansion Project (Trains 5 and 6) (collectively, the Project) in a total volume equivalent to 152.64 Bcf/yr of natural gas. SPL states that the purpose of the Application is to align its current export volumes approved by DOE/FE with the liquefaction production capacity of the Project.

SPL requests authorization to export the LNG to: (i) Any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review SPL's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

SPL requests the authorization on its own behalf and as agent for other entities that will hold title to the LNG at the point of export. SPL is seeking a 20-year term for the non-FTA authorization, commencing on the date of first commercial export of the requested volume from the Project. Additional details can be found in SPL's Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/sabine-pass-liquefaction-llc-fe-dkt-no-19-125-lng.*

DOE/FE Evaluation

In reviewing SPL's request, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[1] and DOE/FE's response to public comments received on that study.[2]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[3] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014).[4]

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 19–125–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19–125–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *https://www.energy.gov/fe/*

[1] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[2] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.* On September 19, 2019, DOE/FE gave notice of an update to the LCA GHG Report, and that proceeding is on-going. *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, 84 FR 49278 (Sept. 19, 2019).

downloads/sabine-pass-liquefaction-llc-fe-dkt-no-19-125-lng.

Signed in Washington, DC, on November 20, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2019–25643 Filed 11–25–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Coal Council

AGENCY: Department of Energy, Office of Fossil Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period. The Council will continue to provide advice and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

FOR FURTHER INFORMATION CONTACT: Tom Sarkus at (412) 386–5981; or email: *thomas.sarkus@netl.doe.gov*.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including the environment, labor, research, and academia.

The renewal of the Council has been deemed essential to the conduct of the Department's business and in the public interest in conjunction with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

Signed in Washington, DC on November 20, 2019.

Rachael J. Beitler,

Acting Committee Management Officer.

[FR Doc. 2019–25664 Filed 11–25–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 19–134–LNG]

Commonwealth LNG, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on October 16, 2019, by Commonwealth LNG, LLC (Commonwealth). The Application requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of approximately 441.4 billion cubic feet per year (Bcf/yr) of natural gas. Commonwealth seeks to export this LNG from its proposed natural gas liquefaction and export facilities (LNG Facility) to be located in Cameron Parish, Louisiana. Commonwealth filed the Application under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 26, 2019.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Benjamin Nussdorf or Amy Sweeney, U.S. Department of Energy (FE–34) Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–7893 or (202) 586–2627

Cassandra Bernstein, U.S. Department of Energy (GC–76) Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION: Commonwealth requests long-term, multi-contract authorization to export LNG from its proposed LNG Facility in a volume up to 9.5 million metric tons per annum (mtpa), which it states is equivalent to approximately 441.4 Bcf/yr of natural gas. Commonwealth requests authorization to export the LNG to: (i) Any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review Commonwealth's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

Commonwealth requests the authorization on its own behalf and as agent for other entities that will hold title to the LNG at the point of export. Commonwealth is seeking a 20-year term for the non-FTA authorization, commencing on the earlier of the date of first commercial export from the LNG Facility or seven years from the issuance of the requested authorization. Additional details can be found in Commonwealth's Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/commonwealth-lng-llc-fe-dkt-no-19-134-lng.*

DOE/FE Evaluation

In reviewing Commonwealth's request, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[1] and DOE/

[1] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/*

FE's response to public comments received on that study.[2]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[3] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014).[4]

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 19–134–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19–134–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *https://www.energy.gov/fe/downloads/commonwealth-lng-llc-fe-dkt-no-19-134-lng.*

Signed in Washington, DC, on November 20, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2019–25645 Filed 11–25–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Orders Issued Under Section 3 of the Natural Gas Act During October 2019

	FE Docket Nos.
EAGLE LNG PARTNERS JACKSONVILLE LLC	16–15–LNG
ECA LIQUEFACTION, S. DE R.L. DE C.V. (FORMERLY ENERGÍA COSTA AZUL,) S. DE R.L. DE C.V.)	18–144–LNG
VENTURE GLOBAL PLAQUEMINES LNG, LLC	16–28–LNG
CENOVUS ENERGY MARKETING LTD	19–94–NG
CANADA IMPERIAL OIL LIMITED	19–114–NG
XTO ENERGY INC	19–116–NG
DIRECT ENERGY MARKETING INC	19–117–NG
IRVING OIL TERMINALS OPERATIONS LLC	19–118–NG
DIRECT ENERGY MARKETING LIMITED	19–112–NG
ALTAGAS MARKETING (U.S.) INC	19–113–NG
PEMEX TRANSFORMACIÓN INDUSTRIAL	19–115–NG
GAS NATURAL CAXITLAN, S. DE R.L. DE C.V	19–119–NG
SUNCOR ENERGY MARKETING INC	19–120–NG
BLUE WATER FUELS, LLC	19–99–LNG
BLUE WATER FUELS, LLC	18–27–LNG

06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.

[2] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.* On September 19, 2019, DOE/FE gave notice of an update to the LCA GHG Report, and that proceeding is on-going. *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, 84 FR 49278 (Sept. 19, 2019).

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during October 2019, it issued orders granting authority to import and export natural gas, to import and export liquefied natural gas (LNG), to amend, and to transfer authorization. These orders are summarized in the attached appendix and may be found on the FE website at *https://www.energy.gov/fe/listing-doefe-authorizationsorders-issued-2019.*

They are also available for inspection and copying in the U.S. Department of Energy (FE–34), Division of Natural Gas Regulation, Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Signed in Washington, DC, on November 20, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

APPENDIX

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

4445	10/03/19	16–15–LNG	Eagle LNG Partners Jacksonville LLC.	Opinion and Order 4445 granting long-term authority to export LNG to Non-Free Trade Agreement Nations.
4317–A; 4364–A	10/07/19	18–144–LNG	ECA Liquefaction, S. de R.L. de C.V. (formerly Energía Costa Azul, S. de R.L. de C.V.).	Orders 4317–A and 4364–A granting transfer of authorizations.
4446	10/16/19	16–28–LNG	Venture Global Plaquemines LNG, LLC.	Opinion and Order 4446 granting long-term authority to export LNG to Non-Free Trade Agreement Nations.
4429–A	10/18/19	19–94–NG	Cenovus Energy Marketing Ltd.	Errata Order 4429.
4447	10/21/19	19–114–NG	Canada Imperial Oil Limited	Order 4447 granting blanket authority to import/export natural gas from/to Canada.
4448	10/18/19	19–116–NG	XTO Energy Inc.	Order 4448 granting blanket authority to export natural gas to Canada/Mexico.
4449	10/18/19	19–117–NG	Direct Energy Marketing Inc	Order 4449 granting blanket authority to import/export natural gas from/to Canada.
4450	10/18/19	19–118–NG	Irving Oil Terminals Operations LLC.	Order 4450 granting blanket authority to import natural gas from Canada.
4451	10/18/19	19–112–NG	Direct Energy Marketing Limited.	Order 4451 granting blanket authority to import natural gas from Canada.
4452	10/18/19	19–113–NG	Altagas Marketing (U.S.) Inc	Order 4452 granting blanket authority to export natural gas to Canada.
4453	10/18/19	19–115–NG	Pemex Transformacíon Industrial.	Order 4453 granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel.
4454	10/18/19	19–119–NG	Gas Natural Caxitlan, S. de R.L. de C.V.	Order 4454 granting blanket authority to export natural gas to Mexico.
4455	10/18/19	19–120–NG	Suncor Energy Marketing Inc	Order 4455 granting blanket authority to import/export natural gas from/to Canada.
4460	10/31/19	19–99–LNG	Blue Water Fuels, LLC	Order 4460 granting long-term authority for Small-scale exports of LNG.
4202–A	10/31/19	19–27–LNG	Blue Water Fuels, LLC	Order 4204–A amending long-term authority to export LNG to Free-Trade Agreement Nations.

[FR Doc. 2019–25646 Filed 11–25–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 19–124–LNG]

Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC; Application for Long-Term, Multi-Contract Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice (Notice) of receipt of an application (Application), filed on September 27, 2019, by Cheniere Marketing, LLC and Corpus Christi Liquefaction, LLC (collectively, CMI). The Application requests long-term, multi-contract authorization to export domestically produced liquefied natural gas (LNG) in an amount up to the equivalent of approximately 108.16 billion cubic feet per year (Bcf/yr) of natural gas. CMI seeks to export this LNG from the Corpus Christi Liquefaction Project located in Corpus Christi, Texas. CMI filed the Application under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene, or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, December 26, 2019.

ADDRESSES:

Electronic Filing by email: fergas@hq.doe.gov.

Regular Mail: U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.): U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Beverly Howard or Amy Sweeney, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9387 or (202) 586–2627.

Cassandra Bernstein, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–9793.

SUPPLEMENTARY INFORMATION: CMI requests long-term, multi-contract authorization to export LNG from the Corpus Christi Liquefaction Project (Trains 1–3) in a volume equivalent to 108.16 Bcf/yr of natural gas. CMI states that the purpose of the Application is to align its current export volumes approved by DOE/FE with the liquefaction production capacity of the Liquefaction Project.

CMI requests authorization to export the LNG to: (i) Any nation with which the United States has entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA nations), and (ii) any other nation with which trade is not prohibited by U.S. law or policy (non-FTA nations). This Notice applies only to the portion of the Application requesting authority to export LNG to non-FTA countries pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a). DOE/FE will review CMI's request for a FTA export authorization separately pursuant to section 3(c) of the NGA, 15 U.S.C. 717b(c).

CMI requests the authorization on its own behalf and as agent for other entities that will hold title to the LNG at the point of export. CMI is seeking a 20-year term for the non-FTA authorization, commencing on the date of first commercial export of the requested volume from the Liquefaction Project. Additional details can be found in CMI's Application, posted on the DOE/FE website at: *https://www.energy.gov/fe/downloads/cheniere-marketing-llc-and-corpus-christi-liquefaction-llc-fe-dkt-no-19-124-lng.*

DOE/FE Evaluation

In reviewing CMI's request, DOE will consider any issues required by law or policy. DOE will consider domestic need for the natural gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. As part of this analysis, DOE will consider the study entitled, *Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports* (2018 LNG Export Study),[1] and DOE/FE's response to public comments received on that study.[2]

Additionally, DOE will consider the following environmental documents:

- *Addendum to Environmental Review Documents Concerning Exports of Natural Gas From the United States,* 79 FR 48132 (Aug. 15, 2014);[3] and
- *Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas From the United States,* 79 FR 32260 (June 4, 2014).[4]

Parties that may oppose this Application should address these issues and documents in their comments and/or protests, as well as other issues deemed relevant to the Application.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Interested parties will be provided 30 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, or notices of intervention.

Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 19–124–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Regulation, Analysis, and Engagement at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 19–124–LNG. PLEASE NOTE: If submitting a filing via email, please include all related documents and attachments (*e.g.,* exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this Notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this Notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Office of Regulation, Analysis, and Engagement docket room, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene, notices of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *https://www.energy.gov/fe/*

[1] *See* NERA Economic Consulting, Macroeconomic Outcomes of Market Determined Levels of U.S. LNG Exports (June 7, 2018), *available at: https://www.energy.gov/sites/prod/files/2018/06/f52/Macroeconomic%20LNG%20Export%20Study%202018.pdf.*

[2] U.S. Dep't of Energy, Study on Macroeconomic Outcomes of LNG Exports: Response to Comments Received on Study; Notice of Response to Comments, 83 FR 67251 (Dec. 28, 2018).

[3] The Addendum and related documents are available at: *http://energy.gov/fe/draft-addendum-environmental-review-documents-concerning-exports-natural-gas-united-states.*

[4] The Life Cycle Greenhouse Gas Report is available at: *http://energy.gov/fe/life-cycle-greenhouse-gas-perspective-exporting-liquefied-natural-gas-united-states.* On September 19, 2019, DOE/FE gave notice of an update to the LCA GHG Report, and that proceeding is on-going. *See* U.S. Dep't of Energy, Life Cycle Greenhouse Gas Perspective on Exporting Liquefied Natural Gas from the United States: 2019 Update, 84 FR 49278 (Sept. 19, 2019).

downloads/cheniere-marketing-llc-and-corpus-christi-liquefaction-llc-fe-dkt-no-19-124-lng.

Signed in Washington, DC, on November 20, 2019.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2019–25644 Filed 11–25–19; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14795–002]

Shell Energy North America (US), L. P.; Notice of Teleconference

a. *Project Name and Number:* Pearl Hill Hydro Battery Pumped Storage Project No. 14795–002.

b. *Applicant:* Shell Energy North America (US), L. P.

c. *Date and Time of Teleconference:* December 17, 2019 at 2:00 p.m. EST.

d. *FERC Contact:* Suzanne Novak, (202) 502–6665, *suzanne.novak@ferc.gov.*

e. *Purpose of Meeting:* Commission staff will hold a teleconference with staff from the Washington State Historic Preservation Office (SHPO), the Advisory Council on Historic Preservation (Advisory Council), the Confederated Tribes of the Colville Reservation (CTCR), Shell Energy North America (US), L. P. (Shell Energy), and the U.S. Army Corps of Engineers, Seattle Division, (Corps) to discuss the Programmatic Agreement for the licensing of the Pearl Hill Hydro Battery Pumped Storage Hydroelectric Project.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend by phone; however, participation will be limited to representation of the Washington SHPO, the Advisory Council, CTCR, Shell Energy, the Corps, and the Commission's representatives. Please call or email Suzanne Novak at (202) 502–6665 or *suzanne.novak@ferc.gov* by December 10, 2019 at 4:30 EST, to RSVP and to receive specific instructions on how to participate.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25626 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Number: PR20–10–000.

Applicants: UGI Utilities, Inc.

Description: Tariff filing per 284.123(b),(e)+(g): Rate Election to be effective 11/18/2019.

Filed Date: 11/18/19.

Accession Number: 201911185139.

Comments Due: 5 p.m. ET 12/9/19.

284.123(g) Protests Due: 5 p.m. ET 1/17/20.

Docket Numbers: RP20–234–000.

Applicants: Northwest Pipeline LLC.

Description: § 4(d) Rate Filing: NWP 2020 Leap Year Rate Filing to be effective 1/1/2020.

Filed Date: 11/19/19.

Accession Number: 20191119–5054.

Comments Due: 5 p.m. ET 12/2/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25622 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC20–3–000]

Commission Information Collection Activities (FERC–574); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC-574 (Gas Pipeline Certificates: Hinshaw Exemption) which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due January 27, 2020.

ADDRESSES: You may submit comments (identified by Docket No. IC20–3–000) by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–574 (Gas Pipeline Certificates: Hinshaw Exemption).

OMB Control No.: 1902–0116.

Type of Request: Three-year extension of the FERC–574 with no changes to the current reporting requirements.

Abstract: The Commission uses the information collected under the

requirements of FERC–574 to implement the statutory provisions of Sections 1(c), 4, and 7 of the Natural Gas Act (NGA). Natural gas pipeline companies file applications with the Commission furnishing information in order to facilitate a determination of an applicant's qualification for an exemption under the provisions of the section 1(c). If the Commission grants an exemption, the natural gas pipeline company is not required to file certificate applications, rate schedules, or any other applications or forms prescribed by the Commission.

The exemption applies to companies engaged in the transportation, sale, or resale of natural gas in interstate commerce if: (a) They receive gas at or within the boundaries of the state from another person at or within the boundaries of that state; (b) such gas is ultimately consumed in such state; (c) the rates, service and facilities of such company are subject to regulation by a State Commission; and (d) that such State Commission is exercising that jurisdiction. 18 CFR part 152 specifies the data required to be filed by pipeline companies for an exemption.

Type of Respondents: Pipeline companies.

Estimate of Annual Burden: [1] The Commission estimates the annual public reporting burden and cost [2] for the information collection as:

FERC–574, GAS PIPELINE CERTIFICATES: HINSHAW EXEMPTION

Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours & average cost ($) per response	Total annual burden hours & total annual cost ($)	Cost ($) per respondent
(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
2	1	2	60 hours; $4,800 ...	120 hours; $9,600 ..	$4,800

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25621 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2607–014]

Spencer Mountain Hydropower, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Protests and Motions To Intervene

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Extension of License Term.

b. *Project No.:* P–2607–014.

c. *Date Filed:* October 23, 2019.

d. *Licensee:* Spencer Mountain Hydropower, LLC.

e. *Name and Location of the Project:* The Spencer Mountain Project is located on the South Fork Catawba River, a tributary of the Catawba River, in Gaston County, North Carolina.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Licensee Contact Information:* Kevin Edwards and Amy Edwards, 916 Comer Rd., Stoneville, NC 27048, (336) 589–6138, *smhydro@pht1.com.*

h. *FERC Contact:* Kim Nguyen, (202) 502–6105, *Kim.Nguyen@ferc.gov.*

i. Deadline for filing comments, motions to intervene and protests is 30 days from the issuance date of this notice by the Commission. The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, and recommendations, using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–2607–014.

j. *Description of Proceeding:* Spencer Mountain Hydropower, LLC filed an application to extend the license terms for the Spencer Mountain Hydroelectric Project. The licensee requests that the license term for the project be extended to July 1, 2035 to comport with the Commission's new policy for default licensing term of 40 years. Currently the license will expire on July 1, 2025.

k. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE, Washington, DC 20426. The filing may also be viewed on the Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–2607–014) excluding the last three digits in the docket number field to access the notice. 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, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

[1] Burden is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[2] Commission staff estimates that the industry's skill set and cost (for wages and benefits) for FERC–574 are approximately the same as the Commission's average cost. The FERC 2019 average salary plus benefits for one FERC full-time equivalent (FTE) is $167,091/year (or $80.00/hour).

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

n. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title COMMENTS, PROTEST, or MOTION TO INTERVENE as applicable; (2) set forth in the heading the name of the applicant(s) and the project number(s) of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to the requests to extend the license terms. Agencies may obtain copies of the applications directly from the applicants. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25625 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER20–413–000.
Applicants: CalPeak Power—Vaca Dixon LLC.
Description: § 205(d) Rate Filing: Normal 2019 to be effective 11/20/2019.
Filed Date: 11/19/19.
Accession Number: 20191119–5128.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–414–000.
Applicants: CalPeak Power—Enterprise LLC.
Description: § 205(d) Rate Filing: Normal 2019 to be effective 11/20/2019.
Filed Date: 11/19/19.
Accession Number: 20191119–5130.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–415–000.
Applicants: CalPeak Power—Panoche LLC.
Description: § 205(d) Rate Filing: Normal 2019 to be effective 11/20/2019.
Filed Date: 11/19/19.
Accession Number: 20191119–5134.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–416–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2827R5 KPP and Evergy Kansas Central Meter Agent Agreement to be effective 11/1/2019.
Filed Date: 11/19/19.
Accession Number: 20191119–5141.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–417–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 2855R5 KMEA and Evergy Metro Meter Agent Agreement to be effective 11/1/2019.
Filed Date: 11/19/19.
Accession Number: 20191119–5145.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–418–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Revisions to Unbundle Schedule 1–A Tariff Administration Services to be effective 1/1/2021.
Filed Date: 11/19/19.
Accession Number: 20191119–5149.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–419–000.
Applicants: ITC Midwest LLC.
Description: § 205(d) Rate Filing: Filing of CIAC Agreement with Northern States to be effective 1/19/2020.
Filed Date: 11/19/19.
Accession Number: 20191119–5150.
Comments Due: 5 p.m. ET 12/10/19.

Docket Numbers: ER20–420–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–11–20_SA 3375 Entergy Arkansas-Searcy Solar GIA (J893) to be effective 11/5/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5005.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–421–000.
Applicants: Montana-Dakota Utilities Co.
Description: Compliance filing: Compliance Filing to Revise Montana Dakota Utilities Market Based Rate Tariff to be effective 10/31/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5029.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–422–000.
Applicants: FL Solar 1, LLC.
Description: Baseline eTariff Filing: Application for Market Based Rate to be effective 11/21/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5037.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–423–000.
Applicants: Energy Unlimited, Inc.
Description: Tariff Cancellation: Energy Unlimited, Inc. Notice of Cancellation to be effective 12/1/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5060.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–424–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2019–11–20_SA 1212 ITC Midwest-FPL Energy 2nd Rev GIA (G056) to be effective 11/4/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5071.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–425–000.
Applicants: American Municipal Power, Inc.
Description: Compliance filing: EL18–181 eTariff Settlement Compliance Filing to be effective 7/1/2018.
Filed Date: 11/20/19.
Accession Number: 20191120–5075.
Comments Due: 5 p.m. ET 12/11/19.

Docket Numbers: ER20–426–000.
Applicants: Energy Alternatives Wholesale, LLC.
Description: Tariff Cancellation: Notice of Cancellation to be effective 11/21/2019.
Filed Date: 11/20/19.
Accession Number: 20191120–5096.
Comments Due: 5 p.m. ET 12/11/19.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's

Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25628 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–422–000]

FL Solar 1, 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 FL Solar 1, 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 December 10, 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 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25624 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL20–10–000]

Anbaric Development Partners, LLC v. PJM Interconnection, L.L.C.; Notice of Complaint

Take notice that on November 18, 2019, Anbaric Development Partners, LLC (Complainant) filed a formal complaint against the PJM Interconnection, L.L.C. (PJM or Respondent) pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e, 825e, and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, alleging that (i) the transmission interconnection procedures under the PJMs' Tariff are unjust, unreasonable and unduly discriminatory and preferential; and (ii) requesting that the Commission (a) require PJM to give Transmission Platform Projects the opportunity to obtain Material Interconnection Rights under the PJM Tariff; (b) direct PJM to modify the PJM Tariff to permit open access Transmission Platform Projects as defined as Remote Generation Resource Interconnection Platform projects to materially interconnect to the PJM Transmission System as set forth herein; and (c) set a refund effective date to be the date of this Complaint such that the Commission's Order will apply to all projects with Queue Positions as of the date of the filing of this Complaint, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served by email and U.S. mail on the contacts listed for Respondent on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the eLibrary link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 9, 2019.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25623 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7186–051]

Missisquoi, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process

b. *Project No.:* 7186–051

c. *Date Filed:* September 30, 2019

d. *Submitted By:* Missisquoi, LLC

e. *Name of Project:* Sheldon Springs Project

f. *Location*: On the Missisquoi River in the Town of Sheldon, Franklin County, Vermont. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Kevin Webb, Hydro Licensing Manager, Missisquoi, LLC, 100 Brickstone Square, Suite 300, Andover, MA 01810; (978) 935–6039; email at *kevin.webb@enel.com.*

i. *FERC Contact:* Steve Kartalia at (202) 502–6131; or email at *stephen.kartalia@ferc.gov.*

j. Missisquoi, LLC filed its request to use the Traditional Licensing Process (TLP) on September 30, 2019, and provided public notice of the request on September 30, 2019. In a letter dated November 20, 2019, the Director of the Division of Hydropower Licensing approved Missisquoi, LLC's request to use the TLP.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Vermont State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Missisquoi, LLC as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. Missisquoi, LLC filed a Pre-Application Document (PAD), including a proposed process plan and schedule with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website (*http://www.ferc.gov*), using the eLibrary link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERConlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at 100 Brickstone Square, Suite 300, Andover, MA 01810.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 7186. Pursuant to 18 CFR 16.8, 16.9, and 16.10, each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 2022.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: November 20, 2019.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2019–25629 Filed 11–25–19; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0824; FRL–10001–83–OMS]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Pesticide Establishment Application, Notification of Registration, and Pesticide Production Reports for Pesticide-Producing and Device-Producing Establishments (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) submitted an information collection request (ICR), Pesticide Establishment Application, Notification of Registration, and Pesticide Production Reports for Pesticide-Producing and Device-Producing Establishments (EPA ICR Number 0160.12, OMB Control Number 2070–0078) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through January 31, 2020. Public comments were previously requested via the **Federal Register** on May 6, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 26, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–2011–0824 to: (1) EPA online using *http://www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michelle Yaras, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste, and Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–4153; email: *yaras.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket

can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(a) requires that any person who produces pesticides or pesticide devices subject to the Act must register with the Administrator of EPA the establishment in which the pesticide or the device is produced. This Section further requires that application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing and Device-Producing Establishments, is used to collect the establishment registration information required by this Section.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide/device production and sales/distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, and sold or distributed in the past year. The supporting regulations at 40 CFR part 167 provide the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, is used to collect the pesticide production information required by Section 7(c) of FIFRA.

Establishment registration information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing and device-producing establishments. Pesticide and device production information, reported on EPA Form 3540–16, is required to be submitted within 30 days after the company is notified of their pesticide-producing or device-producing establishment number, and annually thereafter on or before March 1st.

In January 2016, EPA launched an additional voluntary option for pesticide establishments to electronically register their establishments and report their production through EPA's Central Data Exchange (CDX).

Form Numbers: EPA Forms 3540–8 and 3540–16.

Respondents/affected entities: Pesticide-producing and device-producing establishments.

Respondent's obligation to respond: Mandatory (40 CFR part 167).

Estimated Number of Respondents: 15,063.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 27,136.

Estimated Total Annual Cost: $1,955,029. There are no annualized capital or O&M costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Changes in the Estimates: There is an increase of 3,057 hours in burden due to the wholesale reassessment of the burden covered by this ICR based on to the option of electronic submission, which began in 2016. Some adjustments resulted from corrections of clerical or computational errors in the previous ICR renewal supporting statement. All other adjustments to the burden estimates resulted from (1) adjustments in the salary computation for industry to reflect current wage scales, (2) adjustments for inflation, (3) adjustment to the number of respondents, and (4) adjustments based on differences in submitting information through the paper form or the eReporting system.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–25592 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2006–0894; FRL–10000–71–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Registration of Fuels and Fuel Additives: Requirements for Manufacturers (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Registration of Fuels and Fuel Additives: Requirements for Manufacturers (EPA ICR Number 0309.16, OMB Control Number 2060–0150) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). This is a proposed extension of the ICR, which is currently approved through January 31, 2020. Public comments were previously requested via the **Federal Register** on April 12, 2019 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before December 26, 2019.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2006–0894, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, and (2) OMB via email to *oria_submission@omb.eop.gov.* Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Compliance Division, Office of Transportation and Air Quality, Mail Code 6405A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343–9303; fax number: (202) 343–2801; email address: *caldwell.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: In accordance with the regulations at 40 CFR part 79, subparts A, B, C, and D, Registration of Fuels and Fuel Additives, manufacturers (including importers) of motor-vehicle gasoline, motor-vehicle diesel fuel, and

additives for those fuels, are required to have these products registered by EPA prior to their introduction into commerce. Registration involves providing a chemical description of the fuel or additive, and certain technical, marketing, and health-effects information. The development of health-effects data, as required by 40 CFR 79, Subpart F, is covered by a separate information collection. Manufacturers are also required to submit periodic reports (annually for additives, quarterly and annually for fuels) on production volume and related information. The information is used to identify products whose evaporative or combustion emissions may pose an unreasonable risk to public health, thus meriting further investigation and potential regulation. The information is also used to ensure that fuel additives comply with EPA requirements for protecting catalytic converters and other automotive emission controls. The data have been used to construct a comprehensive data base on fuel and additive composition. The Mine Safety and Health Administration of the Department of Labor restricts the use of diesel additives in underground coal mines to those registered by EPA. Most of the information is business confidential.

Form Numbers: EPA Forms 3520–12, 3520–12A, 3520–12Q, 3520–13, 3520–13A, and 3520–13B.

Respondents/affected entities: Manufacturers and importers of motor-vehicle gasoline, motor-vehicle diesel fuel, and additives to those fuels.

Respondents obligation to respond: Mandatory per 40 CFR part 79.

Estimated number of respondents: 10,700.

Frequency of response: On occasion, quarterly, annually.

Total estimated burden: 22,550 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $2,308,500 million per year, includes $53,500 annualized capital or operation and maintenance costs.

Changes in estimates: There is an increase of 1,550 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an increase in the number of registered fuels and fuel additives for which periodic reports are required.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2019–25591 Filed 11–25–19; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on the Annual Report for Fiscal Year 2019 and Three-Year Plan

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act, as amended (5 U.S.C. App.), and the FASAB Rules Of Procedure, as amended in October 2010, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued its *Annual Report for Fiscal Year 2019 and Three-Year Plan.*

The *Annual Report for Fiscal Year 2019 and Three-Year Plan* is available on the FASAB website at *https://www.fasab.gov/our-annual-reports/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on the content of the annual report and FASAB's project priorities for the next three years. Written comments are requested by January 17, 2020, and should be sent to *fasab@fasab.gov* or Ms. Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act (5 U.S.C. App.), 31 U.S.C. 3511(d).

Dated: November 19, 2019.

Monica R. Valentine,

Executive Director.

[FR Doc. 2019–25662 Filed 11–25–19; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL COMMUNICATIONS COMMISSION

Open Commission Meeting, Friday, November 22, 2019

November 15, 2019.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, November 22, 2019, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW, Washington, DC.

Item number	Bureau	Subject
1	Wireline Competition	*Title:* Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs (WC Docket No. 18–89). *Summary:* The Commission will consider a Report and Order, Further Notice of Proposed Rulemaking, and Order that would ensure that Universal Service Fund support is not used to purchase equipment or services from companies posing a national security threat to the integrity of communications networks or the communications supply chain, propose additional actions to address national security threats to USF-funded networks, and collect information to help assess the extent to which equipment from covered companies already exists in such networks.
2	Public Safety & Homeland Security	*Title:* Wireless E911 Location Accuracy Requirements (PS Docket No. 07–114). *Summary:* The Commission will consider a Fifth Report and Order and Fifth Further Notice of Proposed Rulemaking that would adopt a vertical, or z-axis, location accuracy metric in connection with wireless E911 calls and propose additional measures to improve E911 location accuracy.
3	General Counsel and Wireline Competition.	*Title:* Modernizing Suspension and Debarment Rules (GN Docket No. 19–309). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on updating its suspension and debarment rules to make them consistent with Office of Management and Budget guidelines, in order to better prevent bad actors from participating in Universal Service Fund programs, Telecommunications Relay Services programs, and the National Deaf-Blind Equipment Distribution Program.

Item number	Bureau	Subject
4	Wireline Competition	*Title:* Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services (WC Docket No. 19–308). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on updating its unbundling and resale rules to reflect the marketplace realities of intermodal voice and broadband competition and to encourage both incumbent and competitive local exchange carriers to invest in next-generation networks.
5	Media	*Title:* All-Digital AM Broadcasting (MB Docket No. 19–11); Revitalization of the AM Radio Service (MB Docket No. 13–249). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on whether to authorize AM stations to transition to an all-digital signal on a voluntary basis.
6	Media	*Title:* Amendment of Section 73.3556 of the Commission's Rules Regarding Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310); Modernization of Media Initiative (MB Docket No. 17–105). *Summary:* The Commission will consider a Notice of Proposed Rulemaking that would seek comment on whether the duplicative programming rule applicable to commonly owned radio stations in the same market should be modified or eliminated given the current broadcasting marketplace.
7	Consumer & Governmental Affairs, Enforcement, Managing Director andGeneral Counsel.	*Title:* Misuse of Internet Protocol (IP) Captioned Telephone Service (CG Docket No. 13–24); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03–123). *Summary:* The Commission will consider a Report and Order that would expand the TRS fund contribution base for covering the costs of providing Internet Protocol Captioned Telephone Service (IP CTS) to include intrastate telecommunications revenue as a way of strengthening the funding base for this form of TRS without increasing the size of the Fund itself.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Additional information concerning this meeting may be obtained from the Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the internet from the FCC Live web page at *www.fcc.gov/live.*

Marlene Dortch,

Secretary.

[FR Doc. 2019–25636 Filed 11–25–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 19–1196]

Consumer Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of its Consumer Advisory Committee (hereinafter the ''Committee'').

DATES: December 11, 2019, 9:00 a.m. to 2:00 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Commission Meeting Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Marshall, Designated Federal Officer of the Committee, (202) 418–2809 (voice or Relay), email: *Scott.Marshall@fcc.gov;* or Christina Clearwater, Deputy Designated Federal Officer of the Committee, (202) 418–1893 (voice), email: *Christina.Clearwater@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 19–1196, released November 20, 2019, announcing the Agenda, Date, and Time of the Committee's next meeting.

Proposed Agenda: At its December 11, 2019 meeting, the Committee is expected to consider a recommendation presented by its Caller ID Authentication Working Group relative to certain aspects of the Declaratory Ruling and Third Further Notice of Proposed Rulemaking in *Advanced Methods to Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor,* CG Docket No. 17–59, WC Docket No. 17–97, published at 84 FR 29478, June 24, 2019. The Committee may also receive briefings from Commission staff or outside speakers on issues of interest to the Committee and may discuss topics including, but not limited to, consumer protection and education, consumer participation in the Commission's rulemaking process, and the impact of new and emerging communication technologies.

A limited amount of time will be available for comments from the public. If time permits, the public may ask questions of presenters via the email address *livequestions@fcc.gov* or via Twitter using the hashtag #fcclive. The public may also follow the meeting on Twitter *@fcc* or via the Commission's Facebook page at *www.facebook.com/fcc.* Alternatively, members of the public may send written comments to: Scott Marshall, Designated Federal Officer of the Committee, or Christina Clearwater, Deputy Designated Federal Officer of the Committee, at the addresses above.

This meeting is open to members of the general public. The Commission will accommodate as many participants

as possible; however, admission will be limited to seating availability. The Commission will also provide audio and/or video coverage of the meeting over the internet from the Commission's web page at: *www.fcc.gov/live*. Oral statements at the meeting by parties or entities not represented on the Committee will be permitted to the extent time permits, at the discretion of the Committee Chair and the Designated Federal Officer. Members of the public may submit comments to the Committee in the Commission's Electronic Comment Filing System, ECFS, at: *www.fcc.gov/ecfs/*.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to: *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the Commission to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice; last-minute requests will be accepted but may not be possible to accommodate.

Gregory Haledjian,

Legal Advisor, Consumer and Governmental Affairs Bureau.

[FR Doc. 2019–25641 Filed 11–25–19; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 2019–18]

Filing Dates for the California Special Election in the 25th Congressional District

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a Special General Election on March 3, 2020, to fill the U.S. House of Representatives seat in the 25th Congressional District vacated by Representative Katie Hill. Under California law, a majority winner in a special election is declared elected. Should no candidate achieve a majority vote, a Special Runoff Election will be held on May 12, 2020, between the top two vote-getters.

Political committees participating in the California special elections are required to file pre- and post-election reports. Filing deadlines for these reports are affected by whether one or two elections are held.

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 both the California Special General and Special Runoff Elections shall file a 12-day Pre-General Report on February 20, 2020; a 12-day Pre-Runoff Report on April 30, 2020; and a 30-day Post-Runoff Report on June 11, 2020. (See charts below for the closing date for each report.)

If both elections are held, all principal campaign committees of candidates who participate only in the California Special General Election shall file a 12-day Pre-General Report on February 20, 2020. (See charts below for the closing date for each report.)

If only one election is held, all principal campaign committees of candidates in the Special General Election shall file a 12-day Pre-General Report on February 20, 2020; and a 30-day Post-General Report on April 2, 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 California Special General Election and/or Special Runoff Election by the close of books for the applicable report(s). (See charts below for the closing date for each report.)

Committees filing monthly that make contributions or expenditures in connection with the California Special General or Special Runoff Election will continue to file according to the monthly reporting schedule.

Additional disclosure information in connection with the California 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 CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
If *Only* the Special General (03/03/2020) is Held, Committees Involved Must File			
Pre-General	02/12/2020	[2] 02/17/2020	02/20/2020
Post-General	03/23/2020	04/02/2020	04/02/2020
April Quarterly	03/31/2020	04/15/2020	04/15/2020

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION—Continued

Report	Close of books [1]	Reg./cert. & overnight mailing deadline	Filing deadline
If Two Elections are Held, Committees Involved in *Only* the Special General (03/03/2020) Must File			
Pre-General	02/12/2020	[2] 02/17/2020	02/20/2020
April Quarterly	03/31/2020	04/15/2020	04/15/2020
Committees Involved in Both the Special General (03/03/2020) and Special Runoff (05/12/2020) Must File			
Pre-General	02/12/2020	[2] 02/17/2020	02/20/2020
April Quarterly	03/31/2020	04/15/2020	04/15/2020
Pre-Runoff	04/22/2020	04/27/2020	04/30/2020
Post-Runoff	06/01/2020	06/11/2020	06/11/2020
July Quarterly	06/30/2020	07/15/2020	07/15/2020
Committees Involved in *Only* the Special Runoff (05/12/2020) Must File			
Pre-Runoff	04/22/2020	04/27/2020	04/30/2020
Post-Runoff	06/01/2020	06/11/2020	06/11/2020
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.

[2] Notice that the registered/certified & overnight mailing deadline falls on a weekend or federal holiday. The report should be postmarked before that date.

Dated: November 20, 2019.

On behalf of the Commission.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 2019–25599 Filed 11–25–19; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091; Docket No. 2019–0003; Sequence No. 29]

Submission for OMB Review; Anti-Kickback Procedures

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding Anti-Kickback Procedures.

DATES: Submit comments on or before December 26, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov*. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0091, Anti-Kickback Procedures.

Instructions: All items submitted must cite Information Collection 9000–0091, Anti-Kickback Procedures. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0091, Anti-Kickback Procedures.

B. Needs and Uses

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of 41 U.S.C. chapter 87, Kickbacks. Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of the statute may have occurred, they are required to report the possible violation in writing to the contracting agency inspector general, the head of the contracting agency if an agency does not have an inspector general, or the Department of Justice. The information is used to determine if any violations of the statute have occurred.

There is no Governmentwide data collection process or system which identifies the number of alleged violations of 41 U.S.C. chapter 87, Kickbacks, that are reported annually to agency inspectors general, the heads of the contracting agency if an agency does not have an inspector general, or the Department of Justice.

C. Annual Burden

Respondents: 100.
Total Annual Responses: 100.
Total Burden Hours: 2,000.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 44619, on August 26, 2019. One comment was received; however, it did not change the estimate of the burden.

Comment: The commenter asked for support in urging and supporting Senator Thune to reintroduce S. 545, the Pay Our Coast Guard Act, and seek quick action in bringing it to the floor for a vote. The act was introduced in the 114th Congress to make continuous appropriations for Coast Guard pay for a government shutdown.

Response: This comment is out of scope because the information collection requirements covered through OMB Control No. 9000–0091 do not relate to the topic of appropriations for Coast Guard pay.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: November 20, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–25573 Filed 11–25–19; 8:45 a.m.]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0056; Docket No. 2019–0003; Sequence No. 8]

Submission for OMB Review; Report of Shipment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision and renewal of a previously approved information collection requirement regarding report of shipment.

DATES: Submit comments on or before December 26, 2019.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to:

Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Room 10236, NEOB, Washington, DC 20503 or at *Oira_submission@omb.eop.gov*. Additionally submit a copy to GSA by any of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0056, Report of Shipment.

Instructions: All items submitted must cite Information Collection 9000–0056, Report of Shipment. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, at telephone 202–501–1448, or *curtis.glover@gsa.gov*.

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and any Associated Form(s)

9000–0056, Report of Shipment.

B. Needs and Uses

This clearance covers the information that contractors must submit to comply with the Federal Acquisition Regulation requirement at 52.247–68, Report of Shipment (REPSHIP). This clause requires contractors to send an advanced notice to the consignee transportation office at least twenty-four hours before the arrival of a shipment, unless otherwise directed by a contracting officer.

Generally, this notification is required only for classified material; sensitive, controlled, and certain other protected material; explosives, and some other hazardous materials; selected shipments requiring movement control; or minimum carload or truckload shipments. It facilitates arrangements for transportation control, labor, space, and use of materials handling equipment at destination. Also, timely receipt of notices by the consignee transportation office precludes the incurring of demurrage and vehicle detention charges.

C. Annual Burden

Respondents: 113.
Total Annual Responses: 8,023.
Total Burden Hours: 1,340.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 84 FR 44620, on August 26, 2019. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0056, Report of Shipment, in all correspondence.

Dated: November 20, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–25572 Filed 11–25–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012; Docket No. 2019–0003; Sequence No. 33]

Information Collection; Termination Settlement Proposal Forms—FAR (SF 1435 Through 1440)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget

(OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision and renewal concerning termination settlement proposal forms in the FAR. DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through February 29, 2020. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 27, 2020.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection by either of the following methods:

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. Go to *http://www.regulations.gov* and follow the instructions on the site.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405. ATTN: Lois Mandell/IC 9000–0012, Termination Settlement Proposal Forms—FAR (SF 1435 through 1440).

Instructions: All items submitted must cite Information Collection 9000–0012, Termination Settlement Proposal Forms—FAR (SF 1435 through 1440). Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0012, Termination Settlement Proposal Forms—FAR (SF 1435 through 1440).

B. Need and Uses

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position per the Federal Acquisition Regulation subpart 49.6, Contract Termination Forms and Formats. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

C. Annual Burden

Respondents: 4,995.
Total Annual Responses: 14,128.
Total Burden Hours: 33,907.
Obtaining Copies: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 9000–0012, Termination Settlement Proposal Forms—FAR (SF 1435 through 1440), in all correspondence.

Dated: November 20, 2019.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2019–25580 Filed 11–25–19; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Injury Prevention and Control (NCIPC); Correction

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, National Center for Injury Prevention and Control (NCIPC); December 4, 2019, 9:00 a.m. to 4:40 p.m., EST; and December 5, 2019, 9:00 a.m. to 11:30 a.m., EST which was published in the **Federal Register** on October 24, 2019, Volume 84, Number 206, page 57021.

The meeting location has been changed from the Hilton Garden Inn, 3342 Peachtree Road NE, Atlanta, Georgia 30326 to the Centers for Disease Control and Prevention, 4770 Buford Highway NE, Chamblee Campus, Building 106, Conference Room 1–B, Atlanta, Georgia 30341. This Federal facility meeting room accommodates 80 people.

For Further Information Contact: Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, Georgia 30341; telephone (770) 488–3953; email address: *NCIPCBSC@cdc.gov.*

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 Disease 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. 2019–25612 Filed 11–25–19; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Child Care and Development Fund (CCDF) Tribal Annual Report—ACF–700 (0970–0430)

AGENCY: Office of Child Care, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a three-year extension of the form ACF–700: Child Care and Development Fund (CCDF) Tribal Annual Report (OMB #0970–0430, expiration 11/30/2019) with changes.

DATES: *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent

directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: OPRE Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Child Care and Development Fund (CCDF) Tribal Annual Report (ACF–700) requests Tribal Lead Agencies (TLAs) to provide annual Tribal aggregate information on services provided through the CCDF, which is required by CCDF regulations (45 FR parts 98 and 99). The revised ACF–700 report consists of an introductory section that provides program characteristics and two parts: (1) Administrative Data, and (2) Tribal Narrative. The content and format of the entire form have been revised to address Child Care and Development Block Grant (CCDBG) Act of 2014 changes and to reduce the reporting burden to TLAs.

Information from the ACF–700 will be included in the CCDF Report to Congress, as appropriate, and will be shared with TLAs to inform them of CCDF-funded activities.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours	Annual burden hours
ACF–700	138 (Tribes with small allocation)	3	19	7,866	2,622
ACF–700	83 (Tribes with medium/large allocation).	3	26	6,474	2,158

Estimated Total Annual Burden Hours: 4,780.

Authority: 42 U.S.C. 9857.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2019–25607 Filed 11–25–19; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–D–5324]

Compliance Policy for Limited Modifications to Certain Marketed Tobacco Products; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of a final guidance for industry entitled ''Compliance Policy for Limited Modifications to Certain Marketed Tobacco Products.'' This guidance describes FDA's compliance policy for premarket review requirements for two types of limited modifications to new tobacco products that were on the market as of August 8, 2016, specifically, modifications to battery-operated tobacco products solely to comply with UL 8139 and modifications to liquid nicotine products solely to comply with the Child Nicotine Poisoning Prevention Act of 2015 (CNPPA) flow restrictor requirements for liquid nicotine containers. This guidance will enable tobacco manufacturers to upgrade their battery-operated tobacco products to UL 8139. It will also enable manufacturers to comply with the CNPPA requirements for flow restrictors for liquid nicotine containers. FDA is issuing this guidance to address battery safety concerns and youth exposure to liquid nicotine toxicity.

DATES: The announcement of the guidance is published in the **Federal Register** on November 26, 2019.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time 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–D–5324 for ''Compliance Policy for Limited Modifications to Certain Marketed Tobacco Products.'' 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the guidance document may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Nathan Mease or Lauren Belcher, Center for Tobacco Products, Food and Drug Administration, 10903 New Hampshire Ave., Document Control Center, Bldg. 71, Rm. G335, Silver Spring, MD 20993–0002, 1–877–287–1373, email: *CTPRegulations@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Compliance Policy for Limited Modifications to Certain Marketed Tobacco Products.'' We are issuing this guidance consistent with our good guidance practices (GGP) regulation (§ 10.115 (21 CFR 10.115)). We are implementing this guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because the guidance presents a less burdensome policy that is consistent with public health. The guidance presents a less burdensome policy as it provides that FDA does not intend to enforce violations of the premarket review requirements against certain types of limited modifications to new tobacco products that were on the market as of August 8, 2016—specifically, modifications to battery-operated tobacco products solely to comply with UL 8139 and modifications to liquid nicotine products solely to comply with the CNPPA flow restrictor requirements for liquid nicotine containers. The guidance is consistent with public health because FDA believes that, in modifying their products to comply with UL 8139 or the CNPPA flow restrictor requirements, manufacturers will reduce the risk of battery-related adverse experiences and acute nicotine toxicity. Although this guidance document is for immediate implementation, it remains subject to comment in accordance with FDA's GGP regulation.

UL (formerly known as Underwriters Laboratories), along with the Consumer Product Safety Commission (CPSC), FDA, Health Canada, the American National Standards Institute (ANSI), and other industry stakeholders, developed a voluntary industry standard, ANSI/CAN/UL 8139 Standard for Safety for Electrical Systems of Electronic Cigarettes and Vaping Devices (UL 8139), to help manufacturers address battery hazards for electronic cigarettes and other battery-operated tobacco products. The standard applies to all battery chemistries and types. UL 8139 prescribes an approach to evaluate the safety of the electrical, heating, cell, battery, and charging systems of these products. UL 8139 testing includes battery management system evaluation for normal use and foreseeable misuse, mechanical stress testing, accidental activation, compatibility with interconnected systems, and environmental resilience. This testing enhances consumer safety, minimizes battery-related injuries, and mitigates potential risks. FDA recognizes that, to comply with UL 8139, manufacturers of battery-operated tobacco products may need to change certain aspects of their products.

On March 8, 2019 and August 15, 2019, CPSC staff issued letters to industry providing manufacturers with information regarding the testing parameters that CPSC will use to assess compliance with the restricted flow requirements of 16 CFR 1700.15(d). FDA has received inquiries about tobacco product manufacturers modifying their e-liquid products to comply with the restricted flow requirements. FDA recognizes that to comply with these requirements, manufacturers of liquid nicotine products may need to change certain aspects of their products.

In this guidance, FDA sets out its compliance policy for premarket review requirements with respect to two types of limited modifications to new tobacco products that were on the market as of August 8, 2016: (1) Modifications to battery-operated tobacco products solely to comply with UL 8139 and (2) modifications to liquid nicotine products solely to comply with the CNPPA flow restrictor requirements for liquid nicotine containers. This policy provides that FDA does not intend to enforce violations of the premarket review requirements against such modified products on the basis of these limited modifications.

The guidance represents the current thinking of FDA on these topics. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in section 910(c)(1)(A)(i) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 387j(c)(1)(A)(i)) have been approved under OMB control number 0910–0768; the collections of information in section 905(j) of the FD&C Act (21 U.S.C. 387e(j)) have been approved under OMB control number 0910–0673; and the collections of information in 21 CFR part 1107 have been approved under OMB control number 0910–0684.

III. Electronic Access

Persons with access to the internet may obtain the document at *either https://www.regulations.gov or https://www.fda.gov/TobaccoProducts/Labeling/RulesRegulationsGuidance/default.htm.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: November 20, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25578 Filed 11–25–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5465]

Center for Devices and Radiological Health Ethylene Oxide Sterilization Master File Pilot Program

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration's (FDA or Agency or we) Center for Devices and Radiological Health (CDRH or Center) is announcing its Ethylene Oxide Sterilization Master File Pilot Program (''EtO Pilot Program''). The EtO Pilot Program is voluntary and intends to allow companies (''sterilization providers'') that sterilize single-use medical devices using fixed chamber ethylene oxide (EtO) to submit a Master File when making certain changes between sterilization sites or when making certain changes to sterilization processes that utilize reduced EtO concentrations. Under this voluntary program, manufacturers (''PreMarket Application (PMA) holders'') of Class III devices subject to premarket approval that are affected by such changes may, upon FDA's permission, reference the Master File submitted by their sterilization provider in a postapproval report in lieu of submission of a premarket approval application (PMA) supplement. The EtO Pilot Program seeks to help ensure patient access to safe medical devices while encouraging new, innovative ways to sterilize medical devices that reduce the potential impact of EtO on the environment and on the public health while providing a regulatory approach that would address potential device shortages.

DATES: FDA is seeking participation in the voluntary EtO Pilot Program beginning November 26, 2019. See the ''Participation'' section for selection criteria for participation in the EtO Pilot Program and the ''Procedures'' section for instructions on how to submit a Master File for consideration for inclusion into the EtO Pilot Program. Up to nine eligible participants may be selected for the EtO Pilot Program.

FOR FURTHER INFORMATION CONTACT: Steven Elliott, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4630, Silver Spring, MD 20993, 301–796–5285, *Steven.Elliott@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

EtO sterilization is an important sterilization method that is widely used to keep medical devices safe. Medical devices made from certain polymers (such as plastic or resin), metals, or glass—or devices that have multiple layers of packaging or hard-to-reach crevices (such as catheters)—are often sterilized with EtO to avoid product damage during the sterilization process. It is estimated that approximately 50 percent of all sterile medical devices in the United States are sterilized using EtO (Ref. 1).

For many medical devices, sterilization with EtO may be the only method [1] currently evaluated that effectively sterilizes and does not damage the device during the sterilization process. However, there have been recent concerns about the effects of EtO exposure and environmental emissions. Earlier this year, the FDA was made aware of the closures of two device sterilization facilities due to concerns about the level of EtO emissions (Ref. 2). Since then, the Agency has been closely monitoring the situation and working with device manufacturers affected by the closures to minimize impact to patients who need device access. FDA continues to work with manufacturers on site changes and engage with manufacturers about potential solutions to shortage concerns. FDA has also taken several actions to advance medical device sterilization, including sponsoring two innovation challenges to identify alternatives to EtO sterilization methods (Ref. 3) and approaches to reduce EtO emissions (Ref. 4), and convening the General Hospital and Personal Use Devices Panel on November 6 to 7, 2019 (November 2019 Panel Meeting), to discuss the role of EtO sterilization in maintaining public health (84 FR 46546; see also Ref. 5).

Before most sterile medical devices are on the market, FDA reviews premarket submissions to determine if the sterility information is adequate (*e.g.,* in accordance with internationally agreed upon voluntary consensus standards that the FDA recognizes). If a medical device manufacturer changes the method, process, or the facility identified in its original PMA submission for sterilizing its devices, the manufacturer generally needs to submit a PMA supplement so the Agency can review these changes (Ref. 6). However, considering recent events and concerns regarding EtO emissions, FDA recognizes the need to facilitate timely site changes to keep supply interruptions at a minimum and to facilitate changes to sterilization processes that utilize reduced EtO concentrations. At the November 2019 Panel Meeting, FDA received feedback from Panel members and stakeholders that the Agency could help prevent medical device shortages and advance medical device sterilization by expediting approvals of certain changes to EtO sterilization methods, processes, and facilities (Ref. 5).

For these reasons, FDA is announcing and soliciting participation in the EtO Pilot Program. Under this pilot program, sterilization providers that sterilize single-use medical devices using fixed chamber EtO would submit a Master File when making certain changes between sterilization sites or when making certain changes to sterilization processes that utilize reduced EtO concentrations. Under this voluntary program, PMA holders of Class III devices affected by such changes may, upon FDA's permission, reference the Master File submitted by their sterilization provider in a postapproval report, in accordance with § 814.84 (21 CFR 814.84), in lieu of submission of a PMA supplement, to satisfy the requirements of § 814.39(a) and (e) (21 CFR 814.39(a) and (e)). The pilot program is intended to provide expeditious review and feedback to sterilization providers and PMA holders on Master File submissions used to support changes made to sterilization site and/or processes in a postapproval report rather than a PMA supplement. FDA intends to evaluate pilot participation and the progress of the pilot in 6 months and provide any updates to the pilot in a subsequent notice, if appropriate. This postapproval report does not remove or replace the

[1] In this notice, ''method'' generally refers to the type of sterilization and ''processes'' generally refers to steps within that method to achieve a sterile device. Changes from a conventional EtO cycle to reduced/optimized EtO cycles would be considered a process change.

requirement to submit periodic (annual) reports identifying changes made to the PMA under § 814.39(b). At this time, PMAs reviewed by the Center for Biologics Evaluation and Research and PMAs for combination products [2] are not eligible for this pilot.[3]

For the purposes of this document, the term ''sterilization provider'' is used to refer to a device manufacturer's own in-house sterilization facility or a device manufacturer's contract sterilization provider, and encompasses any subcontractor facilities utilizing the same quality system as the contract sterilization provider, as applicable. For the purposes of this document, the term ''Conventional EtO cycle'' is used to refer to an EtO cycle that utilizes concentrations of sterilant greater than 600 mg/L to sterilize medical devices, and the term ''Reduced/Optimized EtO Concentration cycle'' is used to refer to an EtO cycle that utilizes concentrations of sterilant significantly below 600 mg/L to sterilize medical devices.

A. Participation

Up to nine sterilization providers are eligible to participate in this voluntary EtO Pilot Program. The pilot program is limited to selected sterilization providers that follow the procedures set forth in section I.B and that also meet the following selection qualities:

1. Be a sterilization provider of a single-use device that is provided sterile;
2. Be in good compliance standing with the Agency;
3. Have an approved fixed chamber EtO sterilization process for the device in an existing PMA; and
4. Be proposing one of the following changes:

a. A change from a Conventional EtO cycle at an existing PMA-approved sterilization site to a Conventional EtO cycle at a different site for the same sterilization provider (including EtO chamber changes within the same sterilization site);

b. A change from a Conventional EtO cycle at an existing PMA-approved sterilization site to a Reduced/Optimized EtO Concentration cycle at the same site for the same sterilization provider; or

c. A change from a Conventional EtO cycle at an existing PMA-approved sterilization site to a Reduced/Optimized EtO Concentration cycle at a different site for the same sterilization provider.

Sterilization processes that include cycle parameters (*e.g.,* increased temperature, pressure, humidity) outside validated tolerances that may impact device specifications, device performance, EtO residuals, biocompatibility or toxicology from the approved PMA device are outside the scope of the EtO Pilot Program. For site changes from a Conventional EtO cycle at an existing site to a Conventional EtO cycle at a different site (including EtO chamber changes within the same sterilization site) described in 4a above, the sterilization validation activities for the new cycle should be conducted in accordance with the validation activities in the manufacturer's approved PMA to be eligible for this pilot program. For changes from a Conventional EtO cycle to a Reduced/Optimized EtO Concentration cycle described in 4b and 4c above, the sterilization validation activities for the new cycle should conform to the FDA recognized consensus standard ISO 11135: 2014 ''Sterilization of health care products—Ethylene oxide—Requirements for development, validation and routine control of a sterilization process for medical devices'' to be eligible for this pilot program. Participants who do not meet these criteria will be deemed ineligible for the EtO Pilot Program.

The following are outside the scope of the EtO Pilot Program and are inappropriate for inclusion in this program:

1. Reusable devices, reprocessed single-use devices, or devices that are provided non-sterile.
2. Sterilization providers that do not have an approved fixed chamber EtO sterilization process for the device in an existing PMA.
3. Changes in contract sterilization providers or addition of a new sterilization provider using a sterilization process not approved in an existing PMA.
4. Changes to device design, specifications, or materials.
5. Packaging changes.
6. Load configuration/composition changes.
7. Sterilization processes used only for intermediate processing prior to final device assembly.
8. Devices with alternate sterility assurance levels other than 10^{-6}.
9. Devices with specialized requirements for biocompatibility or sterilant residual compatibility that differ from ISO 10993–7 ''Biological evaluation of medical devices—Part 7: Ethylene oxide sterilization residuals.''

B. Procedures

While the sterilization provider serves as the primary participant of the EtO Pilot Program, FDA anticipates that close collaboration between sterilization providers and PMA holders will be necessary to ensure the success of the program. Accordingly, the procedures for sterilization providers and PMA holders are set forth below.

1. Procedures for Sterilization Providers

To be considered for the voluntary EtO Pilot Program, a sterilization provider should submit the following information in a Master File for the Agency's review with a cover sheet clearly indicating ''Ethylene Oxide Sterilization Master File Pilot Program'' in the subject heading:

a. Name, address, and FDA Establishment Identification (FEI) number of the proposed sterilization facility.

b. List of PMA device(s) to be sterilized (identified by manufacturer, trade name, model number, and PMA number) and letter of authorization from each PMA holder for each identified device.[4]

c. Clear identification of all responsibilities of the sterilization facility and the device manufacturer.

d. Complete description of all sterilization validation information [5] used to support validation of the PMA device(s) under the proposed EtO sterilization process including:

i. A risk analysis with identified risk mitigation measures to address any risks that may impact the PMA approved device with respect to its product parameters or safety and effectiveness profile.

ii. Installation Qualification, Operational Qualification, and Performance Qualification methodology.

iii. Clear, detailed product definition, along with a documented procedure for determining whether a device meets the product definition, or confirmation that the product definition has not differed from the approved PMA.

iv. All reports, protocols and process summaries presented in an easily understandable template that supports incorporation of the PMA device to be

[2] See 21 CFR 3.2(e).

[3] FDA is not including 510(k) devices within the scope of the pilot at this time. Manufacturers of 510(k) devices affected by such changes should evaluate the changes according to FDA's Guidance, ''Deciding When to Submit a 510(k) for a Change to an Existing Device'' in determining whether a new 510(k) is required (available at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents/deciding-when-submit-510k-change-existing-device*). Generally, a new 510(k) would not be required for the types of changes subject to this pilot.

[4] List of device(s) should reflect known devices to be sterilized at the time of submission of the Master File. Subsequent revisions to the list of device(s) should be submitted as an amendment to the Master File.

[5] Sterilization providers may wish to refer to ISO 11135:2014 for information regarding sterilization validation.

sterilized in its defined package and load configuration.

v. The process capability for the EtO sterilization process.

vi. Identification and explanation of common potential protocol deviations, along with proposed mitigation of potential deviations. The Master File should also include a strategy to address any deviations that may be subject to differences of opinion regarding safety and effectiveness between FDA and the sterilization facility and any deviations not addressed in the Master File.

vii. Identification and explanation of management structure and involvement for process and facility review.

viii. Installation and operational requalification schedule to support continuous process effectiveness.

ix. A structured program and schedule for independent audits and monitors.

e. The sterilization facility's inspectional history and history of compliance with applicable regulations (including, but not limited to, requirements under 21 CFR parts 820 and part 814).

For more information on Master Files, see FDA's website: *https://www.fda.gov/medical-devices/premarket-approval-pma/master-files.*

Upon receipt of a Master File containing the above information, FDA will determine eligibility in the pilot program by evaluating whether the criteria outlined in sections I.A and I.B.1. above have been met, and provide written feedback that either accepts the Master File into the EtO Pilot Program, or which rejects the Master File as not eligible for the pilot program. FDA intends to review the information expeditiously and make a decision within 60 days when possible. If a Master File is rejected from the program, the written feedback will identify the reasons the Master File was determined to be ineligible for the program. FDA intends to work interactively with the sponsor to address any deficiencies with the information provided in the Master File.

Sterilization providers (*i.e.,* Master File holders) that are accepted into the pilot program should submit amendments to their Master File every 6 months with information on any process changes or new devices or PMA submissions brought into the program to maintain participation in the pilot program. If there are no modifications or changes, this should be stated in the amendment. If a sterilization provider is accepted into the pilot program or does not maintain participation, they should notify PMA holders for which they granted a right of reference to the Master File.

2. Procedures for PMA Holders

For sterilization providers to be considered for the voluntary EtO Pilot Program, PMA holders affected by a sterilization provider's participation in this program should use the following procedures. As an alternative to the submission of a PMA supplement under § 814.39(a) and (e), FDA will consider permitting PMA holders to reference the existing Master File in a postapproval report to the Agency with a cover sheet clearly indicating ''Periodic Report for Ethylene Oxide Sterilization Master File Pilot Program'' in the subject heading. The postapproval report should contain the following information in lieu of the information in 21 CFR 814.84(b)(2)–(4):

a. Name, address, and FDA FEI number of the proposed sterilization facility.

b. Master File number in which the referenced sterilization procedures are described, with signed right of reference from the Master File holder.

c. List of device(s) to be sterilized (identified by manufacturer, trade name, model number, and PMA number).

Upon receipt of a postapproval report containing the above information, FDA will advise PMA holders of whether the postapproval report is permitted as an alternate submission under § 814.39(a) and (e). Additionally, FDA will notify the PMA holder of whether the PMA, identified devices, and referenced Master File are eligible for the sterilization provider's participation in the program. If the PMA is not eligible for the sterilization provider's participation in the pilot program, FDA will notify the PMA holder of the reasons for rejection.

This Pilot Program does not otherwise remove or replace any requirements, such as, but not limited to, recordkeeping and reporting requirements, under parts 820 or 814. It is the manufacturer's responsibility to ensure compliance with applicable laws and regulations administered by FDA.

During this voluntary EtO Pilot Program, CDRH staff intends to be available to answer questions or concerns that may arise. The EtO Pilot Program participants may comment on and discuss their experiences with the Center.

II. Paperwork Reduction Act of 1995

This notice refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in part 820, regarding the Quality System regulations, have been approved under OMB control number 0910–0073. The collections of information in part 814, subparts A through E, regarding Premarket approval, have been approved under OMB control number 0910–0231.

III. References

The following references are on display in the Dockets Management Staff (see **ADDRESSES**), and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they are also available electronically at *https://www.regulations.gov.* FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. FDA, ''Ethylene Oxide Sterilization for Medical Devices,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/ethylene-oxide-sterilization-medical-devices.*

2. FDA, ''Statement on Concerns with Medical Device Availability Due to Certain Sterilization Facility Closures,'' available at: *https://www.fda.gov/news-events/press-announcements/statement-concerns-medical-device-availability-due-certain-sterilization-facility-closures.*

3. FDA, ''FDA Innovation Challenge 1: Identify New Sterilization Methods and Technologies,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/fda-innovation-challenge-1-identify-new-sterilization-methods-and-technologies.*

4. FDA, ''FDA Innovation Challenge 2: Reduce Ethylene Oxide Emissions,'' available at: *https://www.fda.gov/medical-devices/general-hospital-devices-and-supplies/fda-innovation-challenge-2-reduce-ethylene-oxide-emissions.*

5. FDA, ''November 6 to 7, 2019: General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee Meeting Announcement,'' available at: *https://www.fda.gov/advisory-committees/advisory-committee-calendar/november-6-7-2019-general-hospital-and-personal-use-devices-panel-medical-devices-advisory-committee.*

6. FDA, ''PMA Supplements and Amendments,'' available at: *https://www.fda.gov/medical-devices/premarket-approval-pma/pma-supplements-and-amendments.*

Dated: November 21, 2019.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2019–25631 Filed 11–25–19; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

2019 Interagency Autism Coordinating Committee Call for Nominations Announcement

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Office of the Secretary of the Department of Health and Human Services (HHS) is seeking nominations of individuals to serve as non-federal public members on the Interagency Autism Coordinating Committee (IACC).

DATES: Nominations will be accepted between Wednesday, November 13, 2019 and Friday, January 17, 2020.

ADDRESSES: Nominations are due by Friday January 17, 2020 and may be sent to Dr. Susan Daniels, Director, Office of Autism Research Coordination/NIMH/NIH, 6001 Executive Boulevard, Room 7220, Bethesda, Maryland 20892 by standard or express mail, or via email to *IACCPublicInquiries@mail.nih.gov.* Confirmation of receipt will be provided. More information about the IACC is available at *iacc.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Susan Daniels at 301–827–1437 or email at *iaccpublicinquiries@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: As specified in the Combating Autism Act of 2006 (Pub. L. 109–416) and reauthorized by the Autism Collaboration, Accountability, Research, Education and Support Act of 2019 (Pub. L. 116–60). The Office of the Secretary has directed the Office of Autism Research Coordination (OARC) of the National Institute of Mental Health, National Institutes of Health to assist the Department in conducting an open nomination process. Appointments of non-federal public members to the committee shall be made by the Secretary of Health and Human Services.

Eligibility Requirements

Nominations of new non-federal public members are encouraged, and current non-federal public members may also be re-nominated to continue to serve if they have served only one term previously, in accordance with the provisions of the Autism CARES Act of 2019. Self-nominations and nominations of other individuals are both permitted. Only one nomination per individual is required. Multiple nominations of the same individual will not increase likelihood of selection. The Secretary may select non-federal public members from the pool of submitted nominations and other sources as needed to meet statutory requirements and to form a balanced committee that represents the diversity within the autism spectrum disorder (ASD) community.

Those eligible for nomination include individuals on the autism spectrum, parents or guardians of individuals with ASD, leaders or representatives of major ASD research, advocacy and service organizations, healthcare and service providers, educators, researchers and other individuals with professional or personal experience with ASD. Nominations of individuals with a variety of disability and support needs, individuals from all U.S. states and territories, and individuals representing diverse populations within the autism community, including all genders and gender identities, cultural, ethnic and racial groups are encouraged. Requests for reasonable accommodation to enable participation on the Committee should be indicated in the nomination submission.

IACC non-federal public members are appointed as special government employees and are required to be U.S. citizens. To serve, they must submit an annual confidential financial disclosure report used to determine conflicts of interest as well as a foreign activities questionnaire. Prohibited foreign activities include holding a position or title with a foreign governmental entity (including certain universities), and from receiving compensation and certain gifts from a foreign government. In accordance with White House Office of Management and Budget guidelines (FR Doc. 2014–19140), federally-registered lobbyists are not eligible. Federal employees may not serve as non-federal public members. IACC non-federal public members may be restricted from serving on other federal advisory committees while serving on the IACC. Male non-federal public members must have signed up for the U.S. Selective Service in order to be eligible.

Responsibilities of Appointed Non-Federal Public Members

As specified in the Committee's authorizing statute (section 399CC of the Public Health Service Act, 42 U.S.C. 280i–2, as amended), the Committee will carry out the following responsibilities: (1) Monitor autism spectrum disorder research, and to the extent practicable, services and support activities, across all relevant Federal departments and agencies, including coordination of Federal activities with respect to autism spectrum disorder; (2) develop a summary of advances in autism spectrum disorder research related to causes, prevention, treatment, early screening, diagnosis or ruling out a diagnosis; interventions, including school and community-based interventions, and access to services and supports for individuals with autism spectrum disorder across the lifespan of such individuals; (3) make recommendations to the Secretary regarding any appropriate changes to such activities, including with respect to the strategic plan; (4) make recommendations to the Secretary regarding public participation in decisions relating to autism spectrum disorder, and the process by which public feedback can be better integrated into such decisions; (5) develop a strategic plan for the conduct of, and support for, autism spectrum disorder research, including, as practicable, for services and supports, for individuals with an autism spectrum disorder across the lifespan of such individuals and the families of such individuals, which shall include (A) proposed budgetary requirements; and (B) recommendations to ensure that autism spectrum disorder research, and services and support activities to the extent practicable, of the Department of Health and Human Services and of other Federal departments and agencies are not unnecessarily duplicative; and (6) submit to Congress and the President: (A) An annual update on the summary of advances; and (B) an annual update to the strategic plan, including any progress made in achieving the goals outlined in such strategic plan.

Committee Composition

In accordance with the Committee's authorizing statute, ''Not more than ½, but not fewer than ⅓, of the total membership of the Committee shall be composed of non-Federal public members appointed by the Secretary.''

All non-Federal public members are appointed as Special Government Employees for their service on the IACC, of which:

- At least three such members shall be individuals with a diagnosis of autism spectrum disorder;
- At least three such members shall be parents or legal guardians of an individual with an autism spectrum disorder; and
- At least three such members shall be representatives of leading research, advocacy, and service organizations for individuals with autism spectrum disorder.

The Department strives to ensure that the membership of HHS Federal advisory committees is balanced in

terms of points of view represented and the committee's function. Every effort is made to ensure that diverse views and perspectives are represented on HHS Federal advisory committees and, therefore, the Department encourages nominations of qualified candidates of all genders, cultural, ethnic, and racial groups, people with disabilities, and individuals who may belong to other underrepresented groups. The Department also seeks geographic diversity in the composition of the Committee. Appointment to this Committee shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, disability, and cultural, religious, or socioeconomic status. Requests for reasonable accommodation to enable participation on the Committee should be indicated in the nomination submission.

Member Terms

Non-Federal public members of the Committee ''shall serve for a term of 4 years, and may be reappointed for one additional 4-year term. Any member appointed to fill a vacancy for an unexpired term shall be appointed for the remainder of such term. A member [with a valid appointment] may serve after the expiration of the member's term until a successor has been appointed.''

Meetings and Travel

''The Committee shall meet at the call of the chairperson or upon the request of the Secretary. The Committee shall meet not fewer than 2 times each year.''

In the years 2014–2019, the IACC held an average of 4 meetings, 1 workshop and 2 phone conferences per year, including full committee, subcommittee, working and planning group meetings, and workshops. Travel expenses are provided for non-federal public Committee members to facilitate attendance at in-person meetings. Members are expected to be committed to making every effort to attend all full committee meetings and workshops in person and relevant subcommittee, working and planning group meetings by phone. For those who occasionally cannot travel or for individuals with a disability that prevents travel, remote access options are provided.

Submission Instructions and Deadline

Nominations should include a cover letter of no longer than 3 pages describing the candidate's interest in seeking appointment to the IACC, including relevant personal and professional experience with ASD, indication of any membership eligibility requirements met, disability accommodation requests, and an indication of commitment to attend IACC meetings if selected, as well as full contact information and a current resume or curriculum vitae. Up to 2 letters of support are permitted in addition to the nomination, with a page limit of 3 pages per letter. Please do not include other materials unless requested.

Nominations are due by Friday January 17, 2020 and may be sent to Dr. Susan Daniels, Director, Office of Autism Research Coordination/NIMH/NIH, 6001 Executive Boulevard, Room 7220, Bethesda, Maryland 20892 by standard or express mail, or via email to *IACCPublicInquiries@mail.nih.gov.* Confirmation of receipt will be provided.

More information about the IACC is available at *iacc.hhs.gov.*

Dated: November 20, 2019.

Susan A. Daniels,

Director, Office of Autism Research Coordination, National Institute of Mental Health, National Institutes of Health.

[FR Doc. 2019–25668 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel RFA Panel: Tobacco Regulatory Science C.

Date: December 19, 2019.

Time: 10:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 2019

Sylvia L. Neal,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25593 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Dianca Finch, Ph.D., 240–669–5503; dianca.finch@nih.gov. Licensing information and copies of the U.S. patent application listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD, 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows:

A High-Yield Perfusion-Based Transient Gene Expression Bioprocess

Description of Technology

Currently, fed-batch processes are the most commonly used bioprocesses in transient gene expression (TGE) vaccine manufacturing. However, because fed-batch processes keep all the cells and protein product in the vessel throughout the run, some limitations are intrinsic. First, waste products like cell debris or

other unwanted small molecules accumulate in the vessel with a potential to disrupt the cell growth, protein production, and the stability of the generated protein of interest. Second, necessary buffer exchange and/or cell concentration steps must be performed outside of the culturing vessel. These steps are more involved and increase the risk of contamination. Lastly, even with the addition of daily supplementation in the fed-batch process, there are limitations in length of time that the transfected cells remain viable and productive.

Researchers at the Vaccine Research Center (VRC) of the National Institute of Allergy and Infectious Diseases (NIAID) developed a new transient gene expression (TGE) bioprocess using a perfusion system that resolves the current fed-batch limitations for influenza vaccine production. The major components of this technology are two-fold: the optimization of conditions for polyethylenimine (PEI)-mediated gene transfection in the bioreactor without the interference of microbubbles; and the implementation of a perfusion-based alternating tangential flow (ATF) system for single-system, prolonged cell culture, combining the steps of cell concentration, waste clearance, culturing/media replenishment, and protein expression within a single vessel.

The development of the TGE bioprocess included optimization of conditions for HEK293 cell growth in the bioreactor, optimized transfection mediated by PEI, and protein expression for an extended period to achieve reproducibility and high protein yield.

Due to high improvement in cell growth and protein production without external handling, this bioprocess could lead to substantial cost saving and other benefits in vaccine and drug manufacturing of clinical grade materials.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404.

Potential Commercial Applications

- Bioprocess—A single-use protein production platform for transient gene expression (TGE) with potential applications in rapid protein expression as well as vaccine and drug manufacturing.

Competitive Advantages

The new transient gene expression (TGE) bioprocess for vaccine manufacturing has the following features compared to commonly used related processes such as fed-batch:

- Robust, prolonged cell growth.
- High levels of protein production and reproducibility.
- Cost efficiency.
- Reduction in contamination risk.

Development Stage: Final Product.

Inventors: Jinsung Hong, Ph.D. (NIAID); Jacob Demirji, Ph.D. (NIAID); Daniel Blackstock, Ph.D. (NIAID); and Joe Horwitz, Ph.D. (NIAID).

Intellectual Property: HHS Reference Number E–187–2018 includes U.S. Provisional Patent Application Number 62/751,204 filed 10/26/2018.

Licensing Contact: To license this technology, please contact Dianca Finch, Ph.D., 240–669–5503; *dianca.finch@nih.gov.*

Dated: October 10, 2019.

Wade W. Green,

Acting Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2019–25620 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; 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 National Advisory Eye Council.

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 in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: January 17, 2020.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Following opening remarks by the Acting Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs.

Place: National Eye Institute, 6700B Rockledge Drive, 1st Floor Conference Room, Bethesda, MD 20817.

Closed: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Eye Institute, 6700B Rockledge Drive, 1st Floor Conference Room, Bethesda, MD 20817.

Contact Person: Anne E. Schaffner, Ph.D., Chief, Scientific Review Branch, Division of Extramural Research, National Eye Institute, National Institutes of Health, 6700 B Rockledge Dr. Ste 3400, Bethesda, MD 20892–9300, (301) 451–2020, *aes@nei.nih.gov.*

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: November 21, 2019.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25687 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods Communities of Practice Webinar on Use of Animal-Free Affinity Reagents; Notice of Public Webinar; Registration Information

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) announces a public webinar ''Use of Animal-free Affinity Reagents.'' The webinar is organized on behalf of ICCVAM by the National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM). Interested persons may participate via WebEx. Time will be allotted for questions from the audience. Information about the webinar and registration are available at *https://ntp.niehs.nih.gov/go/commprac-2020.*

DATES:

Webinar: January 21, 2020, 11:00 a.m. to approximately 12:30 p.m. EST.

Registration for Webinar: December 9, 2019, until 12:30 p.m. EST January 21, 2020.

Registration to view the webinar is required.

ADDRESSES: Webinar web page *https://ntp.niehs.nih.gov/go/commprac-2020.*

FOR FURTHER INFORMATION CONTACT: Dr. Warren Casey, Director, NICEATM, Division of NTP, NIEHS, P.O. Box 12233, K2–17, Research Triangle Park, NC 27709. Phone: 984–287–3118, Email: *warren.casey@nih.gov.* Hand Deliver/Courier address: 530 Davis Drive, Room K2021, Morrisville, NC 27560.

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of toxicity testing methods that protect human health and the environment while replacing, reducing, or refining animal use. ICCVAM also provides guidance to test method developers and facilitates collaborations that promote the development of new test methods. To address these goals, ICCVAM will hold a Communities of Practice webinar on ''Use of Animal-free Affinity Reagents.''

Affinity reagents such as antibodies are used in a range of research, diagnostic, and regulatory applications. However, traditional methods for producing such reagents require immunization of laboratory animals. Therefore, even when applied to nonanimal test methods, their use is inconsistent with the spirit of replacing, reducing, or refining animal use. Use of animal-based affinity reagents also introduces variability into the methods that use them.

This webinar will present a review of the usefulness and limitations of nonanimal-derived affinity reagents and their potential to replace animal-derived reagents. The preliminary agenda and additional information about presentations will be posted at *https://ntp.niehs.nih.gov/go/commprac-2020* as available.

Webinar and Registration: This webinar is open to the public with time scheduled for questions by participants following each presentation. Registration for the webinar is required and is open through 12:30 p.m. EST on January 21, 2020. Registration is available at *https://ntp.niehs.nih.gov/go/commprac-2020.* Interested individuals are encouraged to visit this web page to stay abreast of the most current webinar information. Registrants will receive instructions on how to access and participate in the webinar in the email confirming their registration.

Individuals with disabilities who need accommodation to participate in this event should contact Elizabeth Maull at phone: (984) 287–3157 or email: *maull@niehs.nih.gov.* TTY users should contact the Federal TTY Relay Service at (800) 877–8339. Requests should be made at least five business days in advance of the event.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 16 federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of NIEHS and provides the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. Additional information about ICCVAM can be found at *https://ntp.niehs.nih.gov/go/iccvam.*

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts and publishes analyses and evaluations of data from new, revised, and alternative testing approaches. NICEATM and ICCVAM work collaboratively to evaluate new and improved testing approaches applicable to the needs of U.S. federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *https://ntp.niehs.nih.gov/go/niceatm.*

Dated: November 18, 2019.

Brian R. Berridge,

Associate Director, National Toxicology Program.

[FR Doc. 2019–25667 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HIV/AIDS Maternal, Adolescent and Pediatric Therapeutics Clinical Trials Network Leadership and Operations Center (UM1—Clinical Trial Required).

Date: December 18, 2019.

Time: 10:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Roberta Binder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3G21A, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5050, *rbinder@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: November 21, 2019.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25684 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Gastroenterology.

Date: December 19, 2019.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 20, 2019.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2019–25594 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of an Exclusive Patent License: Gene Therapy for Ocular Disease

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Eye Institute, the National Institute on Deafness and Other Communication Disorders, and the National Heart, Lung, and Blood Institute, institutes of the National Institutes of Health, Department of Health and Human Services, are contemplating the grant of an exclusive patent license to OcQuila Therapeutics Ltd., a C corporation incorporated under the laws of the state of Delaware and a limited company incorporated under the laws of the United Kingdom, to practice the inventions covered by the patent estate listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: Only written comments and/or applications for a license which are received by the National Cancer Institute's Technology Transfer Center (representing the National Eye Institute and the National Heart, Lung, and Blood Institute (representing the National Institute on Deafness and Other Communication Disorders) on or before January 10, 2020 will be considered.

ADDRESSES: Requests for copies of the patent application, inquiries, and comments relating to the contemplated an exclusive patent license should be directed to: Michael Shmilovich, Esq., Senior Licensing and Patent Manager, 31 Center Drive Room 4A29, MSC2479, Bethesda, MD 20892–2479, phone number 301–435–5019, or *shmilovm@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

INTELLECTUAL PROPERTY

NIH ref No.	Title	Patent application No.	Filing date	Issued patent No.	Issue date
E–284–2012–0–US–01	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	61/765,654	February 15, 2013.		
E–284–2012–1–US–01	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	61/815,636	April 24, 2013.		
E–284–2012–2–PCT–01	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	PCT/US2014/16389	February 14, 2014.		
E–284–2012–2–AU–02	AAV8 retinoschisin expression vector for treating X-linked retinoschisis.	2014216160	February 14, 2014	2014216160	July 13, 2017.
E–284–2012–2–CA–03	AAV8 retinoschisin expression vector for treating X-linked retinoschisis.	2900231	February 14, 2014	2900231	July 30, 2019.
E–284–2012–2–JP–04	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	2015–558144	February 14, 2014	6449175	December 14, 2018.
E–284–2012–2–US–05	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	14/766,842	February 14, 2014	9,873,893	January 23, 2018.
E–284–2012–2–US–07	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	15/876,821	February 14, 2014	10,350,306	July 16, 2019.
E–284–2012–2–EP–06	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	14708176.4	February 14, 2014.		
E–284–2012–2–PCT–08	Methods And Compositions For Treating Genetically Linked Diseases Of The Eye.	PCT/US2019/14418	January 21, 2019.		
E–164–2018–0–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/701,267	July 20, 2018.		
E–164–2018–1–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/724,480	August 29, 2018.		
E–164–2018–2–US–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	62/768,590	November 16, 2019.		
E–164–2018–3–PCT–01	Intraocular Delivery Of Gene Therapy Expression Vectors.	PCT/US2019/042365	July 18, 2019.		

all U.S. and foreign patents and applications claiming priority to any member of the above.

The patent rights in these inventions have been assigned or exclusively licensed to the Government of the United States of America.

The prospective exclusive license territory may be worldwide and in fields of use that may be limited to human therapeutics for (1) X-linked juvenile retinoschisis and (2) schisis cavity associated ocular disease or injury.

The aforementioned patent estates cover inventions directed to gene therapy and specifically, expression vectors and therapeutic methods of using such vectors in the treatment of ocular diseases resulting from failure to produce or the defective production of an ocular protein. This invention is also directed to methods of administering expression vectors capable of modulating a target gene or gene product for the treatment of ocular disease.

This notice is made in accordance with 35 U.S.C. 209 and 37 CFR part 404. The prospective exclusive license will be royalty bearing. The prospective exclusive license may be granted unless within thirty ( ) days from the date of this published notice, the National Heart, Lung, and Blood Institute receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR part 404.

In response to this Notice, the public may file comments or objections. Comments and objections, other than those in the form of a license application, will not be treated confidentially, and may be made publicly available.

License applications submitted in response to this notice will be presumed to contain business confidential information and any release of information in these license applications will be made only as required and upon a request under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 21, 2019.

Michael A. Shmilovich,

Senior Licensing and Patenting Manager, National Heart, Lung, and Blood Institute.

[FR Doc. 2019–25685 Filed 11–25–19; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

Proposed Project: 2020–2023 National Survey on Drug Use and Health: Methodological Field Tests (OMB No. 0930–0290)—Extension

The National Survey on Drug Use and Health (NSDUH) is a survey of the U.S. civilian, non-institutionalized population aged 12 years old or older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, the Office of National Drug Control Policy (ONDCP), federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

Methodological tests will continue to be designed to examine the feasibility, quality, and efficiency of new procedures or revisions to existing survey protocol. Specifically, the tests will measure the reliability and validity of certain questionnaire sections and items through multiple measurements on a set of respondents; assess new methods for gaining cooperation and participation of respondents with the goal of increasing response and decreasing potential bias in the survey estimates; and assess the impact of new sampling techniques and technologies on respondent behavior and reporting. Research will involve focus groups, cognitive laboratory testing, customer satisfaction surveys, and field tests.

These methodological tests will continue to examine ways to increase data quality, lower operating costs, and gain a better understanding of sources and effects of nonsampling error on NSDUH estimates. Particular attention will be given to minimizing the impact of design changes so survey data continue to remain comparable over time. If these tests provide successful results, current procedures or data collection instruments may be revised.

The number of respondents to be included in each field test will vary, depending on the nature of the subject being tested and the target population. However, the total estimated response burden is 8,225 hours. The exact number of subjects and burden hours for each test are unknown at this time, but will be clearly outlined in each individual submission. These estimated burden hours are distributed over three years as follows:

TABLE 1—ESTIMATED BURDEN FOR NSDUH METHODOLOGICAL FIELD TESTS

Time period	Respondent burden hours
May 2020 to May 2021	2,742
May 2021 to May 2022	2,742
May 2022 to May 2023	2,741
Total	8,225

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by January 27, 2020.

Summer King,

Statistician.

[FR Doc. 2019–25647 Filed 11–25–19; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6190–N–01]

Notice of Intent To Close Reno Field Office

AGENCY: Office of Field Policy and Management, HUD.

ACTION: Notice.

SUMMARY: This notice advises the public that HUD intends to close the Reno, NV field office. HUD is providing this notice.

FOR FURTHER INFORMATION CONTACT: Michael Lawyer, Deputy Director of Operations, Office of Field Policy and Management, Department of Housing and Urban Development, 451 Seventh Street SW, Room 7108, Washington, DC 20410; telephone number 317–957–7318 (This is not a toll-free number). Persons with hearing or speech impairment may contact this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: In accordance with the Federal Property Management Reform Act of 2016 (40 U.S.C. 524), HUD is publishing this notice to provide notice of its intent to close its unoccupied Reno, NV field office. The Act requires executive departments and agencies to assess leased space to identify space that is not fully used or occupied, establish goals and policies that will lead the agency to reduce excess property and underutilized property, and to transfer and dispose of excess property as promptly as possible in accordance with the agency's delegated authority and applicable regulations.

Based upon Section 7(p) of the Housing and Urban Development Act (42 U.S.C. 3535p), a plan for the reorganization of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after publication in the **Federal Register** with a cost-benefit analysis of the plan for each affected office. Such cost-benefit analysis shall include, but not be limited to—(1) An estimate of cost savings supported by background information detailing the source and substantiating the amount of the savings; (2) an estimate of the additional cost which will result from the reorganization; (3) a study of the impact on the local economy; and (4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services. Where any of the above factors cannot be quantified, the Secretary shall provide a statement on the nature and extent of those factors in the cost-benefit analysis.

Cost Benefit Analysis

A. Background

HUD's current field structure, consisting of 65 regional and field offices covering 50 states, the District of Columbia, Guam, and Puerto Rico, is built on the structure of the former Federal Housing Administration (FHA), which had insuring offices throughout the country. As the agency evolved into a cabinet department (1968) its program portfolio grew and staffing levels rose to more than 18,000 in 1973. As a result of legislative action HUD's program portfolio has continued to increase in size, complexity and scope, while its staffing has gradually been reduced by almost two-thirds, to under 7,000.

HUD's existing field office structure is decades old. Advances in technology have made it possible and more cost effective to manage our workload in a more centralized fashion. A set of 16 small offices were successfully closed in Fiscal Year 2014, demonstrating that HUD could continue to deliver services nationwide from a smaller footprint. Closing the Reno, NV Field Office, which has no staff, will achieve operational savings.

The closure of this field office will save money while still ensuring that HUD can effectively respond rapidly to the ever-evolving mission and the budget challenges of today and tomorrow. Leveraging technology has allowed HUD to substantially reduce its footprint and costs while not significantly affecting the delivery of its services.

B. Description of Proposed Changes

One (1) field office in Reno, NV will be closed. There are no staff remaining in that office to be impacted. This action will allow the Department to align resources to more effectively support program operations and reduce operational cost, while maintaining effective program delivery in the state of Nevada from the Las Vegas Field Office.

The proposed changes are expected to produce ongoing cost savings and make more efficient use of real property assets.

(1) Estimate of Cost Savings

The closure of the Reno, NV field office will eliminate the cost of office space leases and administrative costs, including transit, mail, copiers, and telephones, totaling $101,000 annually. The lease cost is based upon HUD's occupancy agreement with General Services Administration (GSA).

(2) Estimate of the Additional Cost

Implementation costs of approximately $15,000 are expected in closing the office; thus, the projected total annual savings will be gained beginning in Fiscal Year 2021 and every year thereafter.

a. One-Time Costs

One-time costs for space alterations, security and move out expenses are projected to cost $15,000. There are no early lease termination fees for this office. There are no remaining employees in this office, and therefore there are no additional buyout, personal relocation, severance, or unemployment costs.

b. Reoccurring Costs

Program delivery to the affected jurisdiction is already managed by program staff in the Las Vegas Field Office, the San Francisco Regional Office, and other HUD field offices. Minimal additional travel costs will be incurred by limited staff travel to the affected jurisdictions to ensure ongoing coordination of program delivery and customer service.

(3) Study of the Impact on the Local Economy

Any impact on the Reno economy in terms of housing, schools, public services, taxes, employment and traffic congestion will be negligible. The office closure should not disrupt the service delivery currently provided to the community.

(4) Estimate of the Effect of the Reorganization

HUD products and services provided to the communities in the affected jurisdictions are currently managed remotely from larger HUD offices, primarily the Las Vegas Field Office, the San Francisco Regional Office, and other HUD field offices, and this will continue to be the case.

Based on the time necessary for office closure, and moveout costs, the closure of the Reno Office will result in minor savings of approximately $10,000 in Fiscal Year 2020. The closure will not introduce new recurring costs, and therefore the full savings of $101,000 per annum is expected in Fiscal Year 2021 and each year thereafter.

Dated: November 19, 2019.

Benjamin DeMarzo,

Assistant Deputy Secretary for Field Policy and Management.

[FR Doc. 2019–25571 Filed 11–25–19; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY920000. L51040000.FI0000. 20XL5017AR]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW173493, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As provided for under the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement of competitive oil and gas lease WYW173493 from Thunder Basin Resources, LLC, for land in Niobrara County, Wyoming. The lessee filed the petition on time, along with all rentals due since the lease terminated under the law. No leases affecting this land were issued before the petition was filed.

FOR FURTHER INFORMATION CONTACT: Chris Hite, Branch Chief for Fluid Minerals Adjudication, Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming, 82003; phone 307–775–6176; email *chite@blm.gov.*

Persons who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact Mr. Hite during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. A reply will be sent during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee agreed to the amended lease terms for rentals and royalties at rates of $10 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively, and additional lease stipulations. The lessee has paid the required $500 administrative fee and the $159 cost of publishing this notice. The lessee met the requirements for reinstatement of the lease per Sec. 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188). Reinstatement of this lease conforms to the terms and conditions of all applicable land use plans, including the 2015 Approved Resource Management Plan Amendments for the Rocky Mountain Region, and other National Environmental Policy Act documents. The BLM proposes to reinstate the lease effective December 1, 2017, under the amended terms and conditions of the lease and the increased rental and royalty rates cited above.

Authority: 30 U.S.C. 188(e)(4) and 43 CFR 3108.2–3(b)(2)(v)

Chris Hite,

Chief, Branch of Fluid Minerals Adjudication.

[FR Doc. 2019–25648 Filed 11–25–19; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA02000–L13400000]

Notice of Intent/Notice of Realty Action: Proposed Resource Management Plan Amendment and Non-Competitive Direct Sale for the Expansion of the San Jose Cemetery, Luis Lopez, Socorro County, NM

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent; Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) is offering to sell a parcel of public land containing 2.72 acres through a non-competitive (direct) sale for the expansion of an existing cemetery at not less than the appraised fair market value of $7,400 to the Roman Catholic Church of the Archdiocese of Santa Fe San Miguel Parish. The sale is subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the BLM land sale and mineral conveyance regulations. In accordance to Section 203 of FLPMA disposal criteria for sales, a resource management plan (RMP) amendment is required establishing the disposal criteria using the Section 202 FLPMA planning process.

DATES: Interested parties may submit written comments regarding the resource management plan amendment and classification of the land for direct sale, and the environmental assessment, on or before January 10, 2020. 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. Only written comments to the Field Manager, BLM Socorro Field Office, will be considered properly filed. Any adverse comments regarding the RMP amendment and non-competitive direct sale will be reviewed by the BLM New Mexico State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify this realty action in whole or in part.

ADDRESSES: Send written comments to the BLM Field Manager, Socorro Field Office, 901 S. Hwy 85, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: BLM Realty Specialist Virginia Alguire at (575) 838–1290 or *valguire@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM will conduct a direct sale for the following public land located in the unincorporated community of Luis Lopez in Socorro County, New Mexico. Luis Lopez lies between Socorro and San Antonio along the Rio Grande. The parcel of public land is legally described as: New Mexico Principal Meridian, New Mexico: T. 4 S., R. 1 W., Section 1, Lot 11.

The area described contains 2.72 acres, in Socorro County, New Mexico. Upon publication of the Notice, these public lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA. Upon publication of this Notice, and until completion of the sale, the BLM will no longer accept land use applications affecting these public lands. The segregated effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on November 26, 2021, unless extended by the BLM New Mexico State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

An Environmental Assessment will evaluate criteria under FLPMA, Section 203(a)(3) and 43 CFR 2710.0–3(a)(2), that the disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on lands other than public lands and which outweigh other public objectives and values. Such tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal

department or agency. Consistent with Section 203 of FLPMA, a tract of public land may be sold as a result of approved land use planning if the sale of the tract meets the disposal criteria of that section. The public land in question has been identified as suitable for disposal in the BLM Socorro Resource Management Plan (RMP), Appendix F, pages 120 through 125, dated August 20, 2010. However, an RMP amendment is required to establish the criteria to meet the FLPMA Section 203 regulation through planning. The underlying decision will amend the BLM Socorro RMP establishing the FLPMA Section 203 sale criteria for the parcel using the FLPMA Section 202 planning process as follows: ''Such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands, and is not suitable for management by another Federal department or agency.''

''Disposal of such tract will serve important public objectives, including but not limited to expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweighs other public objectives and values, including but not limited to recreation and scenic values, which would be served by maintaining such tract in Federal ownership.''

The parcel is not required for any other Federal purpose. Regulations contained in 43 CFR 2711.3–3(a)(1) make allowances for direct sales when a competitive sale is not appropriate and the public interest would be best served by a direct sale. The parcel would be transferred to the Archdiocese of Santa Fe and, given its location, will be used for the expansion of the existing cemetery. This action is consistent with 43 CFR part 2710, the objectives, goals, and decisions of the RMP such as the lands and realty objective to make lands available for community expansion and private economic development and to increase the potential for economic diversity. The BLM has prepared an environmental assessment (EA) DOI–BLM–NM–A020–2019–0045–RMP–EA for the RMP amendment and non-competitive direct sale, and will make it available for comment. The comment period on the EA will end concurrently with the close of the comment period associated with this Notice of Realty Action. The EA, environmental site assessment, mineral potential report, map, and approved appraisal report will be made available for review at the Socorro Field Office at the address in the **ADDRESSES** section and online at the BLM ePlanning website at: *https://go.usa.gov/xVYN8.* The BLM proposes a non-competitive direct sale because it serves an important local public objective of facilitating the expansion of the existing cemetery. The public land will not be offered for sale prior to 60 days from the date of publication of this notice in the **Federal Register**. The patent, if issued, would be subject to the following terms, conditions, and reservations:

1. A reservation for any right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. The parcel is subject to all valid existing rights.

3. The purchaser, by accepting the patent, agrees to an indemnification clause protecting the United States from claims arising out of the patentee's use, occupancy, or occupations on the patented lands.

Pursuant to the requirements established by Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9620(h) (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1988 (100 Stat. 1670), notice is hereby given that the above lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property. To the extent required by law, all parcels are subject to the requirements of Section 120(h) of CERCLA.

No representation, warranty, or covenant of any kind, express or implied, will be given or made by the United States, its officers, or employees as to access to or from the above-described parcel of land, the title to the land, whether or to what extent the land may be developed, its physical condition, or its past, present or potential uses, and the conveyance of any such parcel will not be on a contingency basis. It is the responsibility of the buyer to be aware of all applicable Federal, State, and local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Lands without access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

The BLM prepared a mineral potential report dated April 10, 2012, which concluded that all mineral rights should be transferred. The purchaser will have 30 days from the date of receiving the sale offer to accept the offer and to submit a deposit of 20 percent of the purchase price. The purchaser must remit the remainder of the purchase price within 180 days from the date of the sale offer. Payments must be by certified check, U.S. postal money order, bank draft, or cashier's check, and made payable to the U.S. Department of the Interior-BLM. The purchaser may also conduct an Electronic Funds Transfer (EFT). The balance is due 2 weeks prior to the 180th day if the purchaser conducts an EFT. Failure to meet conditions established for this sale will void the sale and forfeit any payment(s) received.

Authority: 43 CFR 2711.1–2(a) and (c).

Timothy R. Spisak,

State Director.

[FR Doc. 2019–25649 Filed 11–25–19; 8:45 am]

BILLING CODE 4310–FB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1422–1423 (Final)]

Strontium Chromate From Austria and France; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of strontium chromate from Austria and France, provided for in subheadings 2841.50.91 and 3212.90.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV'').[2]

Background

The Commission, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)), instituted these investigations effective September 5, 2018, following receipt of a petition filed with the Commission and Commerce by WPC Technologies, Oak Creek, Wisconsin. The Commission scheduled the final phase of the investigations following notification of preliminary determinations by Commerce that imports of strontium chromate from Austria and France were being sold at LTFV within the meaning

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 84 FR 53676 and 84 FR 53678 (October 8, 2019).

of section 733(b) of the Act (19 U.S.C. 1673b(b)).[3] Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of June 17, 2019 (84 FR 28069). The hearing was held in Washington, DC on October 3, 2019, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on November 21, 2019. The views of the Commission are contained in USITC Publication 4992 (November 2019), entitled *Strontium Chromate from Austria and France: Investigation Nos. 731–TA–1422–1423 (Final).*

By order of the Commission.

Issued: November 21, 2019.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2019–25666 Filed 11–25–19; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1100]

Certain Reload Cartridges for Laparoscopic Surgical Staplers; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainants' Unopposed Motion To Amend the Complaint, Case Caption, and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 14) of the presiding administrative law judge (''ALJ'') granting an unopposed motion to amend the complaint, case caption, and notice of investigation in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Benjamin S. Richards, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–5453. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On July 5, 2019, by publication in the **Federal Register**, the Commission instituted this investigation based on a complaint filed by Ethicon LLC of Guaynabo, PR; Ethicon Endo-Surgery, Inc. of Cincinnati, Ohio; and Ethicon US, LLC of Cincinnati, Ohio (collectively ''Ethicon''). 84 FR 32220 (July 5, 2019). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on the importation into the United States, the sale for importation, and the sale within the United States after importation of certain reload cartridges for laparoscopic surgical staplers by reason of infringement of one or more claims of U.S. Patent Nos. 9,844,379; 9,844,369; 7,490,749; 8,479,969; and 9,113,874. *Id.* The Commission's notice of investigation names the following as respondents: Intuitive Surgical Inc., of Sunnyvale, CA; Intuitive Surgical Operations, Inc., of Sunnyvale, CA; Intuitive Surgical Holdings, LLC, of Sunnyvale, CA; and Intuitive Surgical S. De R.L. De C.V. of Mexicali, Mexico. *Id.* The Office of Unfair Import Investigations is not participating in this investigation. *Id.*

On September 24, 2019, Ethicon moved for leave to amend the complaint, case caption, and notice of investigation. The complaint originally identified the accused products as ''laparoscopic surgical staplers, associated reload cartridges, and components thereof'' and was titled ''Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof,'' but was modified by Ethicon prior to institution to remove staplers and stapler components from the description of accused products and the case caption. Ethicon's motion sought to reincorporate staplers and stapler components into the description of the accused products and the case caption.

On October 23, 2019, the ALJ issued Order No. 14, the subject ID, granting Ethicon's motion. The ALJ found that Ethicon's motion was supported by good cause and that the proposed amendments would not unnecessarily prejudice the public interest or the rights of the parties to the investigation.

No petitions for review were filed.

The Commission has determined not to review the subject ID. From this point forward, the caption for this investigation shall be ''Certain Laparoscopic Surgical Staplers, Reload Cartridges, and Components Thereof.''

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR 210).

By order of the Commission.

Issued: November 21, 2019.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2019–25682 Filed 11–25–19; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Symrise AG, et al. Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Symrise AG, et al.,* Civil Action No. 1:19–cv–03263. On October 30, 2019, the United States filed a Complaint alleging that Symrise AG's proposed acquisition of IDF Holdco, Inc. and ADF Holdco, Inc.'s chicken-based food ingredients business would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment, filed at the same time as the Complaint, requires Symrise AG to divest its Banks County facility in Georgia that manufactures and sells chicken-based food ingredients.

Copies of the Complaint, proposed Final Judgment, and Competitive Impact Statement are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division

[3] 84 FR 22438 and 84 FR 22443 (May 17, 2019).

upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, including the name of the submitter, and responses thereto, will be posted on the Antitrust Division's website, filed with the Court, and, under certain circumstances, published in the **Federal Register**. Comments should be directed to Robert Lepore, Acting Chief, Transportation, Energy & Agriculture Section, Antitrust Division, Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530 (telephone: 202–307–6349).

Amy Fitzpatrick,

Counsel to the Senior Director of Investigations and Litigation.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530 Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

CASE NO.: 1:19–cv–03263
JUDGE: Hon. Royce Lamberth

Complaint

The United States of America brings this civil action pursuant to Section 7 of the Clayton Act, 15 U.S.C. 18, to enjoin the acquisition of International Dehydrated Foods, LLC (''IDF'') and American Dehydrated Foods, LLC (''ADF'') (collectively ''IDF/ADF'') from IDF Holdco, Inc. and ADF Holdco, Inc. by Symrise AG (''Symrise'') and to obtain other equitable relief. The United States alleges as follows:

I. Nature of the Action

1. Symrise's acquisition of IDF/ADF would combine two of the leading manufacturers and sellers of chicken-based food ingredients made from human-grade natural chicken, including chicken broth, chicken fat, and cooked chicken meat (hereafter ''chicken-based food ingredients'') and sold to food manufacturers in the United States. Symrise and IDF/ADF manufacture chicken-based food ingredients for use by manufacturers of food for people and pets (collectively ''food manufacturers'') in products such as soups, stews, sauces, gravies, dry seasonings, and baking mixes.

2. Food manufacturers purchase chicken-based food ingredients to provide taste, nutritional content, and functional characteristics to the food manufacturers' end products. Food manufacturers have few alternatives to chicken-based food ingredients, which provide the unique flavor and texture profiles of food manufacturers' branded soups, sauces, and gravies. In addition, United States Department of Agriculture regulations require chicken-based food ingredients to be manufactured domestically, which prevents food manufacturers from turning to imports.

3. IDF/ADF is the established United States market leader in the manufacture and sale of chicken-based food ingredients for food manufacturers, with a market share of approximately 54%.

4. Symrise, a leading manufacturer of chicken-based food ingredients in Europe recently entered the United States market by building a state-of-the-art chicken-based food ingredients plant in Banks County, Georgia. The plant opened in October 2018. Symrise is poised to become the second-largest manufacturer of chicken-based food ingredients in the United States, as its newly opened Banks County plant represents 23% of the manufacturing capacity in the market.

5. Symrise now seeks to acquire IDF/ADF. If the acquisition is allowed to proceed, the competition between these companies in the manufacture and sale of chicken-based food ingredients in the United States will be lost, and the merged firm will control 75% of the capacity in the market, leading to higher prices, reduced service quality, and diminished innovation.

6. Accordingly, as alleged more specifically below, the acquisition, if consummated, likely would substantially lessen competition in violation of Section 7 of the Clayton Act, 15 U.S.C. 18, and should be enjoined.

II. Defendants and the Transaction

7. Defendant Symrise is a global company headquartered in Holzminden, Germany.

Symrise has diversified operations in multiple lines of business, including a chicken-based food ingredients business run by its Diana Food and Diana Pet Food subsidiaries. Symrise is the market leader in Europe in manufacturing and selling chicken-based food ingredients to food manufacturers. In 2019, Symrise began to sell products from its newly constructed plant in Banks County, Georgia, to United States food manufacturers, including to some of IDF/ADF's largest customers. The plant represents approximately 23% of the capacity in the market for the manufacture and sale of chicken-based food ingredients.

8. Defendants IDF Holdco, Inc. and ADF Holdco, Inc. are the ultimate parent entities of IDF and ADF, family-owned limited liability companies headquartered in Springfield, Missouri. IDF manufactures chicken-based food ingredients. ADF holds the family's interests in Food Ingredient Technologies, LLC (''Fitco'') which also manufactures chicken-based food ingredients. The chicken-based food ingredients operations of IDF and ADF's Fitco business are run in an integrated fashion and include plants in Anniston, Alabama and Monett, Missouri. Like Symrise, IDF/ADF manufactures and sells chicken-based food ingredients to food manufacturers in the United States. IDF/ADF is the largest supplier of chicken-based food ingredients in the United States with a capacity-based market share of approximately 54% and 2018 fiscal year sales of $177 million.

9. Pursuant to a Purchase Agreement dated January 31, 2019 (''Transaction''), Symrise will acquire IDF/ADF, and related assets for approximately $900 million.

III. Jurisdiction and Venue

10. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

11. Defendants manufacture chicken-based food ingredients in the flow of interstate commerce, and their sale of chicken-based food ingredients substantially affects interstate commerce. The Court has subject matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. 25, and 28 U.S.C. 1331, 1337(a), and 1345.

12. Defendants have consented to venue and personal jurisdiction in the District of Columbia for adjudication of this matter. Venue is therefore proper in this district under Section 12 of the Clayton Act, 15 U.S.C. 22 and 28 U.S.C. 1391(b) and (c).

IV. Relevant Market

13. Chicken-based food ingredients manufactured and sold to food manufacturers is a relevant product market and line of commerce under Section 7 of the Clayton Act. Food manufacturers have no reasonable substitutes for chicken-based food ingredients. Because food manufacturers have no reasonable alternatives to chicken-based food ingredients, few, if any, food manufacturers would substitute to other products in response to a price increase.

14. Food manufacturers choose from chicken-based food ingredients suppliers that can provide the flavor, nutritional profile, and functional characteristics required by the food manufacturers' manufacturing processes. The market for chicken-based food ingredients is nationwide. Symrise and IDF/ADF compete with one another for customers throughout the United States.

15. A well-accepted methodology for assessing whether a group of products and services sold in a particular area constitutes a relevant market under the Clayton Act is to ask whether a hypothetical monopolist over all the products sold in the area would raise prices for a non-transitory period by a small but significant amount, or whether enough customers would switch to other products or services or purchase outside the area such that the price increase would be unprofitable. *Fed. Trade Comm'n & U.S. Dep't of Justice Horizontal Merger Guidelines* (2010); *accord Fed. Trade Comm'n* v. *Whole Foods Mkt.,* 548 F.3d 1028, 1038 (D.C. Cir. 2008). A hypothetical monopolist of chicken-based food ingredients manufactured and sold in the United States likely would impose at least a small but significant price increase because few if any customers would substitute to purchasing other products. Therefore, the manufacture and sale of chicken-based food ingredients in the United States is a relevant market under Section 7 of the Clayton Act.

V. Likely Anticompetitive Effects

16. The proposed acquisition is likely to lead to anticompetitive effects. As an initial matter, the transaction is presumptively anticompetitive. The Supreme Court has held that mergers that significantly increase concentration in concentrated markets are presumptively anticompetitive and, therefore, unlawful. *See United States* v. *Phila. Nat'l Bank,* 374 U.S. 321, 363–65 (1963). To measure market concentration, courts often use the Herfindahl-Hirschman Index (''HHI'') as described in the *Horizontal Merger Guidelines.*[1] Mergers that increase the HHI by more than 200 and result in an HHI above 2,500 in any market are presumed to be anticompetitive.

17. The relevant market is highly concentrated and would become more concentrated as a result of the Transaction. IDF/ADF's share of the relevant market based on its maximum capacity to process chicken into ingredients is approximately 54%. Symrise's new Banks County plant has the capacity to take a 23% share of the market. None of the remaining manufacturers holds larger than 6% share.

18. The market for the manufacture and sale of chicken-based food ingredients in the United States currently is highly concentrated, with an HHI over 3,500. The Transaction would increase the HHI by about 2,400, rendering the Transaction presumptively anticompetitive under Supreme Court precedent.

19. Defendants are two of only a few firms that have the technical capabilities and expertise to manufacture and sell chicken-based food ingredients in the United States. Defendants vigorously compete on price, service quality, and product development, and customers have benefitted from this competition.

20. The Transaction would eliminate the competition between Defendants to manufacture and sell chicken-based food ingredients to food manufacturers in the United States. After the Transaction, Symrise would gain the incentive and ability to raise its prices significantly above competitive levels, reduce its investment in research and development, and provide lower levels of service.

VI. Absence of Countervailing Factors

21. Entry by a new manufacturer of chicken-based food ingredients or expansion of existing marginal manufacturers would not be timely, likely, and sufficient to prevent the substantial lessening of competition caused by the elimination of IDF/ADF as an independent competitor.

22. Successful entry into the market for the manufacture and sale of chicken-based food ingredients in the United States is difficult, costly, and time consuming. Any entrant would need to develop infrastructure, research and development capabilities to allow it to manufacture ingredients to match the taste and other characteristics desired by customers, supply relationships to provide reliable access to raw materials, and a track record of successfully meeting customer needs in the food industry. Because of the significant investment food manufacturers make in developing products according to specific taste, nutritional, and other characteristics, as well as the high costs of any problem or delay in production, food manufacturers are unlikely to switch away from established chicken-based food ingredients manufacturers, making it difficult for new chicken-based food ingredients manufacturers to enter the market. As an example, it took Symrise, an experienced food ingredients manufacturer with extensive chicken-based food ingredients operations in Europe, almost three years to construct the plant in Banks County, Georgia, that opened recently. Finally, as noted above, United States Department of Agriculture regulations prevent food manufacturers from importing products from abroad.

23. Defendants cannot demonstrate cognizable and merger-specific efficiencies that would be sufficient to offset the Transaction's anticompetitive effects.

VII. Violation Alleged

24. The effect of the Transaction, if consummated, would likely be to lessen substantially competition for chicken-based food ingredients manufactured and sold to food manufacturers in the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. Unless restrained, the Transaction would likely have the following effects, among others:

(a) Competition in the market for chicken-based food ingredients sold to food manufacturers in the United States would be substantially lessened;

(b) prices for chicken-based food ingredients sold to food manufacturers in the United States would increase;

(c) the quality of chicken-based food ingredients sold to food manufacturers in the United States would decrease; and

(d) innovation in the market for chicken-based food ingredients sold to food manufacturers in the United States would diminish.

VIII. Requested Relief

25. The United States requests that this Court:

(a) Adjudge Symrise's proposed acquisition of IDF/ADF to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

(b) Permanently enjoin and restrain Defendants from consummating the proposed acquisition by Symrise of IDF/ADF or from entering into or carrying out any contract, agreement, plan, or

[1] *See* U.S. Dep't of Justice and Federal Trade Commission, Horizontal Merger Guidelines § 5.3 (2010), *available at http://www.justice.gov/atr/public/guidelines/hmg-2010* html. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

understanding, the effect of which would be to combine Symrise and IDF/ADF;

(c) Award the United States its costs for this action; and

(d) Award the United States such other and further relief as the Court deems just and proper.

Dated: October 30, 2019

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

Makan Delrahim
Assistant Attorney General

Bernard A. Nigro, Jr.
Deputy Assistant Attorney General

Kathleen S. O'neill
Senior Director of Investigations & Litigation

Robert A. Lepore
Acting Chief, Transportation, Energy & Agriculture Section

Patricia C. Corcoran
Assistant Chief, Transportation, Energy & Agriculture Section

William M. Martin
Jeremy Evans (D.C. Bar #478097)
Barbara W. Cash

Attorneys for the United States, U.S. Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530, (202) 598–8193, William.martin@usdoj.gov.

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530 Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

[Proposed] Final Judgment

Whereas, Plaintiff United States of America, filed its Complaint on October 30, 2019, the United States and Defendants, Symrise AG (''Symrise''), ADF Holdco, Inc. (''ADF Seller'') and IDF Holdco, Inc. (''IDF Seller''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And whereas, Defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by Defendants to assure that competition is not substantially lessened;

And whereas, the Defendants agree to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the United States that the divestiture required below can and will be made and that Defendants will not later raise any claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged and decreed*:

I. Jurisdiction

The Court has jurisdiction over the subject matter of and each of the parties to this action.

The Complaint states a claim upon which relief may be granted against Defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''Acquirer'' means Kerry, Inc., a Delaware corporation, and Kerry Luxembourg S.a.r.l., a Luxembourg société à responsabilité limitée, or the entity to whom Defendants divest the Divestiture Assets.

B. ''Symrise'' means Defendant Symrise AG, an Aktiengesellschaft, or publicly listed company, organized under the laws of Germany, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''IDF Seller'' means Defendant IDF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. ''ADF Seller'' means Defendant ADF Holdco, Inc., a Missouri corporation, with its headquarters in Springfield, Missouri, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. ''Diana Food'' means Diana Food, Inc. (previously known as Diana Naturals, Inc.), a wholly-owned subsidiary of Symrise and an Oregon corporation with its headquarters in Silverton, Oregon, its successors and assigns, and its subsidiaries and divisions, groups, affiliates, partnerships, and joint ventures, and its directors, officers, managers, agents and employees.

F. ''Development Authority'' means the Development Authority of Banks County, Georgia, which currently holds legal title to the real estate and real property related to the Banks County facility pursuant to the Diana Food Bonds-for-Title Transaction.

G. ''Banks County facility'' means the production facility and surrounding real estate located at 171 Diana Way Commerce, GA 30529, owned by the Development Authority, leased to Diana Food pursuant to the Diana Food Bond-for-Title Transaction, and built to manufacture certain Chicken-Based Food Ingredients.

H. ''Chicken-Based Food Ingredients'' means ingredients manufactured and sold to food manufacturers for use in food for human consumption or pet consumption (including chicken broth, chicken fat, and cooked chicken meat) made in whole or in part from human-grade natural chicken.

I. ''Diana Food Bonds-for-Title Transaction'' means the current ownership and lease arrangement between Diana Food and the Development Authority for the Banks County facility.

J. ''Divestiture Assets'' means:

1. All interests and rights Diana Food holds in the Banks County facility;

2. All bonds, bond documents, grant documents, and lease agreements to which Diana Food is a party, related to the Banks County facility;

3. All tangible assets located at the Banks County facility and all tangible assets located elsewhere primarily related to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Tangible assets includes, but is not limited to, research and development activities; all manufacturing equipment, tooling and fixed assets, personal property, inventory, office furniture, materials, supplies and other tangible property; all licenses, permits, certifications, and authorizations issued by any governmental organization relating to Chicken-Based Food Ingredients manufactured at the Banks County facility; all contracts, teaming arrangements, agreements, leases, commitments, certifications, and understandings, including supply agreements; all customer lists, contracts, accounts, and credit records; all repair and performance records; and all other records relating to Chicken-Based Food Ingredients manufactured at the Banks

County facility. Defendant Symrise may retain a copy of records necessary for tax, accounting, or regulatory purposes. To the extent any records also include commercially sensitive information, proprietary information, or personally identifiably information pertaining solely to Defendant Symrise's businesses, operations, or products not being transferred to Acquirer, Defendant Symrise may withhold or redact such portions of said records prior to Defendant Symrise's transfer to Acquirer;

4. All intangible assets used in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including, but not limited to all patents; licenses and sublicenses; intellectual property; copyrights; trademarks; trade names; service marks; service names; technical information; computer software and related documentation; know-how; trade secrets; drawings; blueprints; designs; design protocols; specifications for materials; specifications for parts and devices; safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all manuals and technical information Defendants provide to their own employees, customers, suppliers, agents, or licensees relating to Chicken-Based Food Ingredients manufactured at the Banks County facility including but not limited to designs of experiments and the results of successful and unsuccessful designs and experiments.

Notwithstanding the above definition,

(1) Defendant Symrise shall license to Acquirer, through a perpetual and transferable license that is paid up, royalty free, worldwide, and irrevocable, any know-how, including research and development information, unpatented inventions, rights in research and development, and technical data or information, that is (i) controlled by Defendant Symrise, (ii) used in or necessary to the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, and (iii) used in or necessary to the development, production, servicing, and sale of other Symrise products;

(2) the Divesture Assets do not include the intangible assets that Defendant Symrise shall provide as services or use to provide services identified in any transition services agreement entered between the Acquirer and Defendant Symrise, as described *infra* in Paragraph IV(G); and

(3) the Divestiture Assets do not include any trademarks, trade names, service marks, or service names containing the name ''Symrise'' or ''Diana.

III. Applicability

A. This Final Judgment applies to Symrise, IDF Seller, and ADF Seller as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. If, prior to complying with Section IV and Section V of this Final Judgment, Defendants sell or otherwise dispose of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, Defendants shall require the purchaser to be bound by the provisions of this Final Judgment. Defendants need not obtain such an agreement from the acquirers of the assets divested pursuant to this Final Judgment.

IV. Divestiture

A. Defendants are ordered and directed, within forty-five (45) calendar days after the entry of the Hold Separate Stipulation and Order in this matter to divest the Divestiture Assets in a manner consistent with this Final Judgment to an Acquirer acceptable to the United States, in its sole discretion. The United States, in its sole discretion, may agree to one or more extensions of this time period not to exceed sixty (60) calendar days in total, and shall notify the Court in such circumstances. Defendants agree to use their best efforts to divest the Divestiture Assets as expeditiously as possible.

B. In the event the Defendants attempt to divest the Divestiture Assets to an Acquirer other than Kerry, Inc., Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making an inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except information or documents subject to the attorney-client privilege or work-product doctrine. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

C. Defendants shall provide Acquirer and the United States with organization charts and other information relating to the personnel who spend all, or a majority of their business time involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility, including name, job title, experience, responsibilities, training and educational history, relevant certifications, and to the extent permissible by law, job performance evaluations, and current salary and benefits information, to enable Acquirer to make offers of employment. Upon request, Defendants shall make such personnel available for interviews with Acquirer during normal business hours at a mutually agreeable location and will not interfere with any negotiations by Acquirer to employ such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility. Interference with respect to this paragraph includes, but is not limited to, offering to increase the salary or benefits of such personnel involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility other than as part of a company-wide increase in salary or benefits granted in the ordinary course of business.

D. Defendant Symrise shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel who spend all, or a majority of their business time involved in the development, production, servicing, and sale of Chicken-Based Food Ingredients manufactured at the Banks County facility and to make inspections of the Banks County facility; access to any and all environmental, zoning, and other permit documents and information; access to any of the underlying documents for the Diana Food Bonds-for-Title Transaction; and access to any and all financial, operational, or other documents and information customarily provided as part of a due diligence process. For any employees who elect employment with Acquirer, Defendants shall waive all noncompete and nondisclosure agreements. For a period of eighteen (18) months after the divestiture has been completed under Section IV or V, Defendants may not solicit to hire, or hire, any employee hired by Acquirer, unless: (1) Acquirer agrees in writing that Defendants may solicit or hire that employee; or, (2) the employee responds to a general advertisement or solicitation not targeted at employees who accept employment with Acquirer. Nothing in

Paragraphs IV(C) and (D) shall prohibit Defendant Symrise from maintaining reasonable restrictions on the disclosure by any employee who accepts an offer of employment with Acquirer of Defendant Symrise's proprietary non-public information that is (1) not otherwise required to be disclosed by this Final Judgment, (2) related solely to Defendant Symrise's businesses and clients, and (3) unrelated to the Divestiture Assets.

E. Defendant Symrise shall warrant to Acquirer that each asset will be operational on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, operation, or divestiture of the Divestiture Assets. At the option of Acquirer, and subject to approval by the United States, Defendant Symrise shall enter into a transition services agreement to provide back office and information technology support for the Banks County facility for a period ranging between three (3) and twenty (20) months. The United States, in its sole discretion, may approve one or more extensions of this agreement for a total of up to an additional three (3) months. The terms and conditions of any contractual arrangement intended to satisfy this provision must be reasonably related to the market value of the expertise of the personnel providing needed assistance. The Symrise employees tasked with providing these transition services may not share any competitively sensitive information of Acquirer with any other Symrise, IDF Seller, or ADF Seller employee. If Acquirer seeks an extension of the term of this transition services agreement, Defendants shall notify the United States in writing at least three (3) months prior to the date the transition services agreement expires.

G. Defendant Symrise shall warrant to Acquirer (1) that there are no material defects in the environmental, zoning, certifications, or other permits pertaining to the operation of the Divestiture Assets, and (2) that following the sale of the Divestiture Assets, Defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, certifications, or other permits relating to the operation of the Divestiture Assets.

H. At the option of Acquirer, and with the written consent of the United States, Defendants may convey, transfer, or otherwise sell Divestiture Assets to the Development Authority in exchange for tax-exempt bonds pursuant to the Diana Food Bonds-for-Title Transaction arrangement in order to facilitate the divestiture. Unless the United States otherwise consents in writing, the divestiture pursuant to Section IV, or by Divestiture Trustee appointed pursuant to Section V, of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by Acquirer as part of a viable, ongoing business in the manufacture and sale of Chicken-Based Food Ingredients in the United States, and that the divestiture will remedy the competitive harm alleged in the Complaint. If any of the terms of an agreement between Defendants and Acquirer to effectuate the divestitures required by the Final Judgment varies from the terms of this Final Judgment then, to the extent that Defendants cannot fully comply with both terms, this Final Judgment shall determine Defendants' obligations. The divestiture, whether pursuant to Section IV or V of this Final Judgment:

1. Shall be made to an Acquirer that, in the United States' sole judgment, has the intent and capability (including the necessary managerial, operational, technical and financial capability) of competing effectively in the market for the manufacture and sale of Chicken-Based Food Ingredients; and

2. shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer and Defendants gives Defendants the ability unreasonably to raise Acquirer's costs, to lower Acquirer's efficiency, or otherwise to interfere in the ability of Acquirer to compete effectively.

V. Appointment of Divestiture Trustee

A. If Defendants have not divested the Divestiture Assets within the time period specified in Paragraph IV(A), Defendants shall notify the United States of that fact in writing. Upon application of the United States, the Court shall appoint a Divestiture Trustee selected by the United States and approved by the Court to effect the divestiture of the Divestiture Assets.

B. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to the United States, in its sole discretion, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court deems appropriate. Subject to Paragraph V(D) of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of Defendants any agents or consultants, including, but not limited to, investment bankers, attorneys, and accountants, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture. Any such agents or consultants shall serve on such terms and conditions as the United States approves, including confidentiality requirements and conflict of interest certifications.

C. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to the United States and the Divestiture Trustee within ten (10) calendar days after the Divestiture Trustee has provided the notice required under Section VI.

D. The Divestiture Trustee shall serve at the cost and expense of Defendant Symrise pursuant to a written agreement, on such terms and conditions as the United States approves including confidentiality requirements and conflict of interest certifications. The Divestiture Trustee shall account for all monies derived from the sale of the assets sold by the Divestiture Trustee and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services yet unpaid and those of any agents and consultants retained by the Divestiture Trustee, all remaining money shall be paid to Defendant Symrise and the trust shall then be terminated. The compensation of the Divestiture Trustee and any agents and consultants retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished, but the timeliness of the divestiture is paramount. If the Divestiture Trustee and Defendant Symrise are unable to reach agreement on the Divestiture Trustee's or any agents' or consultants' compensation or other terms and conditions of engagement within fourteen (14) calendar days of appointment of the Divestiture Trustee, the United States may, in its sole discretion, take appropriate action, including making a recommendation to the Court. The Divestiture Trustee shall, within three (3) business days of hiring any agents or consultants, provide

written notice of such hiring and the rate of compensation to Defendants and the United States.

E. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestiture. The Divestiture Trustee and any agents or consultants retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the business to be divested, and Defendants shall provide or develop financial and other information relevant to such business as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secrets or other confidential research, development, or commercial information, or any applicable privileges. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestiture.

F. After its appointment, the Divestiture Trustee shall file monthly reports with the United States setting forth the Divestiture Trustee's efforts to accomplish the divestiture ordered under this Final Judgment. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

G. If the Divestiture Trustee has not accomplished the divestiture ordered by this Final Judgment within six (6) months of appointment, the Divestiture Trustee must promptly provide the United States with a report setting forth (1) the Divestiture Trustee's efforts to accomplish the required divestiture, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestiture has not been accomplished, and (3) the Divestiture Trustee's recommendations. The United States will have the right to make additional recommendations consistent with the purpose of the trust to the Court. The Court thereafter may enter such orders as it deems appropriate to carry out the purpose of the Final Judgment, which, if necessary, may include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by the United States. If the United States determines that the Divestiture Trustee has ceased to act or failed to act diligently or in a reasonably cost-effective manner, the United States may recommend the Court appoint a substitute Divestiture Trustee.

VI. Notice of Proposed Divestiture

A. In the event Defendants are divesting the Divestiture Assets to an Acquirer other than Kerry, Inc., within two (2) business days following execution of a definitive divestiture agreement, Defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestiture required herein, shall notify the United States of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within fifteen (15) calendar days of receipt by the United States of such notice, the United States may request from Defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee, if applicable, additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, the United States shall provide written notice to Defendants and the Divestiture Trustee, if there is one, stating whether or not, in its sole discretion, it objects to the Acquirer or any other aspect of the proposed divestiture. If the United States provides written notice that it does not object, the divestiture may be consummated, subject only to Defendants' limited right to object to the sale under Paragraph V(C) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer or upon objection by the United States, a divestiture proposed under Section IV or V shall not be consummated. Upon objection by Defendants under Paragraph V(C), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any purchase made pursuant to Section IV or V of this Final Judgment.

VIII. Hold Separate

Until the divestiture required by this Final Judgment has been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by the Court. Defendants shall take no action that would jeopardize the divestiture ordered by the Court.

IX. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter, and every thirty (30) calendar days thereafter until the divestiture has been completed under Section IV or V, Defendants shall deliver to the United States an affidavit, signed by each Defendant's chief financial officer and general counsel, describing the fact and manner of Defendants' compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who, during the preceding thirty (30) calendar days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts Defendants have taken to solicit buyers for and complete the sale of the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the United States to information provided by Defendants, including limitation on information, shall be made within fourteen (14) calendar days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in reasonable detail all actions Defendants have taken and all steps Defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in

Defendants' earlier affidavits filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one (1) year after such divestiture has been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of any related orders such as the Hold Separate Stipulation and Order, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States, including agents retained by the United States, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, be permitted:

1. Access during Defendants' office hours to inspect and copy, or at the option of the United States, to require Defendants to provide electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Defendants, relating to any matters contained in this Final Judgment; and

2. to interview, either informally or on the record, Defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, Defendants shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this Section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the United States, Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give Defendants ten (10) calendar days' notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire any part of the Divestiture Assets during the term of this Final Judgment.

XII. Retention of Jurisdiction

The Court retains jurisdiction to enable any party to this Final Judgment to apply to the Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Enforcement of Final Judgment

A. The United States retains and reserves all rights to enforce the provisions of this Final Judgment, including the right to seek an order of contempt from the Court. Defendants agree that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of this Final Judgment, the United States may establish a violation of the decree and the appropriateness of any remedy therefor by a preponderance of the evidence, and Defendants waive any argument that a different standard of proof should apply.

B. This Final Judgment should be interpreted to give full effect to the procompetitive purposes of the antitrust laws and to restore all competition the United States alleged was harmed by the challenged conduct. Defendants agree that they may be held in contempt of, and that the Court may enforce, any provision of this Final Judgment that, as interpreted by the Court in light of these procompetitive principles and applying ordinary tools of interpretation, is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face. In any such interpretation, the terms of this Final Judgment should not be construed against either party as the drafter.

C. In any enforcement proceeding in which the Court finds that Defendants have violated this Final Judgment, the United States may apply to the Court for a one-time extension of this Final Judgment, together with other relief as may be appropriate. In connection with any successful effort by the United States to enforce this Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendant agrees to reimburse the United States for the fees and expenses of its attorneys, as well as any other costs including experts' fees, incurred in connection with that enforcement effort, including in the investigation of the potential violation.

D. For a period of four (4) years following the expiration of the Final Judgment, if the United States has evidence that a Defendant violated this Final Judgment before it expired, the United States may file an action against that Defendant in this Court requesting that the Court order (1) Defendant to comply with the terms of this Final Judgment for an additional term of at least four years following the filing of the enforcement action under this Section, (2) any appropriate contempt remedies, (3) any additional relief needed to ensure the Defendant complies with the terms of the Final Judgment, and (4) fees or expenses as called for in this Section.

XIV. Expiration of Final Judgment

Unless the Court grants an extension, this Final Judgment shall expire ten (10) years from the date of its entry, except that after five (5) years from the date of its entry, this Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestitures have been completed and that the continuation of the Final Judgment no longer is necessary or in the public interest.

Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16

United States District Judge

United States District Court for the District of Columbia

United States of America, Department of Justice, Antitrust Division, 450 5th Street NW, Suite 8000, Washington, DC 20530, Plaintiff, v. *Symrise AG, Mühlenfeldstraβe 1, 37603 Holzminden, Germany* and *IDF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809* and *ADF Holdco, Inc., 3801 East Sunshine Street, Springfield, MO 65809,* Defendants.

Case No.: 1:19–cv–03263
Judge: Hon. Royce Lamberth

Competitive Impact Statement

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the ''APPA'' or ''Tunney Act''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On January 31, 2019, Symrise AG (''Symrise'') agreed to acquire International Dehydrated Foods, LLC (''IDF''), and American Dehydrated Foods, LLC (''ADF'') (collectively ''IDF/ADF''), from IDF Holdco, Inc. and ADF Holdco, Inc., for approximately $900 million. The United States filed a civil antitrust Complaint on October 30, 2019, seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition for the manufacture and sale of chicken-based food ingredients (including chicken broth, chicken fat, and cooked chicken meat) for manufacturers of food for people and pets (collectively ''food manufacturers'') in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order (''Hold Separate'') and proposed Final Judgment, which are designed to address the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest, to Kerry, Inc. (''Kerry''), a global manufacturer of ingredients and recipe solutions for the food and beverage industry, or another acquirer approved by the United States, Symrise's newly constructed facility located in Banks County, Georgia (the ''Banks County facility'') which was built to manufacture and sell chicken-based food ingredients; along with certain tangible and intangible assets (collectively, the ''Divestiture Assets''). Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Assets are operated as a competitively independent, economically viable and ongoing business concern, which will remain independent and uninfluenced by Symrise, and that competition is maintained during the pendency of the ordered divestiture.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. Description of Events Giving Rise to the Alleged Violation

A. The Defendants

Symrise, an Aktiengesellschaft, or publicly listed company, organized under the laws of Germany, is headquartered in Holzminden, Germany. Symrise is active globally in three main business segments: (i) Flavor; (ii) nutrition; and (iii) scent and care. In its 2018 fiscal year, Symrise had global sales of EUR 3.154 billion (or approximately $3.53 billion). Symrise's nutrition segment, represented by its Diana division, which also operates in the United States, specializes in producing natural functional ingredients for food manufacturers and aquaculture.

In October 2018, Diana Food, part of the Diana division within Symrise, opened the Banks County facility. The Banks County facility marked Symrise's entrance into the U.S. market for the manufacture and sale of chicken-based food ingredients for food manufacturers, to compete with incumbent suppliers, such as IDF/ADF. Production at the Banks County facility began in 2019. Diana Food's sales for chicken-based food ingredients manufactured at the Banks County facility continue to ramp up and Symrise expects, and has budgeted for, significant sales by year-end 2019. Moreover, Symrise envisions continuing to gain shares of the U.S. market thereafter.

IDF Holdco, Inc. and ADF Holdco, Inc. are the ultimate parent entities of IDF and ADF. IDF and ADF are limited liability companies headquartered in Springfield, Missouri. IDF manufactures and sells chicken-based food ingredients. ADF owns 50% of Food Ingredient Technologies, LLC (''Fitco'') which also manufactures and sells chicken-based food ingredients. Although legally separate entities, IDF and ADF operate as an integrated business unit and collectively are the largest developers and manufacturers in the United States of chicken-based food ingredients for food manufacturers. The companies develop and manufacture chicken-based food ingredients at facilities in Monett, Missouri, and Anniston, Alabama. IDF/ADF's 2018 annual total sales were approximately $266 million, of which approximately $177 million was attributable to the sale of chicken-based food ingredients.

B. The Competitive Effects of the Transaction

1. Relevant Markets

As explained in the Complaint, the manufacture and sale of chicken-based food ingredients (including chicken broth, chicken fat, and cooked chicken meat) for food manufacturers is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18. The ingredients at issue are human-grade quality and are relied upon by food manufacturers for their taste and nutritional attributes. The chicken broth, chicken fat, and cooked chicken meat are each available in different forms and offer different taste profiles, nutrition, and ingredient characteristics that allow for limited substitution with other products.

Alternatives to chicken-based food ingredients may lack the taste, nutritional attributes, form, or labelling abilities desired by food manufacturers. For example, a purchaser of human-grade natural chicken broth for use in a finished chicken broth may not switch to turkey broth. Nor is a purchaser of human-grade natural cooked chicken meat likely to switch to turkey, tofu, or any other meat product for use in chicken noodle soup when the price of human-grade natural chicken broth or cooked chicken meat increases by a significant non-transitory amount.

Additionally, some pet food manufacturers producing end-products with certain ingredient or health claims use only human-grade chicken-based food ingredients, and cannot make the necessary ingredient or health claims with non-human-grade products.

Although some food manufacturers may be able to reformulate their end-products to decrease the amount of chicken-based food ingredients called for in a certain formula or recipe, at least some manufacturers may not be able to reformulate to an extent that would allow for complete substitution. Additionally, even a small reformulation to limit the amount of chicken-based food ingredients used in a given recipe requires time-consuming

reformulation work by food manufacturers. This is especially true because a food manufacturer may need its end-product to maintain the same nutritional and taste attributes that consumers expect, making switching, even in small amounts, impractical and potentially costly. For these reasons, a hypothetical profit-maximizing monopolist manufacturer and seller of chicken-based food ingredients for food manufacturers in the United States could profitably impose at least a small but significant and non-transitory price increase.

The relevant geographic market for the manufacture and sale of chicken-based food ingredients for food manufacturers is the United States. Domestic customers of chicken-based food ingredients for use in food for human consumption or pet consumption cannot buy the products from outside of the United States to use domestically because of restrictions imposed by the United States Department of Agriculture (''USDA'') that prohibit importation into the United States of natural chicken ingredients. Accordingly, the United States is the relevant geographic market within the meaning of Section 7 of the Clayton Act, 15 U.S.C. 18.

2. Competitive Effects

As explained in the Complaint, the proposed acquisition would eliminate the burgeoning competition between IDF/ADF and Symrise, the likely effect of which would be a substantial lessening of competition for the manufacture and sale of chicken-based food ingredients for food manufacturers, resulting in higher prices and lower quality products. The relevant market is highly concentrated, with IDF/ADF having a 54% market share by capacity of the chicken-based food ingredients market and 2018 sales of $177 million. Symrise recently entered this market through the construction of the Banks County facility which began to sell chicken-based food ingredients to food manufacturers earlier this year, including to some of IDF/ADF's largest customers. The brand-new plant has the capacity to take approximately 23% of the market, making it IDF/ADF's largest competitor. This would give the merged company more than three-quarters of the market by capacity for the manufacture and sale of chicken-based food ingredients, with no other individual competitor having more than a 6% share.

3. Entry

As alleged in the Complaint, entry of additional competitors into the market for the manufacture and sale of chicken-based food ingredients for food manufacturers is unlikely to be timely, likely, or sufficient to prevent the harm to competition that would result if the proposed transaction were consummated.

Any new entrant would need to develop infrastructure and research and development capabilities in order to start manufacturing and selling chicken-based ingredients. This would require significant time and financial resources as Symrise's recent entry experience demonstrates. Symrise, a company with significant chicken-based food ingredient operations in Europe, still needed almost three years and over $54 million dollars to construct the Banks County facility. Any new entrant also would need to work with food manufacturers to develop chicken-based food ingredients that meet the specific flavor, nutritional and other characteristics sought by the customer. This often requires extensive and time-consuming testing between a facility and the food manufacturer customer. Finally, food manufacturers often are reluctant to switch from an established chicken-based food ingredients manufacturer given the close relationships that develop, presenting a further hurdle to any new entrant.

III. Explanation of the Proposed Final Judgment

The divestiture required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint. The proposed Final Judgment requires Symrise, within forty-five (45) calendar days after the entry of the Hold Separate by the Court, to divest the Divestiture Assets to Kerry or another acquirer approved by the United States. The assets must be divested in such a way as to satisfy the United States, in its sole discretion, that they can and will be operated by the acquirer as a viable, ongoing business that can compete effectively in the market for the manufacture and sale of chicken-based food ingredient for food manufacturers. Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with prospective acquirers.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore competition that would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose. Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered until after the Final Judgment has expired or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired. This provision, therefore,

makes clear that, for four years after the Final Judgment has expired, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the **Federal Register**.

Written comments should be submitted to:

Robert Lepore, Chief, Transportation, Energy, and Agriculture Section Antitrust Division, United States Department of Justice, 450 Fifth Street NW, Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Symrise's acquisition of IDF/ADF. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will remedy the anticompetitive effects alleged in the Complaint, preserving competition for the manufacture and sale of chicken-based food ingredients for food manufacturers in the United States. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court is ''not to make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993

F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: the court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.''' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec.24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: November 18, 2019

Respectfully submitted,

Jeremy Evans, (DC Bar #478097) ,
Barbara W. Cash,
William M. Martin,
United States Department of Justice, Antitrust Division, Transportation, Energy, and Agriculture Section, Liberty Square Building, 450 Fifth Street NW, Suite 8000, Washington, DC 20530, Telephone: (202) 598–8193.

[FR Doc. 2019–25600 Filed 11–25–19; 8:45 am]

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DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting and Hearing Notice No. 08–19]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR part 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

TIME AND DATE: Thursday, December 5, 2019, at 10:00 a.m.

PLACE: All meetings are held at the Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: 10:00 a.m.—Issuance of Proposed Decisions under the Guam World War II Loyalty Recognition Act, Title XVII, Public Law 114–328.

CONTACT PERSON FOR MORE INFORMATION: Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Patricia M. Hall, Foreign Claims Settlement Commission, 441 G St NW, Room 6234, Washington, DC 20579. Telephone: (202) 616–6975.

Brian Simkin,

Chief Counsel.

[FR Doc. 2019–25713 Filed 11–22–19; 11:15 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF JUSTICE

[OMB Number 1190–0019]

Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension Without Change of a Currently Approved Collection. Requirement That Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description

AGENCY: Civil Rights Division, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (the Department), Civil Rights Division, Disability Rights Section (DRS), will

submit the following information collection extension request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Comments are encouraged and will be accepted for 30 days until December 26, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments (especially on the estimated public burden or associated compliance time) or need additional information, please contact: Rebecca B. Bond, Chief, Disability Rights Section, Civil Rights Division, U.S. Department of Justice, by mail at 4CON, 950 Pennsylvania Ave. NW, Washington, DC 20530; send an email to *DRS.PRA@usdoj.gov;* or call (800) 514–0301 (voice) or (800) 514–0383 (TTY) (the Division's Information Line). 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 20503 or sent to *OIRA_submissions@omb.eop.gov.* Include the title of this proposed collection: ''Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description,'' in the subject line of all written comments. You may obtain copies of this notice in an alternative format by calling the Americans with Disabilities Act (ADA) Information Line at (800) 514–0301 (voice) or (800) 514–0383 (TTY).

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Civil Rights Division, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether, and if so, how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of Information Collection

1. *Type of information collection:* Extension of Currently Approved Collection.

2. *The title of the form/collection:* Requirement that Movie Theaters Provide Notice as to the Availability of Closed Movie Captioning and Audio Description.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form Number: OMB Number 1190–0019.

Component: The applicable component within the Department of Justice is the Disability Rights Section in the Civil Rights Division.

4. *Affected public who will be required to comply, as well as a brief abstract:*

Affected Public (Primary): Businesses and not-for-profit institutions that own, operate, or lease a movie theater that has one or more auditoriums showing digital movies with closed movie captioning and audio description, and that provide notice of movie showings and times. Under the relevant regulation, ''movie theater'' means a facility other than a drive-in theater that is used primarily for the purpose of showing movies to the public for a fee.

Affected Public (Other): None.

Abstract: The Department of Justice's Civil Rights Division, Disability Rights Section (DRS), is seeking to extend its information collection arising from a regulatory provision that requires covered movie theaters to disclose information to the public regarding the availability of closed movie captioning and audio description for movies shown in their auditoriums.

Title III of the Americans with Disabilities Act (ADA), at 42 U.S.C. 12182, prohibits public accommodations from discriminating against individuals with disabilities. The existing ADA title III regulation, at 28 CFR 36.303(a)–(g), requires covered entities to ensure effective communication with individuals with disabilities. The title III regulation clarifies that movie theaters that provide captioning or audio description for digital movies must ensure ''that all notices of movie showings and times at the box office and other ticketing locations, on websites and mobile apps, in newspapers, and over the telephone, inform potential patrons of the movies or showings that are available with captioning and audio description.'' 28 CFR 36.303(g). This requirement does not apply to any third-party providers of films, unless they are part of or subject to the control of the public accommodation. *Id.* Movie theaters' disclosure of this information will enable individuals with hearing and vision disabilities to readily find out where and when they can have access to movies with these features.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

Estimated total number of respondents: The Department's initial PRA request for this collection relied on U.S. Census Bureau data from 2012 and estimated that there was a total of 1,876 firms owning one or more movie theaters in the United States that were potentially subject to this disclosure. *See* 81 FR 37643 (June 10, 2016). The most recent U.S. Census Bureau data, from 2016, estimated that there was a total of 1,790 firms owning one or more movie theaters. *See* U.S. Census Bureau, 2016 SUSB Annual Data Tables by Establishment Industry, Data by Enterprise Employment Size, U.S., 6-digit NAICS. As the vast majority of U.S. movie theaters now show digital movies, which typically allow for closed captioning and audio description, to the extent that each of these movie theater firms that shows digital movies provides notices of movie showings and times to the public about those films, they must provide information concerning the availability of closed movie captioning and audio description in their communications.

Estimated average time to respond: The Department acknowledges that the amount of time it will take a respondent to comply with this requirement may vary depending on the number of movies that the respondent is showing at any given time. Based on information gathered during the initial rulemaking process, the Department estimates that respondents will take an average of up to 10 minutes each week to update existing notices of movie showings and times with closed captioning and audio description information. Therefore, the Department estimates that each firm owning one or more theaters offering digital movies with closed captioning or audio description will spend approximately ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) 8.7 hours each year to comply with this requirement.

The Department anticipates that firms owning one or more movie theaters will likely update their existing listings of movie showings and times to include information concerning the availability of closed movie captioning and audio

description on a regular basis. The Department's research suggests that this information would only need to be updated whenever a new movie with these features is added to the schedule. This will vary as some movies stay on the schedule for longer periods of time than others, but the Department estimates that respondent firms will update their listings to include this information weekly. In the future, if all movies are distributed with these accessibility features, specific notice on a movie-by-movie basis may no longer be necessary and firms owning movie theaters may only need to advise the public that they provide closed captioning and audio description for all of their movies.

6. *An estimate of the total annual public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 15,573 hours. The Department estimates that respondents will take an average of 10 minutes each week to update their existing listings of movie showings and times with the required information about closed captions and audio description. If each respondent spends 10 minutes each week to update its notices of moving showings and times to include this information, the average movie theater firm will spend 8.7 hours annually ((10 minutes/week × 52 weeks/year) ÷ 60 minutes/hour) complying with this requirement. The Department expects that the annual public burden hours for disclosing this information will total (1,790 respondents × 8.7 hours/year) 15,573 hours.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 21, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–25640 Filed 11–25–19; 8:45 am]

BILLING CODE 4410–13–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0099]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension With Change, of a Previously Approved Collection; USMS Medical Forms

AGENCY: U.S. Marshals Service, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), U.S. Marshals Service (USMS), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 26, 2019.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, particularly with respect to the estimated public burden or associated response time, have suggestions, need a copy of the proposed information collection instrument with instructions, or desire any additional information, please contact Nicole Timmons either by mail at CG–3, 10th Floor, Washington, DC 20530–0001, by email at *Nicole.Timmons@usdoj.gov,* or by telephone at 202–236–2646. 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 20503 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:

—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;
—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Extension and revision of a currently approved collection.

2. *The Title of the Form/Collection:* USMS Medical Forms.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Numbers:

—USM–522A Physician Evaluation Report for USMS Operational Employees
—USM–522P Physician Evaluation Report for USMS Operational Employees—Pregnancy Only
—USM–600 Physical Requirements of USMS District Security Officers
—CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

○ USM–522A Physician Evaluation Report for USMS Operational Employees.

▪ Affected public: Private sector (Physicians).

▪ Brief abstract: This form is completed by an USMS operational employee's treating physician to report any illness/injury (other than pregnancy) that requires restriction from full performance of duties for longer than 80 consecutive hours.

○ USM–522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only).

▪ Affected public: Private sector (Physicians).

▪ Brief abstract: Form USM–522P must be completed by the OB/GYN physician of pregnant USMS operational employees to specify any restrictions from full performance of duties.

○ USM–600 Physical Requirements of USMS District Security Officers.

▪ Affected public: Private sector (Physicians).

▪ Brief abstract: It is the policy of the USMS to ensure a law enforcement work force that is medically able to safely perform the required job functions. All applicants for law enforcement positions must have pre-employment physical examinations; existing District Security Officers

(DSOs) must recertify that they are physically fit to perform the duties of their position each year. DSOs are individual contractors, not employees of USMS; Form USM–522 does not apply to DSOs.

○ CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification.

▪ Affected public: Private sector (Physicians).

▪ Brief abstract: This form is completed by the Court Security Officer (CSO)'s attending physician to determine whether a CSO is physically able to return to work after an injury, serious illness, or surgery. The physician returns the evaluation to the contracting company, and if the determination is that the CSO may return to work, the CSO–012 is then signed off on by the contracting company and forwarded to the USMS for final review by USMS' designated medical reviewing official. Court Security Officers are contractors, not employees of USMS; Form USM–522A does not apply to CSOs.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

USM–522A Physician Evaluation Report for USMS Operational Employees. It is estimated that 208 respondents will complete a 20 minute form twice per year.

USM–522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only). It is estimated that 7 respondents will complete a 15 minute form twice per year.

USM–600 Physical Requirements of USMS District Security Officers. It is estimated that 2,000 respondents will complete a 20 minute form.

CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification. It is estimated that 300 respondents will complete a 30 minute form.

6. *An estimate of the total public burden (in hours) associated with the collection:*

USM–522A Physician Evaluation Report for USMS Operational Employees. There are an estimated 139 annual total burden hours associated with this collection.

USM–522P Physician Evaluation Report for USMS Operational Employees (Pregnancy Only). There are an estimated 4 annual total burden hours associated with this collection.

USM–600 Physical Requirements of USMS District Security Officers. There are an estimated 667 annual total burden hours associated with this collection.

CSO–012 Request to Reevaluate Court Security Officer's Medical Qualification. There are an estimated 150 annual total burden hours associated with this collection.

Total Annual Time Burden (Hr): 960.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: November 20, 2019.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2019–25579 Filed 11–25–19; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1770]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention has scheduled a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: Wednedsay December 18, 2019 at 11:00 a.m.–Noon ET.

ADDRESSES: The meeting will take place remotely via webinar.

FOR FURTHER INFORMATION CONTACT: Visit the website for the FACJJ at *www.facjj.ojp.gov* or contact Elizabeth Wolfe, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–9310, email at *elizabeth.wolfe@ojp.usdoj.gov;* or Maegen Barnes, Senior Program Manager/Federal Contractor, by telephone (732) 948–8862, email at *maegen.barnes@bixal.com,* or fax at (866) 854–6619. Please note that the above phone/fax numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.ojp.gov.*

FACJJ meeting agendas are available on *www.facjj.ojp.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion; and (c) member announcements.

The meeting will be available online via Adobe Connect, a video conferencing platform. Members of the public who wish to participate must register in advance of the meeting online at FACJJ Meeting Registration, no later than Friday December 13th, 2019. Should issues arise with online registration, or to register by fax or email, the public should contact Maegen Barnes, Senior Program Manager/Federal Contractor (see above for contact information).

Interested parties may submit written comments and questions in advance to Elizabeth Wolfe (DFO) for the FACJJ, at the contact information above. If faxing, please follow up with Maegen Currie, Senior Program Manager/Federal Contractor (see above for contact information) in order to assure receipt of submissions. All comments and questions should be submitted no later than 5:00 p.m. ET on Friday December 13th, 2019.

The FACJJ will limit public statements if they are found to be duplicative. Written questions submitted by the public while in attendance will also be considered by the FACJJ.

Elizabeth Wolfe,

Training and Outreach Coordinator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2019–25582 Filed 11–25–19; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Form ETA–232, Domestic Agricultural In-Season Wage Report, and Form–232A, Wage Survey Interview Record

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL's) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Form ETA–232, Domestic Agricultural In-Season Wage Report, and Form-232A, Wage Survey Interview Record.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by January 27, 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 Thomas M. Dowd, Deputy Assistant Secretary by telephone at 202–513–7350 (this is not a toll-free number), TTY 1–877–889–5627 (this is not a toll-free number), or by email at *ETA.OFLC.Forms@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 Foreign Labor Certification, 200 Constitution Avenue NW, Box PPII 12–200, Washington, DC 20210; by email: *ETA.OFLC.Forms@dol.gov;* or by Fax 202–513–7395.

FOR FURTHER INFORMATION CONTACT: Thomas M. Dowd, Deputy Assistant Secretary, Office of Foreign Labor Certification, by telephone at 202–513–7350 (this is not a toll-free number) or by email at *ETA.OFLC.Forms@dol.gov.*

Authority: 44 U.S.C. 3506(c)(2)(A).

SUPPLEMENTARY INFORMATION: DOL, in its 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 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.

This information collection is required under 8 U.S.C. 1188, which authorizes DOL to administer the H–2A temporary agricultural program, and Section 218 of the Immigration and Nationality Act (INA), which authorizes the lawful admission into the United States of nonimmigrant workers (H–2A workers) to perform agricultural labor or services of a temporary or seasonal nature. In order for DOL to certify that there are not sufficient U.S. workers qualified and available to perform the labor involved in the petition and that the employment of the foreign worker will not have an adverse effect on the wages and working conditions of similarly employed U.S. workers, employers must demonstrate the need for a specific number of H–2A workers. The section of law authorizing DOL to collect information for OMB control number 1205–0017 is the Wagner-Peyser Act at 29 U.S.C 49(f). Specifically, Congress appropriates funding through the Wagner-Peyser allocations under the State Unemployment Insurance Employment Service Operation Provisions, to meet certain obligations mandated by the INA.

DOL's Office of Foreign Labor Certification (OFLC), within ETA, is responsible for administering the H–2A program, which requires the filing of temporary labor certification applications by employers seeking to use nonimmigrant workers in agricultural work. DOL's H–2A program regulations issued, under the Immigration Reform and Control Act of 1986 for the temporary employment of nonimmigrant agricultural and logging workers in the United States, 20 CFR part 655, subpart B, require employers to pay ''at least the [adverse effect wage rate], the prevailing hourly wage rate, the prevailing piece rate, the agreed-upon collective bargaining rate, or the Federal or State minimum wage rate, in effect at the time the work is performed, whichever is highest[.]'' To determine prevailing wages, State Workforce Agencies (SWA) either formally survey employers' wages or conduct ''ad hoc'' wage surveys. In addition, DOL's H–2A program regulations require that ''[e]ach job qualification and requirement listed in the [H–2A] job offer . . . be bona fide and consistent with the normal and accepted qualifications required by employers that do not use H–2A workers in the same or comparable occupation and crops.'' To determine whether certain working conditions meet these standards, SWAs collect information by either formally surveying employers' prevailing practices or by conducting ''ad hoc'' surveys. DOL uses Form ETA–232, which the SWA completes according to its survey of information from employers on Form ETA–232A, to collect information that will permit DOL to establish and publish H–2A program prevailing wages and prevailing practices.

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 1205–0017.

Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the

use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

Agency: DOL–ETA.

Type of Review: Extension Without Changes.

Title of Collection: Form ETA–232, Domestic Agricultural In-Season Wage Report, and Form 232A, Wage Survey Interview Record.

OMB Control Number: 1205–0017.

Affected Public: Private Sector (businesses or other for-profit institutions, farms), Not-for-profit Institutions, Federal Government, and State, Local, and Tribal governments.

Estimated Number of Respondents:

Form ETA–232A—SWA Interviews of Employer: 9,600.

Form ETA–232—SWA Completion: 400.

Prevailing Practice Surveys—SWA Interviews of Employer: 4,120.

Prevailing Practice Surveys—SWA Completion: 206.

Frequency: On Occasion.

Total Estimated Number of Annual Responses: 14,326.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 8,963 hours.

Total Estimated Annual Other Costs Burden: $0.

John Pallasch,

Assistant Secretary for Employment and Training.

[FR Doc. 2019–25615 Filed 11–25–19; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Form ETA–9142–B–CAA–3, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116–6

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL or Department) is submitting the Employment and Training Administration (ETA)-sponsored Information Collection Request (ICR), titled, *Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116–6* (Feb. 15, 2019) (OMB Control Number 1205–0535), to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995. Public comments on the ICR are invited.

DATES: OMB will consider all written comments it receives on or before December 26, 2019.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free of charge from the *RegInfo.gov* website at: *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201911-1205-005* (this link will only become active on the day following publication of this notice); by contacting Frederick Licari at 202–693–8073/TTY 202–693–8064 (these are not toll-free numbers); or by sending an email to: *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW, Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Frederick Licari by telephone at 202–693–8073/TTY 202–693–8064 (these are not toll-free numbers) or by sending an email to: *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to Form ETA–9142–B–CAA–3, *Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019 Public Law 116–6* (Feb. 15, 2019), which is currently set to expire on November 30, 2019, and all applicable instructions and electronic versions (OMB Control Number 1205–0535). The Department collected information through Form ETA–9142–B–CAA–3 to carry out its statutory and regulatory responsibilities under the H–2B temporary non-agricultural employment-based visa program. Although the form is no longer in use, joint regulations between DOL and the Department of Homeland Security (DHS) require H–2B employers that have filed the form with DHS to retain the form and maintain records supporting the attestations the employer made on the form.

Before an employer may petition for any temporary skilled or unskilled foreign workers, it must submit a request for certification to the Secretary of Labor containing the elements prescribed by the Immigration and Nationality Act (INA) and the Department's implementing regulations, which differ depending on the visa program under which the foreign workers are sought. The H–2B visa program enables employers to bring nonimmigrant foreign workers to the United States to perform nonagricultural work of a temporary or seasonal nature as defined in INA Section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). For purposes of the H–2B program, the INA and governing federal regulations at 20 CFR part 655, subpart A, and 8 CFR part 214, require the Secretary of Labor to certify that any foreign worker seeking to enter the United States on a temporary basis for the purpose of performing non-agricultural services or labor will not, by doing so, adversely affect wages and working conditions of U.S. workers who are similarly employed. In addition, the Secretary must certify that qualified U.S. workers are not available to perform such temporary labor or services.

On February 15, 2019, the President signed the Consolidated Appropriations Act, 2019. Division H, Section 105 of the Act authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers, notwithstanding the otherwise established statutory numerical limitation. DOL and the Department of Homeland Security (DHS) issued a temporary final rule implementing Division H, Section 105 of the Act on May 8, 2019. This collection of information was required by that rule. The Secretary of Homeland Security, in consultation with the Secretary of Labor, increased the H–2B cap for Fiscal Year (FY) 2019 by up to 30,000 additional visas for American businesses that were likely to suffer irreparable harm (that is, permanent and severe financial loss) without the ability to employ the H–2B workers requested on their petition. The 30,000 additional visas were available only to workers who were issued an H–2B visa or

otherwise granted H–2B status in FY 2016, 2017, or 2018.

The need to quickly issue regulations enacting the provision of the Consolidated Appropriations Act, 2019, caused the Department to seek approval of this information collection through an expedited process. The initial clearance for this information collection was sought using PRA emergency procedures outlined in regulations at 5 CFR 1320.13. Subsequently, the Department has sought public comment to revise this information collection through the notice-and-comment process. The Department proposes: (1) To revise this collection to eliminate the burden associated with completing and submitting the attestations to DHS and the accompanying business harm assessment, as DHS stopped accepting the form once the supplemental H–2B cap was reached and (2) to continue requiring employers to retain the required supporting documentation for three years from the date the certification was issued.

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. 5 CFR 1320.6(a). The Department obtains OMB approval for this information collection under Control Number 1205–0535. The current approval is scheduled to expire on November 30, 2019. However, DOL notes that outstanding information collection requirements submitted to OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on May 8, 2019, 84 FR 20005.

Interested parties are encouraged to send comments to OMB, Office of Information and Regulatory Affairs, at the address shown in the **ADDRESSES** section within thirty (30) days of the publication of this notice in the **Federal Register** by December 26, 2019. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0535. OMB 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.

Title of the Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6 (Feb. 15, 2019).

OMB Number: 1205–0535

Affected Public: Private Sector (businesses or other for-profits and not-for-profit institutions) and State, Local, and Tribal Governments.

Total Estimated Annual Respondents: 3,776.

Annual Frequency: On occasion.

Total Estimated Annual Responses: 3,776.

Total Estimated Average Time per Response: 0.50 hour.

Total Estimated Annual Burden Hours: 1,888 hours.

Total Estimated Annual Cost for Respondents: $87,773.

Authority: 44 U.S.C. 3507(a)(1)(D).

Dated: November 20, 2019.

Frederick Licari,

Departmental Clearance Officer.

[FR Doc. 2019–25614 Filed 11–25–19; 8:45 am]

BILLING CODE 4510–FP–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 1 meeting of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Sherry Hale, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5696.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of September 10, 2019, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meeting is:

Sound Health Network (review of applications): This meeting will be closed.

Date and time: December 13, 2019; 11:00 a.m. to 1:00 p.m.

Dated: November 21, 2019.

Sherry Hale,

Staff Assistant, National Endowment for the Arts.

[FR Doc. 2019–25633 Filed 11–25–19; 8:45 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request;

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to establish this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by January 27, 2020 to be assured consideration. Comments received after that date will be

considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Community Facility Support awards made by the Division of Earth Sciences Instrumentation and Facilities Program under NSF 16–609 and for Support of National or Regional Multi-User Facilities awards under NSF 15–516.

OMB Number: 3145–NEW.

Expiration Date of Approval: Not applicable.

Type of Request: Intent to seek approval to establish an information collection.

Proposed Project: Use of the Information:

The NSF Division of Earth Sciences Instrumentation and Facilities (EAR/IF) Program has long supported Community Facilities or National or Regional Multi-User Facilities (hereafter Facilities or Facility) to make complex and expensive instruments, systems of instruments or services broadly available to the Earth science research and education communities. In proposals requesting renewal of Facility support and/or in submitted Annual and Final Progress Reports, investigators have typically reported a number of performance metrics and details of facility operating budgets and expenses. A review of this information across the portfolio of currently supported EAR/IF Facilities reveals considerable variation in the reporting of performance metrics and financial information. More consistent reporting of information on support for specific research projects and related level of personnel effort, and sources of Facility income, for example, will enable NSF to more accurately assess the Facility's value to the scientific community. Performance metrics and financial reporting standards have not been specified within previous EAR/IF solicitations or via specific reporting requirements as part of Grant or Cooperative Agreement Terms and Conditions.

The intent of this data collection is to understand facility performance, services and finances in a uniform manner. This will help NSF assess whether standard reporting for performance metrics, financials and specific research project support will be required for future awardees through proposals, annual and final reports. This Information is for internal oversight use by the Division of Earth Sciences and will not be made publicly available.

Burden on the Public: Estimated at 80 hours per award for 14 awards for a total of 1,120 hours.

Dated: November 20, 2019.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2019–25603 Filed 11–25–19; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of November 25, December 2, 9, 16, 23, 30, 2019.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 25, 2019

There are no meetings scheduled for the week of November 25, 2019.

Week of December 2, 2019—Tentative

Wednesday, December 4, 2019

9:00 a.m.—Strategic Programmatic Overview of the Fuel Facilities and the Spent Fuel Storage and Transportation Business Lines (Public Meeting) (Contact: Damaris Marcano: 301–415–7328)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Friday, December 6, 2019

10:00 a.m.—Meeting with Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Larry Burkhart: 301–287–3775)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of December 9, 2019—Tentative

There are no meetings scheduled for the week of December 9, 2019.

Week of December 16, 2019—Tentative

Tuesday, December 17, 2019

10:00 a.m.—Briefing on Equal Employment Opportunity, Affirmative Employment, and Small Business (Public Meeting) (Contact: Larniece McKoy Moore: 301–415–1942)

This meeting will be webcast live at the Web address—*https://www.nrc.gov/.*

Week of December 23, 2019—Tentative

There are no meetings scheduled for the week of December 23, 2019.

Week of December 30, 2019—Tentative

There are no meetings scheduled for the week of December 30, 2019.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Denise McGovern at 301–415–0681 or via email at *Denise.McGovern@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or by email at *Tyesha.Bush@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated at Rockville, Maryland, this 21st day of November 2019.

For the Nuclear Regulatory Commission.

Denise L. McGovern,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2019–25718 Filed 11–22–19; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17; NRC–2019–0165]

Portland General Electric Company; Eugene Water and Electric Board, and PacifiCorp; Trojan Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal; issuance; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) issued a renewed license to Portland General Electric (PGE), Eugene Water and Electric Board, and PacifiCorp (together ''licensee'') for Special Nuclear Materials (SNM) License No. SNM–2509 for the receipt, possession, transfer, and storage of spent fuel from the Trojan Nuclear Plant in the Trojan Independent Spent Fuel Storage Installation (ISFSI), located in Columbia County, Oregon on August 9, 2019. On October 23, 2019, the renewed license and technical specifications were corrected to reflect the current amendment and to remove obsolete pages from the technical specifications.

DATES: November 26, 2019.

ADDRESSES: Please refer to Docket ID NRC–2019–0165 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0165. Address questions about NRC dockets IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Christopher T. Markley, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–6293, email: *Christopher.Markley@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

Based upon the application dated March 23, 2017, as supplemented January 29, 2019, and February 21, 2019, and June 10, 2019, the NRC issued a renewed license to the licensee for the Trojan ISFSI, located in Columbia County, Oregon. The renewed license SNM–2509 authorizes and requires operation of the Trojan ISFSI in accordance with the provisions of the renewed license and its technical specifications. Issuance of the renewed license was noticed in the **Federal Register** on August 16, 2019 (84 FR 42023). The renewed license and technical specifications were corrected to reflect the current amendment and to remove obsolete pages from the technical specifications. The renewed license, as corrected, will expire on March 31, 2059.

II. Availability of Documents

The following table includes the ADAMS accession numbers for the documents referenced in this notice. For additional information on accessing ADAMS, see the **ADDRESSES** section of this document.

Document	ADAMS Accession No.
Licensee's application, dated March 23, 2017	ML17086A039.
Response to First Request for Additional Information, dated January 23, 20197	ML19028A411.
Response to Request for Referenced Information, dated February 21, 2019	ML19057A148.
Response to Request for Referenced Information, dated June 10, 2019	ML19164A182.
Special Nuclear Materials License No. SNM–2509	ML19221B649.
Special Nuclear Materials License No. SNM–2509 (Corrected)	ML19296B636.
SNM–2507 2509 Technical Specifications	ML19221B650.
SNM–2507 2509 Technical Specifications (Corrected)	ML19296B637.
NRC Safety Evaluation Report	ML19221B651.
NRC Environmental Assessment	ML19169A054.
NUREG–2157, ''Generic Environmental Impact Statement for Continued Storage of Spent Fuel'' Volumes 1 and 2	ML14196A105. ML14196A107.

Dated at Rockville, Maryland, this 20th day of November 2019.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Materials and Structural Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2019–25608 Filed 11–25–19; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–34 and CP2020–32]

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:* December 2, 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).:* MC2020–34 and CP2020–32; *Filing Title:* USPS Request to Add Priority Mail Contract 564 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 20, 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:* December 2, 2019.

This Notice will be published in the **Federal Register**.

Darcie S. Tokioka,

Acting Secretary.

[FR Doc. 2019–25630 Filed 11–25–19; 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 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 26, 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 20, 2019, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 564 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–34, CP2020–32.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2019–25590 Filed 11–25–19; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIME AND DATE: November 18, 2019, at 10:30 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Items.
2. Financial Matters.
3. Strategic Matters.

On November 18, 2019, a majority of the members of the Board of Governors of the United States Postal Service voted unanimously to hold and to close to public observation a special meeting in Washington, DC, via teleconference. The Board determined that no earlier public notice was practicable.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Acting Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Acting Secretary.

[FR Doc. 2019–25758 Filed 11–22–19; 4:15 pm]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information on the American Research Environment

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI) on the American research environment

SUMMARY: On behalf of the National Science and Technology Council's (NSTC's) Joint Committee on the Research Environment (JCORE), the OSTP requests input on actions that Federal agencies can take, working in partnership with private industry, academic institutions, and non-profit/philanthropic organizations, to maximize the quality and effectiveness of the American research environment. Specific emphasis is placed on ensuring that the research environment is welcoming to all individuals and enables them to work safely, efficiently, ethically, and with mutual respect, consistent with the values of free inquiry, competition, openness, and fairness.

DATES: Interested persons are invited to submit comments on or before 11:59 p.m. ET on December 23, 2019.

ADDRESSES: Comments submitted in response to this notice may be submitted online to: the NSTC Executive Director, Chloe Kontos, *JCORE@ostp.eop.gov.* Email submissions should be machine-readable [pdf, word] and not copy-protected. Submissions should include ''RFI Response: JCORE'' in the subject line of the message.

Instructions: Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Submission must not exceed

10 pages in 12 point or larger font, with a page number provided on each page. Responses should include the name of the person(s) or organization(s) filing the comment. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

It is suggested that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this RFI.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Federal Government to form a binding contract. Additionally, those submitting responses are solely responsible for all expenses associated with response preparation.

FOR FURTHER INFORMATION CONTACT: For additional information, please direct your questions to the NSTC Executive Director, Chloe Kontos, *JCORE@ostp.eop.gov.*

SUPPLEMENTARY INFORMATION: NSTC established JCORE in May 2019. JCORE is working to address key areas that impact the U.S. research enterprise; enabling a culture supportive of the values and ethical norms critical to world-leading science and technology. This includes the need to improve safety and inclusivity, integrity, and security of research settings while balancing accountability and productivity.

Specifically, JCORE is working to:

• *Ensure rigor and integrity in research:* This subcommittee is identifying cross-agency principles, priorities, and actions to enhance research integrity, rigor, reproducibility, and replicability. This includes exploring how Federal government agencies and stakeholder groups, including research institutions, publishers, researchers, industry, non-profit and philanthropic organizations, and others, can work collaboratively to support activities that facilitate research rigor and integrity through efforts to address transparency, incentives, communication, training and other areas.

• *Coordinate administrative requirements for Federally-funded research:* This subcommittee is identifying and assessing opportunities to coordinate agency policies and requirements related to Federal grant processes and conflicts of interest disclosure. Additionally, this subcommittee is also exploring how persistent digital identifiers and researcher profile databases can be used to reduce administrative work and track agency investments.

• *Strengthen the security of America's S&T research enterprise:* This subcommittee is working to enhance risk assessment and management, coordinate outreach and engagement across the research enterprise, strengthen disclosure requirements and policies, enhance oversight and vigilance, and work with organizations that perform research to develop best practices that can be applied across all sectors. The subcommittee is taking a risk-based approach to strengthening the security of our research enterprise balanced with maintaining appropriate levels of openness that underpins American global leadership in science and technology.

• *Foster safe, inclusive, and equitable research environments:* This subcommittee is convening the multi-sector research community to identify challenges and opportunities, share best practices, utilize case studies, and share lessons learned in order to promote practices and cultures that build safe, inclusive, and equitable research environments.

Research Rigor and Integrity

The National Academies and others have in recent reports on rigor, reproducibility and replicability [1] and integrity,[2] identified a number of areas that Federal agencies and non-Federal stakeholders should consider to foster rigorous research. The subcommittee on Rigor and Integrity in Research is seeking perspectives on actions Federal agencies can take, working in partnership with the broader research community, to strengthen the rigor and integrity of research while recognizing the need for discipline-specific flexibilities.

1. What actions can Federal agencies take to facilitate the reproducibility, replicability, and quality of research? What incentives currently exist to (1) conduct and report research so that it can be reproduced, replicated, or generalized more readily, and (2) reproduce and replicate or otherwise confirm or generalize publicly reported research findings?

2. How can Federal agencies best work with the academic community, professional societies, and the private sector to enhance research quality, reproducibility, and replicability? What are current impediments and how can institutions, other stakeholders, and Federal agencies collaboratively address them?

3. How do we ensure that researchers, including students, are aware of the ethical principles of integrity that are fundamental to research?

4. What incentives can Federal agencies provide to encourage reporting of null or negative research findings? How can agencies best work with publishers to to facilitate reporting of null or negative results and refutations, constraints on reporting experimental methods, failure to fully report caveats and limitations of published research, and other issues that compromise reproducibility and replicability?

5. How can the U.S. government best align its efforts to foster research rigor, reproducibility, and replicability with those of international partners?

Coordinating Administrative Requirements for Research

Numerous reports and recommendations, including from the National Academies,[3] the National Science Board,[4] and the Government Accountability Office,[5] have highlighted concerns about increasing administrative work for Federally-funded researchers. Congress has directed Federal agencies to reduce the administrative burden associated with Federal awards through the 21st Century Cures Act (Pub. L. 114–25) and the American Innovation and Competitiveness Act (Pub. L. 114–329). Despite these efforts, preliminary reports from the Federal Demonstration Partnership indicate that the time university faculty spend administering Federal awards, rather than on research, has continued to increase.

Taking into consideration the current Federal landscape with respect to individual Federal agency financial conflict of interest (FCOI) regulations and policies, including definitions, disclosure or reporting requirements and thresholds, training requirements, and timing for disclosure, please comment on the following:

1. What actions can the Federal government take to reduce administrative work associated with FCOI requirements for researchers, institutions, and Federal agency staff?

2. How can Federal agencies best achieve the appropriate balance

[1] National Academy of Sciences. Reproducibility and Replicability in Science (2019)

[2] National Academy of Sciences. Fostering Integrity in Research (2017)

[3] National Academies report Optimizing the Nation's Investment in Academic Research (2016).

[4] National Science Board report Reducing Investigators' Administrative Workload for Federally Funded Research (2014).

[5] Government Accountability Office report Federal Research Grants: Opportunities Remain for Agencies to Streamline Administrative Requirements (2016).

between reporting and administrative requirements and the potential risk of unreported or managed financial conflicts that could compromise the research?

3. From the perspective of institutions, describe the impact of the 2011 revisions to the Public Health Services FCOI regulations. What were the implications with respect to the balance between burden and risk? Did the revisions result in fewer significant unresolved or unreported financial conflicts?

4. Please comment on whether and how a streamlined, harmonized, Federal-wide policy for FCOI would provide benefits with respect to reducing administrative work and whether there would be anticipated challenges.

5. How can agencies best reduce workload associated with submitting and reviewing applications for Federal research funding? What information is necessary to assess the merit of the proposed research, and what information can be delayed until after the merit determination is made (''just-in-time'')?

Research Security

The open and internationally collaborative nature of the U.S. science and technology research enterprise underpins America's innovation, science and technology leadership, economic competitiveness, and national security. However, over the past several years, some nations have exhibited increasingly sophisticated efforts to exploit, influence, our research activities and environments. Some of these recent efforts have come through foreign government-sponsored talent recruitment programs. Breaches of research ethics, both within talent programs and more generally, include the failure to disclose required information such as foreign funding, unapproved parallel foreign laboratories (so-called shadow labs), affiliations and appointments, and conflicting financial interests. Other inappropriate behaviors include conducting undisclosed research for foreign governments or companies on United States agency time or with United States agency funding, diversion of intellectual property or other legal rights, and breaches of contract and confidentiality in or surreptitious gaming of the peer-review process.

In light of these concerns, we seek public input on the following questions:

1. How can the U.S. Government work with organizations that perform research to manage and mitigate the risk of misappropriation of taxpayer or other funds through unethical behaviors in the research enterprise? Please consider:

a. Disclosure requirements and policies. Who within the research enterprise should disclose financial as well as nonfinancial support and affiliations (*e.g.,* faculty, senior researchers, postdoctoral researchers, students, visitors)? What information should be disclosed, and to whom? What period of time should the disclosure cover? How should the disclosures be validated especially since they are made voluntarily? What are appropriate consequences for nondisclosure?

b. Disclosure of sources of support for participants in the research enterprise. What additional sources of support should be disclosed, and should they include current or pending participation in foreign government-sponsored talent recruitment programs?

c. What information can the government provide to organizations that perform research to help them assess risks to research security and integrity?

2. How can the U.S. government best partner across the research enterprise to enhance research security? Please consider:

a. Appropriate roles and responsibilities for government agencies, institutions, and individuals;

b. Discovery of and communication of information regarding activities that threaten the security and integrity of the research enterprise; and

c. Establishment and operation of research security programs at organizations that perform research.

3. What other practices should organizations that perform research adopt and follow to help protect the security and integrity of the research enterprise? Please consider:

a. Organization measures to protect emerging and potentially critical early-stage research and technology.

b. How can Federal agencies and research institutions measure and balance the benefits and risks associated with international research cooperation?

Safe and Inclusive Research Environments

JCORE is focused on identifying actions that will ensure research environments in America are free from harassment of any kind, and from any conditions that encourage or tolerate harassment or other forms of behavior that are inconsistent with the ethical norms of research. The aim is to foster an American research enterprise, which epitomizes our values and those of research itself, namely, where researchers feel welcome and are encouraged to join, wish to remain, and subsequently thrive. To achieve this, leaders must create a research environment that welcomes all individuals, values their ideas, treats individuals as equals, and promotes bold thinking, rigorous and civil debate, and collegiality. With this focus in mind, we seek the public's input on the following questions:

1. What policies and practices are most beneficial in fostering a culture of safe and inclusive research environments? Where applicable, please provide information on:

a. Organizational leadership actions that create a culture of inclusivity;

b. Best practices for preventing harassment from beginning;

c. Best practices for prohibiting retaliation against those who report harassment;

d. Best practices for re-integrating those who have been accused of harassment but found to be innocent;

e. Whether your organization has a common code of ethics applicable to researchers, and whether that code is highlighted and actively promoted in training, research practice, etc;

f. How institution-based procedures for reporting cases of sexual harassment and non-sexual harassment (or toxic climate) differ, and if there are aspects of one set of policies that would be beneficial for broader inclusion.

2. What barriers does your organization face in the recruitment and retention of diverse researchers? Where applicable, please provide information on:

a. The setting to which it applies (*i.e.,* academic, industry, etc.);

b. Whether your organization has best practices or challenges specific to recruitment and retention of global talent;

c. Solutions your organization has used to successfully increase recruitment or retention of diverse and/or international researchers;

d. Best practices to promote bold thinking and enable collegiality in debate.

3. Are Federal agency policies on harassment complimentary or conflicting with regard to state or organizational policies? Where applicable, please provide information on:

a. What aspects are in conflict, along with the associated agency policy;

b. What aspects are most protective and make policy reasonable to implement;

c. What processes have effectively streamlined the administrative workload associated with implementation, compliance, or reporting.

4. What metrics can the Federal government use to assess progress in promoting safer and more inclusive research environments? Where applicable, please provide information on:

a. What methods your organization uses to assess workplace climate;

b. What systems within your organization were developed to enforce and/or report back to agencies;

c. What metrics does your organization uses to assess effectiveness of safe and inclusive practices;

d. What actions does your organization take communicate climate survey results, both within your organization and to external stakeholders?

Sean Bonyun,

Chief of Staff, Office of Science and Technology Policy.

[FR Doc. 2019–25604 Filed 11–25–19; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33702; 812–14957]

North Square Investments Trust, et al.; Notice of Application

November 21, 2019.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act, as well as from certain disclosure requirements in rule 20a–1 under the Act, Item 19(a)(3) of Form N–1A, Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''), and sections 6–07(2)(a), (b), and (c) of Regulation S–X (''Disclosure Requirements'').

Applicants: North Square Investments Trust (the ''Trust''), a Delaware statutory trust registered under the Act as an open-end management investment company with multiple series (each a ''Fund'') and North Square Investments, LLC (''Adviser''), a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') that serves an investment adviser to the Funds (collectively with the Trust, the ''Applicants'').

Summary of Application: The requested exemption would permit Applicants to enter into and materially amend subadvisory agreements with subadvisers without shareholder approval and would grant relief from the Disclosure Requirements as they relate to fees paid to the subadvisers.

Filing Dates: The application was filed on September 27, 2018, and amended on April 12, 2019, July 19, 2019, August 27, 2019, and October 24, 2019.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 2019, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090. Applicants: Alan E. Molotsky, Esq., North Square Investments, LLC, 10 South LaSalle Street, Suite 1925, Chicago, IL 60603.

FOR FURTHER INFORMATION CONTACT: Stephan N. Packs, Senior Attorney, at (202) 551–6853, or David J. Marcinkus, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number or an Applicant using the ''Company'' name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

I. Requested Exemptive Relief

1. Applicants request an order to permit the Adviser,[1] subject to the approval of the board of trustees of each Trust (collectively, the ''Board''),[2] including a majority of the trustees who are not ''interested persons'' of the Trust or the Adviser, as defined in section 2(a)(19) of the Act (the ''Independent Trustees''), without obtaining shareholder approval, to: (i) Select investment subadvisers (''Subadvisers'') for all or a portion of the assets of one or more of the Funds pursuant to an investment subadvisory agreement with each Subadviser (each a ''Subadvisory Agreement''); and (ii) materially amend Subadvisory Agreements with the Subadvisers.

2. Applicants also request an order exempting the Subadvised Funds (as defined below) from the Disclosure Requirements, which require each Fund to disclose fees paid to a Subadviser. Applicants seek relief to permit each Subadvised Fund to disclose (as a dollar amount and a percentage of the Fund's net assets): (i) The aggregate fees paid to the Adviser and any Wholly-Owned Subadvisers; and (ii) the aggregate fees paid to Affiliated and Non-Affiliated Subadvisers (''Aggregate Fee Disclosure'').[3] Applicants seek an exemption to permit a Subadvised Fund to include only the Aggregate Fee Disclosure.[4]

3. Applicants request that the relief apply to Applicants, as well as to any future Fund and any other existing or future registered open-end management investment company or series thereof that intends to rely on the requested order in the future and that: (i) Is advised by the Adviser; (ii) uses the multi-manager structure described in the application; and (iii) complies with the terms and conditions of the

[1] The term ''Adviser'' means (i) the Initial Adviser, (ii) its successors, and (iii) any entity controlling, controlled by or under common control with, the Initial Adviser or its successors that serves as the primary adviser to a Subadvised Fund. For the purposes of the requested order, ''successor'' is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Any other Adviser also will be registered with the Commission as an investment adviser under the Advisers Act.

[2] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Fund (as defined below), if different from the board of trustees (''Trustees'') of the Trust.

[3] A ''Wholly-Owned Subadviser'' is any investment adviser that is (1) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Adviser, (2) a ''sister company'' of the Adviser that is an indirect or direct ''wholly-owned subsidiary'' of the same company that indirectly or directly wholly owns the Adviser (the Adviser's ''parent company''), or (3) a parent company of the Adviser. An ''Affiliated Subadviser'' is any investment subadviser that is not a Wholly-Owned Subadviser, but is an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of a Subadvised Fund or the Adviser for reasons other than serving as investment subadviser to one or more Funds. A ''Non-Affiliated Subadviser'' is any investment adviser that is not an ''affiliated person'' (as defined in the Act) of a Fund or the Adviser, except to the extent that an affiliation arises solely because the Subadviser serves as a subadviser to one or more Funds.

[4] Applicants note that all other items required by sections 6–07(2)(a), (b) and (c) of Regulation S–X will be disclosed.

application (each, a ''Subadvised Fund'').[5]

II. Management of the Subadvised Funds

4. The Adviser serves or will serve as the investment adviser to each Subadvised Fund pursuant to an investment advisory agreement with the Fund (each an ''Investment Advisory Agreement''). Each Investment Advisory Agreement has been or will be approved by the Board, including a majority of the Independent Trustees, and by the shareholders of the relevant Subadvised Fund in the manner required by sections 15(a) and 15(c) of the Act. The terms of these Investment Advisory Agreements comply or will comply with section 15(a) of the Act. Applicants are not seeking an exemption from the Act with respect to the Investment Advisory Agreements. Pursuant to the terms of each Investment Advisory Agreement, the Adviser, subject to the oversight of the Board, will provide continuous investment management for each Subadvised Fund. For its services to each Subadvised Fund, the Adviser receives or will receive an investment advisory fee from that Fund as specified in the applicable Investment Advisory Agreement.

5. Consistent with the terms of each Investment Advisory Agreement, the Adviser may, subject to the approval of the Board, including a majority of the Independent Trustees, and the shareholders of the applicable Subadvised Fund (if required by applicable law), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Fund to a Subadviser. The Adviser will retain overall responsibility for the management and investment of the assets of each Subadvised Fund. This responsibility includes recommending the removal or replacement of Subadvisers, allocating the portion of that Subadvised Fund's assets to any given Subadviser and reallocating those assets as necessary from time to time.[6] The Subadvisers will be ''investment advisers'' to the Subadvised Funds within the meaning of Section 2(a)(20) of the Act and will provide investment management services to the Funds subject to, without limitation, the requirements of Sections 15(c) and 36(b) of the Act.[7] The Subadvisers, subject to the oversight of the Adviser and the Board, will determine the securities and other investments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and will place orders with brokers or dealers that they select.[8]

6. The Subadvisory Agreements will be approved by the Board, including a majority of the Independent Trustees, in accordance with sections 15(a) and 15(c) of the Act. In addition, the terms of each Subadvisory Agreement will comply fully with the requirements of section 15(a) of the Act. The Adviser may compensate the Subadvisers or the Subadvised Funds may compensate the Subadvisers directly.

7. Subadvised Funds will inform shareholders of the hiring of a new Subadviser pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadviser is hired for any Subadvised Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement[9]; and (b) the Subadvised Fund will make the Multi-manager Information Statement available on the website identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that website for at least 90 days.[10]

III. Applicable Law

8. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.''

9. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company with respect to each investment adviser, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

10. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the 1934 Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

11. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its

[5] All registered open-end investment companies that currently intend to rely on the requested order are named as Applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

[6] Applicants represent that if the name of any Subadvised Fund contains the name of a subadviser, the name of the Adviser that serves as the primary adviser to the Fund, or a trademark or trade name that is owned by or publicly used to identify the Adviser, will precede the name of the subadviser.

[7] The Subadvisers will be registered with the Commission as an investment adviser under the Advisers Act or not subject to such registration.

[8] A ''Subadviser'' also includes an investment subadviser that will provide the Adviser with a model portfolio reflecting a specific strategy, style or focus with respect to the investment of all or a portion of a Subadvised Fund's assets. The Adviser may use the model portfolio to determine the securities and other instruments to be purchased, sold or entered into by a Subadvised Fund's portfolio or a portion thereof, and place orders with brokers or dealers that it selects.

[9] A ''Multi-manager Notice'' will be modeled on a Notice of internet Availability as defined in Rule 14a–16 under the 1934 Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadviser (except as modified to permit Aggregate Fee Disclosure); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Fund. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the 1934 Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

[10] In addition, Applicants represent that whenever a Subadviser is hired or terminated, or a Subadvisory Agreement is materially amended, the Subadvised Fund's prospectus and statement of additional information will be supplemented promptly pursuant to rule 497(e) under the Securities Act of 1933.

financial statements information about investment advisory fees.

12. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

IV. Arguments in Support of the Requested Relief

13. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisers is substantially equivalent to the limited role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants also assert that the shareholders expect the Adviser, subject to review and approval of the Board, to select a Subadviser who is in the best position to achieve the Subadvised Fund's investment objective. Applicants believe that permitting the Adviser to perform the duties for which the shareholders of the Subadvised Fund are paying the Adviser—the selection, oversight and evaluation of the Subadviser—without incurring unnecessary delays or expenses of convening special meetings of shareholders is appropriate and in the interest of the Fund's shareholders, and will allow such Fund to operate more efficiently. Applicants state that each Investment Advisory Agreement will continue to be fully subject to section 15(a) of the Act and approved by the relevant Board, including a majority of the Independent Trustees, in the manner required by section 15(a) and 15(c) of the Act.

14. Applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Fund in the manner described in the Application must be approved by shareholders of that Fund before it may rely on the requested relief. Applicants also state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest or economic incentives, and provide that shareholders are informed when new Subadvisers are hired.

15. Applicants contend that, in the circumstances described in the application, a proxy solicitation to approve the appointment of new Subadvisers provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

16. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that disclosure of the individual fees paid to the Subadvisers does not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Subadvisers are to inform shareholders of expenses to be charged by a particular Subadvised Fund and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the Subadvised Fund's overall advisory fee will be fully disclosed and, therefore, shareholders will know what the Subadvised Fund's fees and expenses are and will be able to compare the advisory fees a Subadvised Fund is charged to those of other investment companies. In addition, Applicants assert that the requested relief would benefit shareholders of the Subadvised Fund because it would improve the Adviser's ability to negotiate the fees paid to Subadvisers. In particular, Applicants state that if the Adviser is not required to disclose the Subadvisers' fees to the public, the Adviser may be able to negotiate rates that are below a Subadviser's ''posted'' amounts. Applicants assert that the relief will also encourage Subadvisers to negotiate lower subadvisory fees with the Adviser if the lower fees are not required to be made public.

V. Relief for Affiliated Subadvisers

17. The Commission has granted the requested relief with respect to Wholly-Owned and Non-Affiliated Subadvisers through numerous exemptive orders. The Commission also has extended the requested relief to Affiliated Subadvisers.[11] Applicants state that although the Adviser's judgment in recommending a Subadviser can be affected by certain conflicts, they do not warrant denying the extension of the requested relief to Affiliated Subadvisers. Specifically, the Adviser faces those conflicts in allocating fund assets between itself and a Subadviser, and across Subadvisers, as it has an interest in considering the benefit it will receive, directly or indirectly, from the fee the Subadvised Fund pays for the management of those assets. Applicants also state that to the extent the Adviser has a conflict of interest with respect to the selection of an Affiliated Subadviser, the proposed conditions are protective of shareholder interests by ensuring the Board's independence and providing the Board with the appropriate resources and information to monitor and address conflicts.

18. With respect to the relief permitting Aggregate Fee Disclosure, Applicants assert that it is appropriate to disclose only aggregate fees paid to Affiliated Subadvisers for the same reasons that similar relief has been granted previously with respect to Wholly-Owned and Non-Affiliated Subadvisers.

VI. Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Fund may rely on the order requested in the Application, the operation of the Subadvised Fund in the manner described in the Application will be, or has been, approved by a majority of the Subadvised Fund's outstanding voting securities as defined in the Act, or, in the case of a Subadvised Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder before such Subadvised Fund's shares are offered to the public.

2. The prospectus for each Subadvised Fund will disclose the existence, substance and effect of any order granted pursuant to the Application. In addition, each Subadvised Fund will hold itself out to the public as employing the multi-manager structure described in the Application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility, subject to oversight by the Board, to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. The Adviser will provide general management services to each Subadvised Fund, including overall supervisory responsibility for the general management and investment of the Subadvised Fund's assets, and subject to review and oversight of the Board, will (i) set the Subadvised Fund's overall investment strategies, (ii) evaluate, select, and recommend

[11] *See Carillon Series Trust and Carillon Tower Advisers, Inc.,* Investment Company Act Rel. Nos. 33464 (May 2, 2019) (notice) and 33494 (May 29, 2019) (order).

Subadvisers for all or a portion of the Subadvised Fund's assets, (iii) allocate and, when appropriate, reallocate the Subadvised Fund's assets among Subadvisers, (iv) monitor and evaluate the Subadvisers' performance, and (v) implement procedures reasonably designed to ensure that Subadvisers comply with the Subadvised Fund's investment objective, policies and restrictions.

4. Subadvised Funds will inform shareholders of the hiring of a new Subadviser within 90 days after the hiring of the new Subadviser pursuant to the Modified Notice and Access Procedures.

5. At all times, at least a majority of the Board will be Independent Trustees, and the selection and nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Independent Legal Counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then-existing Independent Trustees.

7. Whenever a Subadviser is hired or terminated, the Adviser will provide the Board with information showing the expected impact on the profitability of the Adviser.

8. The Board must evaluate any material conflicts that may be present in a subadvisory arrangement. Specifically, whenever a subadviser change is proposed for a Subadvised Fund (''Subadviser Change'') or the Board considers an existing Subadvisory Agreement as part of its annual review process (''Subadviser Review''):

(a) the Adviser will provide the Board, to the extent not already being provided pursuant to section 15(c) of the Act, with all relevant information concerning:

(i) any material interest in the proposed new Subadviser, in the case of a Subadviser Change, or the Subadviser in the case of a Subadviser Review, held directly or indirectly by the Adviser or a parent or sister company of the Adviser, and any material impact the proposed Subadvisory Agreement may have on that interest;

(ii) any arrangement or understanding in which the Adviser or any parent or sister company of the Adviser is a participant that (A) may have had a material effect on the proposed Subadviser Change or Subadviser Review, or (B) may be materially affected by the proposed Subadviser Change or Subadviser Review;

(iii) any material interest in a Subadviser held directly or indirectly by an officer or Trustee of the Subadvised Fund, or an officer or board member of the Adviser (other than through a pooled investment vehicle not controlled by such person); and

(iv) any other information that may be relevant to the Board in evaluating any potential material conflicts of interest in the proposed Subadviser Change or Subadviser Review.

(b) the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the Subadviser Change or continuation after Subadviser Review is in the best interests of the Subadvised Fund and its shareholders and, based on the information provided to the Board, does not involve a conflict of interest from which the Adviser, a Subadviser, any officer or Trustee of the Subadvised Fund, or any officer or board member of the Adviser derives an inappropriate advantage.

9. Each Subadvised Fund will disclose in its registration statement the Aggregate Fee Disclosure.

10. In the event that the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the Application, the requested order will expire on the effective date of that rule.

11. Any new Subadvisory Agreement or any amendment to an existing Investment Advisory Agreement or Subadvisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Subadvised Fund will be submitted to the Subadvised Fund's shareholders for approval.

For the Commission, by the Division of Investment Management, under delegated authority.

Eduardo A. Aleman,

Deputy Secretary.

[FR Doc. 2019–25672 Filed 11–25–19; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87575; File No. SR–NYSECHX–2019–21]

Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Exchange Rule 7.37 To Specify in Exchange Rules the Exchange's Source of Data Feeds From NYSE American LLC

November 20, 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 November 15, 2019, the NYSE Chicago, Inc. (''NYSE Chicago'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the 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 Rule 7.37 to update the Exchange's source of data feeds from NYSE American LLC (''NYSE American'') for purposes of order handling, order execution, order routing, and regulatory compliance. 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 update and amend the use of data feeds table in Rule 7.37, which sets forth on a market-by-market basis the specific securities information processor and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks related to each of those functions. Specifically, the table would be amended to reflect that the Exchange will receive a direct feed from NYSE American as its primary source of data for order handling, order

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

execution, order routing, and regulatory compliance.

Rule 7.37 currently provides that the Exchange will utilize the securities information processor (''SIP'') data feed as its primary source for the handling, execution, and routing of orders, as well as for regulatory compliance. In connection with NYSE American's elimination of its delay mechanism,[4] the Exchange will begin using a direct feed from NYSE American as its primary data feed. To reflect this change, the Exchange proposes to amend the table in Rule 7.37(d) to specify that it will use a direct feed from NYSE American, rather than the SIP data feed, as the primary source for that market, and that the Exchange would use the SIP data feed as a secondary source for that market.

The Exchange will implement this change on the same date that NYSE American eliminates its delay mechanism, which, subject to effectiveness of proposed rule changes, will be implemented in November 2019. The Exchange will announce this date via Trader Update.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes its proposal to amend the table in Rule 7.37(d) to update the data feed source for NYSE American will ensure that Rule 7.37 correctly identifies and publicly states on a market-by-market basis all of the specific securities information processor and proprietary data feeds that the Exchange utilizes for the handling, execution, and routing of orders, and for performing the regulatory compliance checks for each of those functions. The proposed rule change also removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest by providing additional specificity, clarity, and transparency in the Exchange's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue, but rather would provide the public and investors with up-to-date information about which data feeds the Exchange uses for the handling, execution, and routing of orders, as well as for regulatory compliance.

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

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8] Because the 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6)[10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange represents that the proposal would correctly identify and publicly state on a market-by-market basis all of the specific network processor and proprietary data feeds that the Exchange utilizes for the handling, execution and routing of orders, and for performing the regulatory compliance checks to each of those functions. Further, the Exchange represents that the proposal would enhance the clarity and transparency in Exchange Rules. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest, and hereby waives the operative delay and designates the proposed rule change as operative upon filing.[12]

At any time within 60 days of the filing of such 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 under Section 19(b)(2)(B)[13] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSECHX–2019–21 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.

[4] *See* SR–NYSEAmer–2019–48 (NYSE American proposal to eliminate its delay mechanism, which was filed on November 4, 2019).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NYSECHX–2019–21. 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–NYSECHX–2019–21 and should be submitted on or before December 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25585 Filed 11–25–19; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87577; File No. SR–OCC–2019–008]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Approving Proposed Rule Change To Establish a Regulatory Committee of the Options Clearing Corporation's Board of Directors

November 20, 2019.

I. Introduction

On September 25, 2019, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–OCC–2019–008 (''Proposed Rule Change'') pursuant to Section 19(b) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to establish a new committee under OCC's Board of Directors.[3] The Proposed Rule Change was published for public comment in the **Federal Register** on October 9, 2019.[4] The Commission has received no comments regarding the Proposed Rule Change. This order approves the Proposed Rule Change.

II. Background

OCC proposes to establish the OCC Regulatory Committee (''Committee'') and adopt the OCC Regulatory Committee Charter (''Committee Charter''). The Committee would be composed solely of members of OCC's Board of Directors (''Board''). To facilitate the establishment of the Committee, OCC also proposes to amend Article III, Section 4 of the OCC By-Laws (''By-Laws'') and the OCC Board of Directors Charter and Corporate Governance Principles (''Board Charter'').

Specifically, OCC proposes to amend the Board Charter and Article III, Section 4 of OCC's By-Laws to list the Committee alongside the other OCC Board committees. OCC also proposes to amend its By-Laws consistent with the Committee Charter regarding the delegation of authority from the Board to the Committee as well as the composition of the Committee. The Committee Charter would further define the scope of the Committee's authority. For example, the Committee Charter would authorize the Committee to access OCC's books, records, facilities and personnel and to hire specialists or rely upon other outside advisors.

Consistent with the charters of OCC's other Board-level committees,[5] the Committee Charter would define the purpose and functions of the Committee and would set out requirements related to the composition and meetings of the Committee, which would, in part, relate to the governance arrangements supporting OCC's compliance with its regulatory obligations. For example, in defining the Committee's purpose, the Committee Charter would state that the Board established the Committee to assist in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations. The functions and responsibilities with which the Committee would be charged under the Committee Charter would include (1) overseeing OCC management's action plans to achieve compliance with any proposed new regulation; (2) meeting with regulators to discuss OCC's efforts to enhance its regulatory compliance posture; (3) reviewing annual regulatory compliance reports provided by OCC management; and (4) reviewing documents related to examinations conducted by OCC's regulators (*e.g.,* examination report letters provided by regulators, responses to such letters from OCC). Regarding the composition and meetings of the Committee, the Committee would be composed of all OCC Public Directors, and the Committee would be obligated to meet at least quarterly and to maintain minutes of all Committee meetings.[6]

The proposed Committee Charter would also clearly describe direct lines of responsibility between the Committee and, as appropriate, either the Board or members of OCC's management team. For example, the Committee Charter would require that the Committee make such reports to the Board as deemed necessary or advisable. The Committee Charter would also require that OCC's Chief Compliance Officer (''CCO''), or one of his or her deputies if the CCO is unavailable, attend meetings of the Committee. Additionally, the Committee Charter would require the Committee to review its charter at least once every twelve months and submit the Committee Charter to the Board for approval.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Exchange Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to such organization.[7] After carefully considering the Proposed Rule Change, the Commission finds that the proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to OCC. More specifically, the Commission finds that the proposal is consistent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Notice of Filing *infra* note 4, at 84 FR 54240.

[4] Securities Exchange Act Release No. 87207 (Oct. 3, 2019), 84 FR 54239 (Oct. 9, 2019) (SR–OCC–2019–008) (''Notice of Filing'').

[5] *See* Securities Exchange Act Release 84473 (Oct. 23, 2019), 83 FR 54385 (Oct. 29, 2018) (SR–OCC–2018–012).

[6] The Committee Charter would permit the Committee's Chair to determine whether to record minutes of any executive session called by the Committee.

[7] 15 U.S.C. 78s(b)(2)(C).

with Section 17A(b)(3)(F) of the Exchange Act[8] and Rule 17Ad–22(e)(2) thereunder.[9]

A. Consistency With Section 17A(b)(3)(F) of the Exchange Act

Section 17A(b)(3)(F) of the Exchange Act requires, among other things, that the rules of a clearing agency be designed to, in general, protect investors and the public interest.[10] Based on its review of the record, the Commission believes that the proposed changes are designed to, in general, protect investors and the public interest for the reasons set forth below.

The Committee, as described in the Proposed Rule Change, would be established to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations. The Committee's responsibilities would include meeting with regulators as well as reviewing compliance reports and materials related to examinations conducted by OCC's regulators. Moreover, the Committee Charter and By-Laws would require that the Committee be composed of OCC's Public Directors. The Commission believes that establishing a Board-level committee for the purpose of overseeing OCC's efforts to demonstrate compliance with its regulatory obligations would help ensure that such efforts are being reviewed and overseen at appropriately senior levels within the organization, which in turn should enhance OCC's efforts to demonstrate compliance with its regulatory obligations.

Further, the proposed Committee Charter would clearly define the authority and function of the Committee. For example, the Committee Charter would provide the Committee with authority to (1) act on the behalf of the Board; (2) access OCC's books, records, facilitates and personnel; and (3) hire specialists or rely upon outside advisors. The authority described in the proposed Committee Charter would be consistent with the authority granted to OCC's other Board-level committees.[11] The Committee Charter would also clearly describe the Committee's obligations regarding meeting frequency, minutes, and reporting. Further, the Committee would be obligated to review the Committee Charter at least once every twelve months. Formally defining the Committee's characteristics in this manner—consistent with the characteristics of OCC's other Board-level committees—should help ensure that the Committee is imbued with and sustains a level of attention and stature consistent with that of OCC's other Board-level committees, which in turn should enhance the Committee's ability to achieve its stated mission of supporting OCC's efforts to demonstrate compliance with its regulatory obligations.

The Commission believes generally that a clearing agency's compliance the applicable securities laws protects investors and the public interest. As discussed above, the Commission believes that the Proposed Rule Change is designed to ensure that the Committee's work will be reviewed, supervised, and supported at the Board level, which in turn should enhance the Committee's ability to achieve its stated goal of supporting OCC's efforts to demonstrate compliance with its regulatory obligations. The Commission believes, therefore, that OCC's proposal to establish a Board-level Regulatory Committee is consistent with, in general, protecting investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[12]

B. Consistency With Rule 17Ad–22(e)(2) Under the Exchange Act

Rule 17Ad–22(e)(2) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements that address certain criteria.[13] Rules 17Ad–22(e)(2)(i) and (v) under the Exchange Act require that such governance arrangements are clear and transparent and specify clear and direct lines of responsibility.[14] Further, the Commission has expressed the belief that policies and procedures specifying clear and direct lines of responsibility should generally entail documenting the responsibilities of the board of directors and senior management.[15]

As described above, OCC proposes amend its By-Laws and Board Charter to list the Committee among OCC's other Board-level committees and to specify the required composition of the Committee. Additionally, the Committee Charter would clearly define the authority and function of the Committee. For example, the Committee Charter would provide the Committee with authority to (1) act on the behalf of the Board; (2) access OCC's books, records, facilitates and personnel; and (3) hire specialists or rely upon outside advisors. The Committee Charter would also obligate OCC's CCO, or one of his or her deputies if the CCO is unavailable, to attend meetings of the Committee. Moreover, the Committee Charter would obligate the Committee to review its charter at least once every twelve months and submit the Committee Charter to the Board for approval. The Commission believes, therefore, that the changes to OCC's By-Laws and Board Charter as well as the organizational aspects of the proposed Committee Charter are consistent with Exchange Act Rule 17Ad–22(e)(2)(i) and (v).[16]

Rule 17Ad–22(e)(2)(iii) under the Exchange Act requires, in part, that the governance arrangements required by Rule 17Ad–22(e)(2) support the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies.[17]

As described above, certain aspects of the Committee Charter relate to the governance of OCC's compliance with its regulatory obligations. For example, the Committee Charter would state that the Committee was established to assist the Board in overseeing OCC's efforts to demonstrate compliance with its regulatory obligations. The Committee's functions and responsibilities, as specified in the Committee Charter, would include meeting with regulators to discuss OCC's efforts to enhance it compliance posture and reviewing reports related to OCC's compliance posture (*e.g.,* annual regulatory compliance reports provided by OCC management, final exam report letters from OCC's regulators, and OCC's response to regulatory examination letters). As discussed above, the Commission believes OCC's proposal to establish a Board-level Regulatory Committee is consistent with, in general, protecting investors and the public interest consistent with the requirements of Section 17A(b)(3)(F) of the Exchange Act.[18] The Commission believes, therefore, that the establishment of the Committee through a detailed charter document is consistent with Exchange Act Rule 17Ad–22(e)(2)(iii).[19]

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(2).

[10] 15 U.S.C. 78q–1(b)(3)(F).

[11] *See* Securities Exchange Act Release 84473 (Oct. 23, 2019), 83 FR 54385 (Oct. 29, 2018) (SR–OCC–2018–012).

[12] 15 U.S.C. 78q–1(b)(3)(F).

[13] 17 CFR 240.17Ad–22(e)(2).

[14] 17 CFR 240.17Ad–22(e)(2)(i) and 17 CFR 240.17Ad–22(e)(2)(v).

[15] *See* Securities Exchange Act Release No. 78961 (Sep. 28, 2016), 81 FR 70786, 70804 (Oct. 13, 2016) (S7–03–14) (''Covered Clearing Agency Standards'').

[16] 17 CFR 240.17Ad–22(e)(2)(i) and 17 CFR 240.17Ad–22(e)(2)(v).

[17] 17 CFR 240.17Ad–22(e)(2)(iii).

[18] 15 U.S.C. 78q–1(b)(3)(F).

[19] 17 CFR 240.17Ad–22(e)(2)(iii).

IV. Conclusion

On the basis of the foregoing, the Commission finds that the Proposed Rule Change is consistent with the requirements of the Exchange Act, and in particular, the requirements of Section 17A of the Exchange Act [20] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[21] that the Proposed Rule Change (SR–OCC–2019–008) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25587 Filed 11–25–19; 8:45 am]

BILLING CODE 8011–01–P

[20] In approving this Proposed Rule Change, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87578; File No. SR–IEX–2019–12]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Table in Rule 11.410(a) To Update the Market Data Source That the Exchange Will Use To Determine the Top of Book Quotation for NYSE Chicago, Inc. and To Amend Rules 2.220(a)(7) and 11.410(a) To Reflect the Name Change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc.

November 20, 2019.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 15, 2019, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Act,[4] and Rule 19b–4 thereunder,[5] IEX is filing with the Commission a proposed rule change to amend the table in Rule 11.410(a) to update the market data source that the Exchange will use to determine the Top of Book [6] quotation for NYSE Chicago, Inc. (''XCHI'') and to amend Rules 2.220(a)(7) and 11.410(a) to reflect the name change of Chicago Stock Exchange, Inc. to NYSE Chicago, Inc. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act [7] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[8]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.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 the 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 these statement may be examined at the places specified in Item IV below. The self-regulatory organization 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the table in IEX Rule 11.410(a) to update the market data source that the Exchange will use to determine the Top of Book quotation for NYSE Chicago, Inc. (''XCHI'') and to amend IEX Rules 2.220(a)(7) and 11.410(a) to reflect the name change of Chicago Stock Exchange, Inc to NYSE Chicago, Inc.

Specifically, the Exchange proposes to amend and update the table in Rule 11.410(a) specifying the primary and secondary sources for XCHI as a result of XCHI's establishment of NYSE Chicago BBO, NYSE Chicago Trades and NYSE Chicago Integrated Feed (''NYSE Chicago Market Data Feeds'' or ''direct feeds'').[9] As specified in Rule 11.410(a)(2), the Exchange uses market data from each away trading center that produces a Protected Quotation [10] to determine its Top of Book quotation, as well as the NBBO [11] for certain reporting, regulatory and compliance systems within IEX. As proposed, the Exchange will use securities information processor (''SIP'') data, *i.e.,* CQS SIP data for securities reported under the Consolidated Quotation Services and Consolidated Tape Association plans and UQDF SIP data for securities reported under the Nasdaq Unlisted Trading Privileges national market system plan, to determine XCHI Top of Book quotes. No secondary source is proposed to be specified as SIP data will be used exclusively. While the Exchange uses proprietary market data feeds to determine the Protected Quotations of all but one of the other away markets,[12] as specified in Rule 11.410, it has determined to utilize the SIP quote feeds for XCHI because the Exchange is in the process of implementing technology changes to support use of the NYSE Chicago Market Data Feeds. Once these changes are complete, IEX will file a rule change under Section 19(b) of the Act and Rule 19b–4 thereunder to amend relevant portions of Rule 11.410 once these steps are complete, to again specify that the Exchange will use XCHI's direct feeds as the primary source of XCHI's Protected Quotations.[13] The Exchange notes that it is not necessary to utilize the XCHI direct feed in order to determine XCHI Top of Book quotes and thereby enable the Exchange to comply with applicable requirements of Regulation NMS with respect to its Top of Book quotes. The Exchange also notes that other exchanges also use SIP market data feeds to determine Top of Book quotes for some away markets, including XCHI, pursuant to effective rule filings.[14]

The Exchange is also proposing a conforming change to Rule 11.410(a)(2) to reflect that, as proposed, the Exchange will not use proprietary market data feeds as the primary source

[4] 15 U.S.C. 78s(b)(1).

[5] 17 CFR 240.19b–4.

[6] *See* IEX Rule 11.410(a)(1).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* Securities Exchange Act Release No. 87389 (October 23, 2019), 84 FR 57904 (October 29, 2019) (SR–NYSECHX–2019–15).

[10] *See* IEX Rule 1.160(bb).

[11] *See* IEX Rule 1.160(u).

[12] The Exchange uses CQS/UQDF SIP data as the exclusive source of market data for NYSE National (XCIS). *See* IEX Rule 11.410(a).

[13] *See supra* note 5[sic].

[14] *See, e.g.,* Nasdaq Stock Market Rule 4759(a).

from which it will determine Top of Book quotations for XCHI.

Finally, the Exchange proposes to amend Rules 2.220(a)(7) and 11.410(a) to reflect the name change of XCHI from Chicago Stock Exchange, Inc. to NYSE Chicago, Inc.[15] IEX Rule 2.220(a)(7) lists the away trading centers that IEX Services LLC (''IEX Services'') routes to as outbound router for the Exchange. Rule 11.410(a), as discussed above, specifies the market data sources for each away trading center that the Exchange uses for necessary price reference points.

The Exchange is not proposing any other changes to Rule 11.410 with respect to its use of market data feeds and calculations of necessary price reference points. The proposed change merely specifies the market data feeds that the Exchange will use to determine XCHI Top of Book quotes, and does not alter the manner in which orders are handled or routed by the Exchange.

2. Statutory Basis

IEX believes that the proposed rule change is consistent with the provisions of Section 6(b)[16] of the Act 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.

The Exchange believes that the proposed rule change removes impediments to and perfects the mechanism of a free and open market and protects investors and the public interest because it provides transparency with respect to the sources of market data that it will use to determine XCHI Top of Book quotes. For the reasons discussed in the Purpose section, the Exchange believes that use of SIP market data will enable it to determine XCHI Top of Book quotes and comply with applicable requirements of Regulation NMS. In addition, and as further noted in the Purpose section, other exchanges use SIP market data to determine Top of Book quotes for some away markets, including NYSE National, Inc., so the proposed change does not raise any new or novel issues not already considered by the Commission.

The Exchange also believes it is consistent with the Act to make a conforming change to Rule 11.410(a)(2) so that provision is consistent with the table in Rule 11.410(a).

Further, the Exchange believes it is consistent with the Act to update the referenced rules to reflect the name change of XCHI so that IEX's rules accurately specify away markets referenced, as well as to avoid any potential confusion on the part of market participants. As noted in the Purpose section, the proposed changes are nonsubstantive and do not alter the manner in which orders are handled or routed by the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

IEX 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. The Exchange believes that the proposed update does not impact competition in any respect since its purpose is to enhance transparency and with respect to the operation of the Exchange and its use of market data feeds, and to update an away market name.

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)(iii) of the Act[18] and subparagraph (f)(6) of Rule 19b–4 thereunder.[19]

A proposed rule change filed under Rule 19b–4(f)(6)[20] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii),[21] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative upon filing. The Exchange noted in its filing that other exchanges use SIP market data to determine Top of Book quotes for some away markets, including NYSE National, Inc., so the proposed change does not raise any new or novel issues. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission hereby designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2019–12 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–IEX–2019–12. This file number should be included in the subject line if email is used. To help the Commission process and review your comments more efficiently, please use

[15] *See* Securities Exchange Act Release No. 84494 (October 26, 2018), 83 FR 54953 (November 1, 2018) (SR–NYSECHX–2018–05).

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A)(iii).

[19] 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.

[20] *Id.*

[21] 17 CFR 240.19b–4(f)(6)(iii).

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 Section, 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 will also be available for inspection and copying at the IEX's principal office and on its internet website at *www.iextrading.com.* 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–IEX–2019–12 and should be submitted on or before December 17, 2019.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

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[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–87576; File No. SR–NYSEArca–2019–14]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Permitted Investments of the PGIM Ultra Short Bond ETF

November 20, 2019.

I. Introduction

On March 13, 2019, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') 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 make certain changes to the listing rule for shares (''Shares'') of the PGIM Ultra Short Bond ETF (''Fund''). The proposed rule change was published for comment in the **Federal Register** on April 2, 2019.[3] On May 10, 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 approve or disapprove the proposed rule change.[5] On June 27, 2019, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7] On September 23, 2019, the Commission designated a longer period within which to issue an order approving or disapproving the proposed rule change.[8] On November 14, 2019, the Exchange filed Amendment No. 1 to the proposed rule change.[9] The Commission has received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

A. The Fund and the Shares

PGIM Investments LLC (''Adviser'') is the investment adviser for the Fund. PGIM Fixed Income (''Subadviser''), a unit of PGIM, Inc., is the subadviser to the Fund. According to the Exchange, the investment objective of the Fund is to seek total return through a combination of current income and capital appreciation, consistent with preservation of capital. The Fund seeks to achieve its investment objective by investing primarily in a portfolio of U.S. dollar denominated short-term fixed, variable and floating rate debt instruments. Under normal market conditions,[10] the Fund invests at least 80% of its net assets (plus any borrowings for investment purposes) in a portfolio of financial instruments consisting of (1) the Principal Investment Instruments (as defined in the First Prior Order); and (2) derivatives (as described in the Prior Orders) that (a) provide exposure to such Principal Investment Instruments, or (b) are used to enhance returns, manage portfolio duration, or manage the risk of securities price fluctuations, as described in the Prior Orders.[11]

The Shares commenced trading on the Exchange on April 10, 2018, pursuant to the generic listing standards under Commentary .01 to NYSE Arca Rule 8.600–E (''Managed Fund Shares'').[12] Since then, the Exchange has proposed—and the Commission has approved—two proposed rule changes to expand the permitted investments of the Fund beyond what is permitted under the generic listing requirements.[13] By this proposed rule change, the Exchange proposes to again amend the listing rule applicable to the Shares.

B. The Proposed Modifications to the Shares' Listing Rule

The Exchange proposes to amend two requirements of the Shares' current listing rule as set forth in the First Prior Order, namely the requirements that: (1) The Fund's investments in non-U.S. Government, non-agency, non-GSE and other privately issued asset backed securities (including mortgage-backed securities) (''Private ABS/MBS'') are limited to 20% of the total assets of the Fund;[14] and (2) the Fund may invest

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 85430 (Mar. 27, 2019), 84 FR 12646 (Apr. 2, 2019) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 85829 (May 10, 2019), 84 FR 22221 (May 16, 2019). The Commission designated July 1, 2019, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 86220, 84 FR 31868 (Jul. 3, 2019).

[8] *See* Securities Exchange Act Release No. 87058, 84 FR 51210 (Sep. 27, 2019).

[9] In Amendment No. 1, the Exchange supplemented the proposed rule change by adding additional details regarding certain of the asset backed securities in which the Fund may invest. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nysearca-2019-14/srnysearca201914-6425213-198531.pdf.*

[10] The term ''normal market conditions'' is defined in NYSE Arca Rule 8.600–E(c)(5).

[11] The terms ''First Prior Order'' and ''Prior Orders'' are defined *infra* at note 13.

[12] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Rule 5.2–E(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[13] *See* Securities Exchange Act Release No. 83319 (May 24, 2018), 83 FR 25097 (May 31, 2018) (SR–NYSEArca–2018–15) (''First Prior Order''); and Securities Exchange Act Release No. 84818 (December 13, 2018) (SR–NYSEArca–2018–75) (together with the First Prior Order, ''Prior Orders'').

[14] At the time the proposed rule change was filed, Commentary .01(b)(5) to NYSE Arca Rule 8.600–E provided that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities

only 10% of its total assets in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4) to NYSE Arca Rule 8.600–E.[15]

The Exchange proposes to modify the Fund's current limit on Private ABS/MBS by removing collateralized debt obligations (''CDOs'')[16] from the definition of Private ABS/MBS and by allowing the Fund to invest up to 20% of its total assets in CDOs. Therefore, the Exchange is proposing to allow up to 40% of the Fund's portfolio to be composed of what had previously been defined as Private ABS/MBS. The Exchange asserts that the ability to invest up to 20% of the Fund's portfolio in CDOs would help the Fund maintain portfolio diversification and would reduce manipulation risk.[17] The Exchange argues that CDOs can be distinguished from asset backed securities (''ABS'') because CDOs are collateralized by bank loans or by corporate or government fixed income securities, while ABS are collateralized by consumer and other loans (including student loans) made by non-bank lenders.[18] Additionally, the Exchange states that the Fund's investments in CDOs would be subject to the Fund's liquidity procedures, and that the Fund's investment adviser does not expect that such investments would materially impact the liquidity of the Fund's investments.[19]

With respect to the requirement that the Fund may invest only up to 10% of its total assets in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4), the Exchange proposes that the Fund's Private ABS/MBS (which may constitute up to 20% of the portfolio) and CDOs (which also may constitute up to 20% of the portfolio) would not count toward that 10% limit. As a result, up to 50% of the Fund's fixed income securities might not satisfy the criteria in Commentary .01(b)(4). The Exchange argues that this alternative limit is appropriate because the criteria in Commentary .01(b)(4) ''do not appear to be designed for structured finance vehicles such as Private ABS/MBS.''[20]

The Exchange proposes no other changes to the Shares' listing rule.

C. The Fund's Investments in CDOs

In Amendment No. 1, the Exchange added information regarding the CDOs in which the Fund may invest. The Adviser and Subadviser represent that, with respect to the Fund's investments in CDOs (which, for purposes of this filing, include CBOs and CLOs), (1) the Fund will invest principally in the senior-most tranches of these securities, generally with an AAA investment rating which have first claim in the capital structure and generally have less sensitivity to the credit risk of the underlying assets (*e.g.,* bank loans or commercial real estate); and (2) CDOs/CLOs represent about one quarter of the non-agency securitized credit market and have issuances of about $793.9 billion as of September 30, 2019.[21] The Exchange states that the senior-most tranches provide investors with additional protections by distinguishing such investments from many of the attributes associated with the underlying assets and this credit enhancement provides the senior-most tranches ''loss absorption'' as credit losses from the collateral would be borne mainly by the more junior tranches.[22] According to the Exchange, the relative lack of sensitivity to underlying credit exposure for senior CDO tranches allows market participants to more accurately assess current valuations, which may result in greater market liquidity.[23]

The Adviser and Subadviser also represent that the senior-most CLO tranches generally make up at least 60% of the total amount issued in each securitization, and the Subadviser notes that the senior-most CLO tranches also make up most of the secondary trading volume for these securities.[24] According to the Exchange, most investors in these tranches are institutional and professional investors (such as asset managers, insurance companies, pensions and money-center bank treasury offices), and transparency in the underlying collateral is robust as trustees and servicers generally must report holdings on a monthly basis.[25] The Exchange also states that the underlying collateral (*e.g.,* U.S. broadly-syndicated bank loans) for CLOs is actively traded throughout the day as most of the underlying collateral held by retail mutual funds also serves as the underlying collateral for CLOs and, because mutual funds must calculate a daily price for these investments, there is more readily available information for investors to establish a market price.[26] According to the Exchange, the asset transparency along with the seniority of the CLO tranches tends to create more stable and predictable cash flows and, as a result, pricing can be more readily established and analyzed, including in volatile markets.[27] Therefore, the Exchange asserts, the senior-most CLO tranches generally trade at tighter spreads even in times of market volatility.[28]

Additionally, the Adviser and Subadviser represent that the JPM CLO Index, which reflects recent total return performance across the CLO capital structure, provides a readily available indication of the amount of volatility (as measured by standard deviation) that CLOs have experienced and illustrates how large the ''drawdown'' (worst 12-month total return) has been in times of stress.[29] In the Exchange's view, these two measures show significant differences in the stability of returns and the ''drawdown'' between the senior-most (''AAA CLO'') and the most junior tranches (''B CLO'').[30] Additionally, the Adviser and Subadviser represent that, like the corporate credit market, the investment grade portions of the securitized credit market are generally more liquid than lower-rated securities, with ample price

components of a portfolio may not account, in the aggregate, for more than 20% of the weight *of the fixed income portion* of the portfolio. Recently, however, the Exchange amended Commentary .01(b)(5) to NYSE Arca Rule 8.600–E, and it now provides that non-agency, non-government sponsored entity and privately issued mortgage-related and other asset-backed securities components of a portfolio may not account, in the aggregate, for more than 20% of the weight of the portfolio. *See* Securities Exchange Act Release No. 86017 (June 3, 2019), 84 FR 26711 (June 7, 2019) (SR–NYSEArca–2019–06).

[15] Commentary .01(b)(4) requires that at least 90% of *the fixed income weight* of the portfolio must be either: (a) From issuers that are required to file reports pursuant to Sections 13 and 15(d) of the Act; (b) from issuers that have a worldwide market value of its outstanding common equity held by non-affiliates of $700 million or more; (c) from issuers that have outstanding securities that are notes, bonds debentures, or evidence of indebtedness having a total remaining principal amount of at least $1 billion; (d) exempted securities as defined in Section 3(a)(12) of the Act; or (e) from issuers that are a government of a foreign country or a political subdivision of a foreign country.

[16] The Exchange defines CDOs as collateralized loan obligations (''CLOs'') and collateralized bond obligations (''CBOs''). The Exchange defines CLOs as securities issued by a trust or other special purpose entity that are collateralized by a pool of loans by U.S. banks and participations in loans by U.S. banks that are unsecured or secured by collateral other than real estate. The Exchange defines CBOs as securities issued by a trust or other special purpose entity that are backed by a diversified pool of fixed income securities issued by U.S. or foreign governmental entities or fixed income securities issued by U.S. or corporate issuers.

[17] *See* Notice, *supra* note 3, 84 FR at 12647–48.

[18] *See id.* at 12647, n.12.

[19] *See id.* at 12648.

[20] *Id.*

[21] *See* Amendment No. 1, *supra* note 9, at 3.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] *See id.*

[26] *See id.*

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See id.* at 3–4.

discovery, while lower-rated securities are more volatile, with valuations that are more difficult to discern in times of market stress.[31]

Further, the Adviser and Subadviser represent that analysis of both data from the Trade Reporting and Compliance Engine of the Financial Industry Regulatory Authority and collateralized mortgage-backed securities (''CMBS'')/CLO spreads over time show how markets have behaved in past periods of volatility.[32] The Exchange states that: (1) During the period from January 2012 through September 2019, CLO spread widening occurred during periods of broader market volatility; (2) there was a relatively high volume of CLOs trading in the secondary market, especially in the senior-most tranches; and (3) the spread moves were most pronounced in the junior tranches, while AAA CLOs did not experience a large spread move.[33]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to continue listing and trading the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[35] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange proposes to modify the Fund's current limit on Private ABS/MBS to allow up to 40% of the Fund's portfolio to be composed of what had previously been defined as Private ABS/MBS. The Commission notes that it has previously approved listing rules which permit other series of Managed Fund Shares to hold private asset backed and mortgage-backed securities in excess of the levels permitted under Commentary .01(b)(5).[36] The Commission also notes that it recently approved modifications to the listing rule of another issue of Managed Fund Shares, which included permitting that fund to hold up to 50% of its total assets in private asset-backed and mortgage-backed securities.[37]

The Exchange also proposes to allow up to 50% of the Fund's portfolio to be composed of fixed income securities which would not satisfy the criteria in Commentary .01(b)(4), in that: (1) Under the First Prior Order, the Fund may invest up to 10% of its total assets in fixed income securities that do not satisfy the criteria of Commentary .01(b)(4); and (2) the Fund's investments in Private ABS/MBS (which may constitute up to 20% of the portfolio) and CDOs (which also may constitute up to 20% of the portfolio) would not be required to satisfy the Commentary .01(b)(4) criteria. The Commission notes that it has previously approved the listing of other series of Managed Fund Shares with similar investment objectives and strategies without imposing requirements that a certain percentage of such funds' securities meet one of the criteria set forth in Commentary .01(b)(4).[38]

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEArca–2019–14), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2019–25586 Filed 11–25–19; 8:45 am]

BILLING CODE 8011–01–P

[31] *See id.* at 4.

[32] *See id.*

[33] *See id.*

[34] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] *See, e.g.,* Securities Exchange Act Release Nos. 84047 (September 6, 2018), 83 FR 46200 (September 12, 2018) (SR–Nasdaq–2017–128) (approving the listing and trading of shares of the Western Asset Total Return ETF); and 84826 (December 14, 2018), 83 FR 65386 (December 20, 2018) (SR–NYSEArca–2018–25) (approving the continued listing and trading of shares of the Natixis Loomis Sayles Short Duration Income ETF).

[37] *See* Securities Exchange Act Release No. 87410 (October 28, 2019), 84 FR 58750 (November 1, 2019) (SR–NYSEArca–2019–33).

[38] *See, e.g.,* Securities Exchange Act Release No. 67894 (September 20, 2012), 77 FR 59227 (September 26, 2012) (SR–BATS–2012–033) (order approving the listing and trading of shares of the iShares Short Maturity Bond Fund); Securities Exchange Act Release No. 70342 (September 6, 2013), 78 FR 56256 (September 12, 2013) (SR–NYSEArca–2013–71) (order approving the listing and trading of shares of the SPDR SSgA Ultra Short Term Bond ETF, SPDR SSgA Conservative Ultra Short Term Bond ETF, and SPDR SSgA Aggressive Ultra Short Term Bond ETF).

[39] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0293 issued to CapitalSouth Partners Fund II, L.P., said license is hereby declared null and void.

United States Small Business Administration

Dated: November 20, 2019.

A. Joseph Shepard,

Associate Administrator for Investment and Innovation.

[FR Doc. 2019–25637 Filed 11–25–19; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16206 and #16207; Mississippi Disaster Number MS–00113]

Administrative Declaration of a Disaster for the State of Mississippi

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 11/19/2019.

Incident: Flash Flooding.

Incident Period: 05/08/2019 through 05/09/2019.

DATES: Issued on 11/19/2019.

Physical Loan Application Deadline Date: 01/21/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 08/19/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Stone

Contiguous Counties:

Mississippi: Forrest, George, Hancock, Harrison, Jackson, Pearl River, Perry.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.875
Homeowners without Credit Available Elsewhere	1.938
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.750
Non-Profit Organizations without Credit Available Elsewhere	2.750
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16206 6 and for economic injury is 16207 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–25609 Filed 11–25–19; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16148; ALASKA Disaster Number AK–00045 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the State of Alaska

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Economic Injury Disaster Loan (EIDL) declaration for the State of Alaska, dated 10/08/2019.

Incident: Swan Lake Fire.

Incident Period: 06/05/2019 through 10/02/2019.

DATES: Issued on 11/19/2019.

Economic Injury (EIDL) Loan Application Deadline Date: 07/08/2020.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's EIDL declaration for the State of Alaska, dated 10/08/2019, is hereby amended to establish the incident period for this disaster as beginning 06/05/2019 and continuing through 10/02/2019.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Christopher Pilkerton,

Acting Administrator.

[FR Doc. 2019–25610 Filed 11–25–19; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice: 10956]

Cultural Property Advisory Committee; Notice of Meeting

AGENCY: Department of State.

ACTION: Notice of meeting.

SUMMARY: The Department of State is issuing this notice to announce the location, date, time, and agenda for the next meeting of the Cultural Property Advisory Committee.

DATES: January 21–22, 2020, 9:00 a.m. to 5:00 p.m. (EST). The Cultural Property Advisory Committee will hold an open session on January 21, 2020, at 1:30 p.m. (EST). It will last approximately one hour.

Participation: You may participate electronically by Zoom. To participate, visit *http://culturalheritage.state.gov* for information on how to access the meeting. Please submit any request for reasonable accommodation not later than January 7, 2020, by contacting the Bureau of Educational and Cultural Affairs at *culprop@state.gov.* It may not be possible to accommodate requests received after that date.

Comments: The Committee will review your written comment if it is received by January 7, 2020, at 11:59 p.m. (EST). You are not required to submit a written comment in order to make an oral comment in the open session.

ADDRESSES: The public will participate electronically by Zoom. The Committee members will meet at the U.S. Department of State, Annex 5, 2200 C St. NW, Washington, DC .

- *Written Comments:* You may submit written comments in two ways, depending on whether they contain privileged or confidential information:
- *Electronic Comments:* For ordinary comments, please use *http://www.regulations.gov,* enter the docket [DOS–2019–0043] and follow the prompts to submit your comments.
- *Paper Comments:* For comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)), please send submissions to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC 20522–0505.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the meeting, contact Cathy Bing, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, by phone, (202) 632–6301, or email: *culprop@state.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*) (''the Act''), the Assistant Secretary of State for Educational and Cultural Affairs calls a meeting of the Cultural Property Advisory Committee (''the Committee'') (19 U.S.C. 2605(e)(2)). The Act describes the Committee's responsibilities. A portion of this meeting will be closed to the public pursuant to 5 U.S.C. 552b(c)(9)(B) and 19 U.S.C. 2605(h).

Meeting Agenda: The Committee will review the requests by the Government of the Republic of Turkey and the Government of the Republic of Tunisia seeking import restrictions on archaeological and ethnological material.

Open Session Participation: The Committee will hold an open session of the meeting to receive oral public comments on the requests from Turkey and Tunisia on Tuesday, January 21, 2020, from 1:30 p.m. to approximately 2:30 p.m. (EST). We have provided specific instructions on how to participate or observe the open session at *https://eca.state.gov/cultural-heritage-center.* You do not need to register to observe the open session. You do not have to submit written comments to make an oral comment in the open session. But if you do wish to speak, you must request to be scheduled by January 14, 2020, via email (*culprop@state.gov*) in order to be assigned a slot. Please submit your name and organizational affiliation in this request.

The open session will start with a brief presentation by the Committee, after which you should be prepared to answer questions on any written statements you may have submitted. Finally, you may provide additional oral comments for up to five (5) minutes per participant. Due to time constraints, it may not be possible to accommodate all who wish to speak.

Written Comments: If you do not wish to participate in the open session but still wish to make your views known, you may submit written comments for the Committee's consideration. Submit non-privileged and non-confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) regarding the requests from Turkey and Tunisia using the *Regulations.gov* website (listed in the ''COMMENTS'' section above) not later than January 7, 2020, at 11:59 p.m. (EST). Please send comments that contain privileged or confidential information (within the meaning of 19 U.S.C. 2605(i)(1)) to: U.S. Department of State, Bureau of Educational and Cultural Affairs—Cultural Heritage Center, SA–5 Floor 5, 2200 C St. NW, Washington, DC, 20522–0505. In all cases, your written comments should relate specifically to the determinations specified in the Act at 19 U.S.C. 2602(a)(1). We request that any party soliciting or aggregating written comments received from other persons for submission to the Department inform those persons that the Department will not edit their comments to remove any identifying or contact information and that they therefore should not include any such information in their comments that they do not want publicly disclosed. Written comments submitted using the *Regulations.gov* website is not private because they will be posted on the *Regulations.gov* website. Because written comments cannot be edited to remove any personally identifying or contact information, we caution against including any such information in an electronic submission without appropriate permission to disclose that information (including trade secrets and commercial or financial information that are privileged or confidential within the meaning of 19 U.S.C. 2605(i)(1)).

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–25683 Filed 11–25–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 10957]

Notice of Receipt of Request From the Government of the Republic of Tunisia Under Article 9 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

AGENCY: Department of State.

ACTION: Notice of receipt of request.

SUMMARY: Notice of receipt of request from Tunisia for cultural property protection.

FOR FURTHER INFORMATION CONTACT: Catherine Foster, Cultural Heritage Center, Bureau of Educational and Cultural Affairs: 202–632–6301; *culprop@state.gov.* Include ''Tunisia'' in the subject line.

SUPPLEMENTARY INFORMATION: The Government of Tunisia has made a request to the Government of the United States under Article 9 of the 1970 *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.* The United States Department of State received this request on November 7, 2019. Tunisia's request seeks U.S. import restrictions on archaeological and ethnological material representing Tunisia's cultural patrimony. Pursuant to the authority vested in the Assistant Secretary of State for Educational and Cultural Affairs, and pursuant to 19 U.S.C. 2602(f)(1), notification of the request is hereby published. A public summary of Tunisia's request and information about U.S. implementation of the 1970 Convention will be available at the Cultural Heritage Center website: *https://eca.state.gov/cultural-heritage-center.*

Marie Therese Porter Royce,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2019–25686 Filed 11–25–19; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0847]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Aircraft Pilots Workforce Development Grant Program

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 for a new information collection. The collection involves the establishment of a new grant program in the FAA for the Aircraft Pilots Workforce Development. The information to be collected will be used for selecting projects.

DATES: Written comments should be submitted by January 27, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Linda Long, William J. Hughes Technical Center, Atlantic City International Airport, B300, 2nd Floor, Column H–15, Atlantic City, NJ 08405.

By fax: 609–485–4101.

FOR FURTHER INFORMATION CONTACT: Linda Long by email at: *Linda.Long@faa.gov;* phone: 609–485–8902.

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–XXXX.

Title: FAA Aircraft Pilots Workforce Development Grant Program.

Form Numbers: Form SF–424, SF–424A, SF424B, SF–LLL, Key Contacts Form V1.0, Project Narrative Attachment Form V1.2, Budget Narrative Attachment Form V1.2,

Project/Performance Site Location (s) V2.0, Other Attachment Form V1.2.

Type of Review: New information collection.

Background: This is a new collection and is required to retain a benefit from the Federal Aviation Administration (FAA). The new collection will be conducted for reporting purposes and will assist in the FAA in administering a new Aircraft Pilots Workforce Development Grant Program. The program is mandated by FAA Reauthorization of 2018, Public Law 115–254 for the purpose to (1) Create and deliver curriculum designed to provide high school students with meaningful aviation education that is designed to prepare the students to become aircraft pilots, aerospace engineers, or unmanned aircraft systems operators. (2) Support the professional development of teachers using the above curriculum.

Under this new authority, the FAA intends to collect information from the following categories of eligible applicants identified in the legislation. (1) Accredited Higher Education Institution (20 U.S.C. 1001), Secondary school or high school (20 U.S.C. 7801). (2) State or local government entity. (3) Air Carriers (sec. 40102, title 49) or labor unions representing aircrafts pilots and (4) Flight School that provides flight training (part 61, title 14) or holds a pilot school certificate (part, 141, title 14).

The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with quarterly and final reports from all grant recipients. It will provide critical data on locations where the grant dollars are being used to plan and respond the aircraft pilot workforce shortage. This information will provide the FAA with an indication of where gaps exist in planning for the workforce shortage and will help the FAA determine which projects have the great ability to help address the forecasted aircraft pilot shortage.

Respondents: The Legislation identified the following categories of applicants as eligible to apply for grants under this program. The Program expects approximately 10 respondents from each category below for a total of approximately 40 respondents:

(1) Accredited Higher Education Institution (20 U.S.C. 1001), Secondary school or high school (20 U.S.C. 7801).

(2) State or local government entity.

(3) Air Carriers (sec. 40102, title 49) or labor unions representing aircrafts pilots.

(4) Flight School that provides flight training (part 61, title 14) or holds a pilot school certificate (part, 141, title 14).

The legislation also requires the FAA to ensure participation from a diverse collection of public and private schools in rural, suburban, and urban areas.

Frequency: The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with quarterly and final reports from all grant recipients.

Estimated Average Burden per Response: 4 Hours per respondent.

Estimated Total Annual Burden Hours: Estimated to be 456 hours.

Issued in Atlantic City, NJ, on November 18, 2019.

Linda A. Long,

Program Manager, Aviation Workforce Development Grant Programs. NextGen Partnership Contracts Branch (ANG–A17).

[FR Doc. 2019–25680 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2019–0848]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: Aviation Maintenance Technical Workforce Development Grant Program

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 for a new information collection. The collection involves the establishment of a new grant program in the FAA for the Aviation Maintenance Technical Workforce Development. The information to be collected will be used for selecting projects.

DATES: Written comments should be submitted by January 27, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Linda Long, William J. Hughes Technical Center, Atlantic City International Airport, B300, 2nd Floor, Column H–15, Atlantic City, NJ 08405.

By fax: 609–485–4101.

FOR FURTHER INFORMATION CONTACT: Linda Long by email at: *Linda.Long@faa.gov;* phone: 609–485–8902.

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–XXXX.

Title: Aviation Maintenance Technical Workforce Development Grant Program.

Form Numbers: Form SF–424, SF–424A, SF424B, SF–LLL, Key Contacts Form V1.0, Project Narrative Attachment Form V1.2, Budget Narrative Attachment Form V1.2, Project/Performance Site Location (s) V2.0, Other Attachment Form V1.2.

Type of Review: New information collection.

Background: This is a request for a new collection and is required to retain a benefit from the Federal Aviation Administration (FAA). The new collection will be conducted for reporting purposes and will assist in the FAA in administering a new Aircraft Pilots Workforce Development Grant Program. The program is mandated by FAA Reauthorization of 2018, Public Law No: 115–254 for the purpose to: (1) Establish new educational programs that teach technical skills used in aviation maintenance, including purchasing equipment or to improve existing such programs. (2) Enhance aviation maintenance technical education or aviation maintenance industry workforce. (3) To establish scholarships or apprenticeships for individuals pursuing employment in the aviation maintenance industry. (4) Support outreach about careers in the aviation maintenance industry to: Primary, secondary and post-secondary school students, communities under-represented in the industry. (5) Support transition to careers in aviation maintenance; including members of the Armed Forces. (6) Support educational opportunities related to aviation maintenance in economically disadvantaged geographic areas.

Under this new authority, the FAA intends to collect information from the following categories of eligible applicants identified in the legislation: (1) Accredited Higher Education Institution (20 U.S.C. 1001), Secondary school or high school (20 U.S.C. 7801).

(2) State or local governmental entity.
(3) A holder of a certificate issued under part 21, 121, 135, or 145 of title 14, Code of Federal Regulations or a labor organization representing aviation maintenance.

The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with quarterly and final reports from all grant recipients. It will provide critical data on locations where the grant dollars are being used to plan and respond the aircraft pilot workforce shortage. This information will provide the FAA with an indication of where gaps exist in planning for the workforce shortage and will help the FAA determine which projects have the great ability to help address the forecasted aviation maintenance technical workers shortage.

Respondents: The Legislation identified the following categories of applicants as eligible to apply for grants under this program. The Program expects approximately 15 respondents from each of the below categories for a total of approximately 45 total respondents:

(1) Accredited Higher Education Institution (20 U.S.C. 1001), Secondary school or high school (20 U.S.C. 7801)

(2) State or local government entity

(3) A holder of a certificate issued under part 21, 121, 135, or 145 of title 14, Code of Federal Regulations or a labor organization representing aviation maintenance

Frequency: The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with quarterly and final reports from all grant recipients.

Estimated Average Burden per Response: 4 hours.

Estimated Total Annual Burden Hours: Estimated to be 560 hours.

Issued in Atlantic City, NJ, on November 21, 2019.

Linda A. Long,

Program Manager, Aviation Workforce Development Grant Programs, NextGen Partnership Contracts Branch (ANG–A17).

[FR Doc. 2019–25681 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2017–0043]

Motorcyclist Advisory Council; Notice of Public Meeting

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice of public meeting.

SUMMARY: This notice announces the fifth meeting of the FHWA Motorcyclist Advisory Council (MAC).

DATES: The meeting will be held as an ''in-person'' meeting from 8:30 a.m. to 4:30 p.m. EST on December 10, 2019. Requests to attend the meeting must be received by December 2, 2019. Requests for accommodations to a disability must be received by December 2, 2019. Requests to speak during the meeting must be submitted with a written copy of their remarks to DOT by December 5, 2019.

ADDRESSES: The meeting will be held at the National Highway Institute, 1310 North Courthouse Road, Suite 300, Arlington, VA 22201. Members of the public who wish to attend are asked to send an email to *MAC-FHWA@dot.gov.* Individuals requiring accommodations are asked to note this when they send an email about attending to *MAC-FHWA@dot.gov.* If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Michael Griffith at the phone number listed in the following section or email your request to *MAC-FHWA@dot.gov.* If you would like to file a written statement with the Committee, you may do so either before or after the meeting by submitting an electronic copy of that statement to *MAC-FHWA@dot.gov* or the specific docket page at: *www.regulations.gov.* An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov;* the Government Publishing Office's database at: *https://www.gpo.gov/fdsys/;* or the specific docket page at: *www.regulations.gov.* An electronic copy of the minutes from all meetings will be available for download within 60 days of the conclusion of the meeting at: *https://safety.fhwa.dot.gov/motorcycles/.*

FOR FURTHER INFORMATION CONTACT: Mr. Michael Griffith, the Designated Federal Official, Office of Safety, 202–366–9469, (*mike.griffith@dot.gov*), or Ms. Guan Xu, 202–366–5892, (*guan.xu@dot.gov*), Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

Purpose of the Committee: Section 1426 of the Fixing America's Surface Transportation Act (Pub. L. 114–94) required the FHWA Administrator, on behalf of the Secretary, to establish the MAC. The MAC is responsible for providing advice and making recommendations concerning infrastructure issues related to motorcyclist safety including barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies. On July 28, 2017, the Secretary of Transportation appointed 10 members to the MAC. Four meetings have been held to date.

Agenda Summary: In general, the meeting will again cover a topical discussion of the infrastructure issues described above, namely: Barrier design; road design, construction, and maintenance practices; and the architecture and implementation of intelligent transportation system technologies. Specifically at this MAC meeting, the agenda will cover the following key topics:

- Discussion of proposed draft MAC recommendations to identify areas that need the most attention for discussion and areas that are complete or near-complete.
- Public Comments.
- Finalizing areas of MAC recommendations and identify problem areas in need of more input or feedback.
- Discussion of next steps.

Public Participation: This meeting will be open to the public. The Designated Federal Official and the Chair of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Mr. Michael Griffith at the phone number listed in the **FOR FURTHER INFORMATION CONTACT** section or email the appropriate address listed in the **ADDRESSES** section. You must make your request for an oral statement at least 5 business days prior to the meeting. Reasonable provisions will be made to include any such presentation on the agenda. Public comment will be limited to 3 minutes per speaker, per topic.

Services for Individuals with Disabilities: The DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because

of a disability, such as sign language, interpretation, or other ancillary aids, please indicate specific needs in your request to attend the meeting.

Authority: Section 1426 of Pub. L. 114–94.

Issued on: November 21, 2019.

Nicole R. Nason,

Administrator, Federal Highway Administration.

[FR Doc. 2019–25669 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2019–0195 (Notice No. 2019–11)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, PHMSA invites comments on a revision to the information collection pertaining to hazardous materials public sector training and planning grants for which PHMSA intends to request a renewal with revision from the Office of Management and Budget.

DATES: Interested persons are invited to submit comments on or before January 27, 2020.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA–2019–0195 (Notice No. 2019–11) by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* To the Docket Management System; 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.

Instructions: All submissions must include the agency name and Docket Number (PHMSA–2019–0195) for this notice at the beginning of the comment. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Requests for a copy of an information collection should be directed to Steven Andrews or Shelby Geller, (202) 366–8553, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Standards and Rulemaking Division, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: Steven Andrews or Shelby Geller, (202) 366–8553, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Standards and Rulemaking Division, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Section 1320.8 (d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies an information collection request that PHMSA will be submitting to the Office of Management and Budget (OMB) for revision. Specifically, PHMSA is notifying the public of its intent to seek additional information in hazardous materials planning grant applications. This information collection is contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on a proposed revision to this information collection. The following information is provided for this information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for this information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

On February 28, 2019, PHMSA published a final rule titled ''Hazardous Materials: Oil Spill Response Plans and Information Sharing for High-Hazard Flammable Trains (FAST Act)'' [HM–251B; 84 FR 6910] which revised and clarified requirements for Comprehensive Oil Spill Response Plans (COSRPs) and expanded their applicability based on petroleum oil thresholds that apply to an entire train consist. The final rule also required a railroad to share information about high-hazard flammable train (HHFT) operations with each State emergency response commissions (SERC, Tribal Emergency Response, Commission (TERC), or other appropriate State-delegated agency in each State through which it operates to improve community preparedness. At a minimum, railroads must provide: (1) A reasonable estimate of the number of HHFTs that the railroad expects to operate each week, through each county within the State or through each tribal jurisdiction; (2) the routes over which the HHFTs will operate; (3) a description of the hazardous materials being transported and all applicable emergency response information required by the shipping papers and emergency response information requirements of the HMR; (4) an HHFT point of contact; and (5) a description of the response zones (including counties and states) and the contact information for the qualified individual and alternate as specified under § 130.120(c) if a route identified above is additionally subject to the comprehensive spill plan requirements. In addition, the HHFT notification must be maintained and transmitted in accordance with the following: (1) Railroads must update the notifications for changes in volume greater than 25%; (2) notifications and updates may be transmitted electronically or by hard copy; (3) if the disclosure includes information that a railroad believes is security sensitive or proprietary and exempt from public disclosure, the railroad should indicate that in the notification; (4) each point of contact must be clearly identified by name or title, and contact role (*e.g.,* qualified individual, HHFT point of contact) in association with the telephone number. One point of contact may fulfill multiple roles; and (5) copies of the railroad's notifications must be made

available to the Department of Transportation upon request.

Following an audit conducted by the General Accounting Office (GAO), PHMSA received a recommendation (GAO–17–91) to develop a process for regularly collecting information from SERCs on the distribution of the railroad-provided hazardous materials shipping information to local planning entities. In response to this recommendation, PHMSA is seeking to have grant applicants declare if SERCs have received copies of the railroad-provided information detailed above. In addition, PHMSA is seeking to determine if the SERCs are disseminating this information to local planning entities. PHMSA expects that requesting grantees to provide this additional information will add approximately 2 minutes of burden time per respondent. For 62 grantees, this is appropriately 2.067 additional burden hours (62 grantees x 2 minutes).

The time to complete each component of an HMEP grantee application, including the additional information-sharing compliance questions, is as follows:

Question/topic	Respondents	Responses per respondent	Number of responses	Hours per response	Total burden hours
General Grantee and Sub-grantee information	62	1	62	16	992
Information on LEPCs	62	1	62	16	992
Assessment of Potential Chemical Threats	62	1	62	8	496
Assessment of Response Capabilities for Accidents/Incidents	62	1	62	8	496
HMEP Planning and Training Grant Reporting	62	1	62	7	434
HMEP Planning Goals and Objectives	62	1	62	7	434
HMEP Training and Planning Assessment	62	1	62	7	434
Hazmat Transportation Fees	62	1	62	3.23	200.26
Grant Applicant is NIMS Compliant/Grant Application Is Reviewed By SERC	62	1	62	5.5	341
HMEP Grant Program Administration	62	1	62	5.5	341
HHFT Information-Sharing Compliance Questions	62	1	62	0.033	2.067

Title: Hazardous Materials Public Sector Training and Planning Grants.

OMB Control Number: 2137–0586.

Summary: Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes, and local communities to manage hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping regarding the application for grants, the monitoring of expenditures, and the reporting and requesting of modifications.

Information collection	Respondents	Total annual responses	Hours per response	Total annual burden hours
Hazardous Materials Grants Applications	62	62	83.26	5,162

Affected Public: State and local governments, Indian tribes.

Increase in Annual Reporting and Recordkeeping Burden:

Increase in Annual Respondents: 0.

Increase in Annual Responses: 0.

Increase in Annual Burden Hours: 2.

Frequency of collection: On occasion.

Issued in Washington, DC on November 20, 2019.

William S. Schoonover,

Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2019–25567 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2019–0165]

Non-Traditional and Emerging Transportation Technology (NETT) Council

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

ACTION: Request for comment.

SUMMARY: In April 2019, the Department of Transportation (DOT) created the Non-Traditional and Emerging Transportation Technology (NETT) Council, an internal deliberative body at DOT, to identify and resolve jurisdictional and regulatory gaps associated with non-traditional and emerging transportation projects pending before DOT, including with respect to safety oversight, environmental review, and funding issues. The Office of the Secretary of Transportation invites comments on projects, issues, or topics that DOT should consider through the NETT Council, including regulatory models and other alternative approaches for non-traditional and emerging transportation technologies.

DATES: Comments are requested by January 10, 2020. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation,'' below, for more information about written comments.

Written Comments: Comments should refer to the docket number above and be submitted by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m. ET, Monday

through Friday, except Federal Holidays.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Privacy Act: Except as provided below, all comments received into the docket will be made public in their entirety. The comments will be searchable 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 should not include information in your comment that you do not want to be made public. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or at *https://www.transportation.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: For policy issues, please email *NETTCouncil@dot.gov* or contact Philip Sung at 202–366–0442. For legal issues, please contact Sean Ford at 202–366–1841. Office hours are from 8 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Congress provides authority to the Department of Transportation (Department or DOT) to regulate the safety of transportation. This authority is implemented by the Department's operating administrations and extends to particular technologies and certain operational scenarios. Some new technologies and operational scenarios may not fit precisely into the Department's existing regulatory structure. The Non-Traditional and Emerging Transportation Technology Council (Council or NETT Council) was formed to provide project sponsors a single point of access to the Department to discuss innovative transportation plans and proposals, to coordinate oversight of such projects, and to develop and establish Department-wide processes, solutions, and best practices for managing new transportation technology subject to the Department's jurisdiction.

Since the Council's inception, innovators and stakeholders have approached the Department with concepts and ideas that vary in their stage of development. To ensure that the Council is responsive to the needs of the public and industry, the Department is interested in hearing from stakeholders and the public as to whether and to what extent the Department's existing regulatory construct supports or hinders innovation. The Department is also seeking comment on how the NETT Council can better be in a position to support transportation innovation.

The questions below are meant to guide commenters; however, commenters are invited to provide their views on issues surrounding non-traditional and emerging transportation technologies and other general comments related to this topic. Further, although the questions focus on specific types of stakeholders, we would appreciate the views of all commenters on all questions. Finally, in this notice, the Department is not requesting comment on issues related to automated vehicles [1] or unmanned aerial systems (UAS), except to the limited extent of operations where these technologies (or technologies based on or derived from them) are being used in ways that do not fit within the Department's existing regulatory structures. To the extent possible, please provide technical information, regulatory citations, data, or other evidence to support your comments.

1. Are there existing Federal transportation laws or regulations that inhibit innovation by creating barriers to testing, certifying or verifying compliance, or operating non-traditional and emerging transportation technologies? Please provide specific examples, explain why the requirement imposes a barrier, and identify the specific law or regulation that you believe should be changed and describe how it should be changed. Please identify all associated regulations that should be changed, including specific citations to the Code of Federal Regulations and explain the need for the change.

2. Are there existing design or performance requirements that may contribute to a reduced safety purpose or impose more cost or restriction on the design of non-traditional and emerging transportation technologies than is warranted?

3. If you identified a barrier to innovation in response to Question 1 or 2, above, can this barrier be removed or mitigated without resorting to additional rulemaking? If rulemaking is necessary, please identify all associated regulations that should be changed, including specific citations to the Code of Federal Regulations and explain the need for the change and how safety will not adversely be impacted.

4. If you identified a barrier to innovation in response to Question 1 or 2, above, is legislation necessary to remove or mitigate that innovation barrier? Please identify the barrier with specificity, explain why it is a barrier, and identify the specific law that you believe should be changed. Please describe how it should be changed and why there will be no adverse impact to safety.

5. Do you believe that there are international bodies or organizations (at any level) that the Department should be working with to develop standards or best practices for potential application to non-traditional and emerging transportation technologies in the United States?

6. Does the current landscape of State/local/Tribal regulation for non-traditional and emerging transportation technologies hinder or support innovation? More specifically:

a. What laws or regulations do State, local, or Tribal governments rely upon, other than Federal transportation laws and regulations, to regulate the safe design, construction, and operational safety of non-traditional or emerging transportation technologies (*e.g.,* hyperloop and non-traditional tunneling)? In what ways do these laws or regulations hinder or support innovation? (Please be specific in your response.)

b. Are there State/local/Tribal occupational license regimes that govern the safe conduct of operators of non-traditional or emerging transportation technologies? Do they hinder or support innovation?

c. Are there State/local/Tribal laws that assist innovators in developing safe prototypes, road testing, deploying, or commercializing new transportation technologies? (Comments on regulatory gaps or feasibility studies and analyses are encouraged.)

7. Would intermodal or cross-sector regulations support or inhibit innovation and ensure safety of transportation infrastructure, as well as the safe movement of goods, services, capital and the traveling public? Please explain why or why not. Include specific examples, studies, or other data if available.

8. Would cross-sector or cross-modal transportation safety regulations support or inhibit investments in non-traditional and emerging transportation

[1] For a description of the Department's activities on automated vehicles, please visit *https://www.transportation.gov/AV.*

technologies? Please explain why or why not. Include specific examples, studies, or other data if available.

9. How can Federal policies, regulations, or legislation be used to foster mobility service providers, remove barriers to new non-traditional and emerging transport operations, or promote safe, efficient, environmentally sound and user-friendly mobility systems? Please explain, using specific examples where feasible.

10. Technology Companies/Innovators: What standards or code of conduct are relevant to ensuring a balance between supporting innovation and ensuring the safety of transportation infrastructure and the traveling public?

11. Technology Companies/Innovators: What actions can the NETT Council take to support your work, while maintaining its safety focus?

a. At what point in the development of the technology or operation would it be ideal to interface with the NETT Council?

b. Considering the resource constraints and the potential cross modal nature of non-traditional and emerging transportation technologies, would an on-going relationship with the NETT Council during the development and construction of your project be helpful to assess potential safety risks and unintended consequences be helpful? If so, how often should engagements occur?

12. Local, State, Tribal, and Other Public Entities: What support should the NETT Council consider providing when non-traditional/emerging transportation technology companies propose a non-traditional or emerging transportation technology or system in your jurisdiction?

a. In what way could Federal action help maintain the overall safety of the design, construction, and operation system? What aspects do you believe are best addressed by State, local, and Tribal entities? Please provide specific examples to support your comment.

b. In what way could Federal actions assist you in overseeing any risks (safety or other) and unintended consequences that are local in nature? In what way could they interfere with your oversight and enforcement authorities? Please provide specific examples to support your comment.

c. In what way could Federal actions improve or clarify oversight roles? Please provide specific examples to support your comment.

13. Local, State, Tribal, and Other Public Entities: Has a company approached you about a non-traditional or emerging transportation technology? If so, are there any best practices you can share from working with companies that could shape how the NETT Council approaches non-traditional or emerging transportation proposals?

Public Participation

How do I prepare and submit comments?

Your comments must be written in English. To ensure that your comments are filed correctly in the docket, please include the docket number of this document in your comments.

Please submit one copy (two copies if submitting by mail or hand delivery) of your comments, including the attachments, to the docket following the instructions given above under **ADDRESSES**. Please note, if you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using an Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.

How do I submit confidential business information?

Any submissions containing Confidential Information must be delivered to OST in the following manner:

- Submitted in a sealed envelope marked ''confidential treatment requested'';
- Document(s) or information that the submitter would like withheld should be marked ''PROPIN''; Accompanied by an index listing the document(s) or information that the submitter would like the Departments to withhold. The index should include information such as numbers used to identify the relevant document(s) or information, document title and description, and relevant page numbers and/or section numbers within a document; and
- Submitted with a statement explaining the submitter's grounds for objecting to disclosure of the information to the public.

OST will treat such marked submissions as confidential under the FOIA, and will not include it in the public docket. OST also requests that submitters of Confidential Information include a non-confidential version (either redacted or summarized) of those confidential submissions in the public docket. In the event that the submitter cannot provide a non-confidential version of its submission, OST requests that the submitter post a notice in the docket stating that it has provided OST with Confidential Information. Should a submitter fail to docket either a non-confidential version of its submission or to post a notice that Confidential Information has been provided, we will note the receipt of the submission on the docket, with the submitter's organization or name (to the degree permitted by law) and the date of submission.

Will the agency consider late comments?

U.S. DOT will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, the Agency will also consider comments received after that date.

How can I read the comments submitted by other people?

You may read the comments received at the address given above under WRITTEN COMMENTS. The hours of the docket are indicated above in the same location. You may also see the comments on the internet, identified by the docket number at the heading of this notice, at *http://www.regulations.gov.*

Issued in Washington, DC, under authority delegated at 49 CFR 1.25a.

Finch Fulton,

Deputy Assistant Secretary for Transportation Policy.

[FR Doc. 2019–25638 Filed 11–25–19; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

SUB-AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of five entities and four persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.:

202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action(s)

On November 18, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following five entities and four persons are blocked under the relevant sanctions authority listed below.

Individuals

1. KHAN, Sayed Habib Ahmad (a.k.a. KHAN, Syed Habib Ahmad; a.k.a. ''HABIB, Sayed''), Kuwait; Arzan Qemat Area, PD 12, Kabul City, Afghanistan; DOB 1970; POB Kunar Province, Afghanistan; nationality Afghanistan; Gender Male; Residency Permit Number 270010174266 (Kuwait) issued 25 Apr 2016 expires 24 Jun 2018 (individual) [SDGT] (Linked To: NEJAAT SOCIAL WELFARE ORGANIZATION).

Designated pursuant to section 1(a)(iii)(E) of Executive Order 13224 of September 23, 2001, ''Blocking the Property and Prohibiting Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism,'' as amended by the Executive Order of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism'' (E.O. 13224, as amended), for being a leader or official of, NEJAAT SOCIAL WELFARE ORGANIZATION, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. WAKIL, Rohullah (a.k.a. WAKIL, Haji Sahib Rohullah; a.k.a. ''Haji Rohullah''), Afghanistan; DOB 1962; alt. DOB 1963; POB Nangalam, Afghanistan; Gender Male (individual) [SDGT] (Linked To: ISIL KHORASAN).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of ISIL KHORASAN, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. BAYALTUN, Ismail (a.k.a. BAYALTUN, Ismail Halil), Dunya Is Mer, Gaziantep, Turkey; No:/A Atlikonak, Sanliurfa 63000, Turkey; DOB 01 Oct 1989; alt. DOB 21 Nov 1980; citizen Turkey; Gender Male; National ID No. C13638980 (Turkey); Identification Number 4386794904 (Turkey) (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

4. BAYALTUN, Ahmet, Turkey; DOB 1971; citizen Turkey; Gender Male (individual) [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Entities

1. SAHLOUL MONEY EXCHANGE COMPANY (a.k.a. AL–SAHLOUL MONEY EXCHANGE COMPANY; a.k.a. SAHLUL HAWALA OFFICE), Axray, Masseeh Basha, Lallei Street, Kalvan Centre Building #22, Office #203, Istanbul, Turkey; Mersin, Turkey [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of the ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

2. AL SULTAN MONEY TRANSFER COMPANY (a.k.a. AL SULTAN GOLD & JEWELRY; a.k.a. AL SULTAN GOLD AND JEWELRY; a.k.a. AL SULTAN JEWELRY; a.k.a. AL–SULTAN JEWELRY & GENERAL TRADING CO; a.k.a. AL–SULTAN JEWELRY AND GENERAL TRADING CO; a.k.a. ALSULTAN KUYUMCULK ELEKTRONIK GIDA ITHALAT IHRACAT LIMITED SIRKETI; a.k.a. ALSULTAN KUYUMCULUK; a.k.a. SULTAN GOLD), Ataturk Mah. Sehit Nusret Cad., No: 17 A/1 Haliliye-Haliliye, Sanliurfa, Turkey [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of the ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

3. NEJAAT SOCIAL WELFARE ORGANIZATION (a.k.a. NEJAT–E EJTIMAYEE), House Number 1297, Lot Number 2, Sub-District number 2, Narang Bagh Area, Jalalabad, Nangarhar, Afghanistan; Police District 12, Kabul City, Kabul Province, Afghanistan; Jalalabad City, Nangarhar Province, Afghanistan [SDGT] (Linked To: ISIL KHORASAN).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of ISIL KHORASAN, an entity whose property and interests in property are blocked pursuant to section 1(a)(iv) of E.O. 13224, as amended.

4. TAWASUL COMPANY (a.k.a. AL–TAWASUL COMPANY; a.k.a. TAWASUL FINANCIAL EXCHANGE; a.k.a. TAWASUL HAWALA COMPANY), Harim, Syria [SDGT] (Linked To: ISLAMIC STATE OF IRAQ AND THE LEVANT).

Designated pursuant to section 1(a)(iii)(C) of E.O. 13224, as amended, for having materially assisted, sponsored, or provided financial, material, or technological support for, goods or services to or in support of the ISLAMIC STATE OF IRAQ AND THE LEVANT, an entity whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

5. ACL ITHALAT IHRACAT (a.k.a. ACL GSM IMPORT EXPORT; a.k.a. ACL ITHALAT IHRACAT ISMAIL BAYALT; a.k.a. ACL ITHALAT IHRACAT ISMAIL BAYALTUN), No: 96 Dunya Is Merkezi 2 Kat, Sanliurfa, Turkey; Cengiz Topel Mah 2 Dunya is Merk, Sanliurfa, Turkey; Yusufpasa Mah Dunya Is Merkeri Ctr, Sanliurfa 63000, Turkey; 96 Earth Business Center, 2nd Floor, Sanliurfa, Turkey [SDGT] (Linked To: BAYALTUN, Ismail).

Designated pursuant to section 1(a)(iii)(A) of E.O. 13224, as amended, for being owned, controlled, or directed by, or to have acted or purported to act for or on behalf of, directly or indirectly BAYALTUN, Ismail, an individual whose property and interests in property are blocked pursuant to E.O. 13224, as amended.

Dated: November 18, 2019.

Andrea Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2019–25632 Filed 11–25–19; 8:45 am]

BILLING CODE 4810–AL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meeting Notice; Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: December 5, 2019, from Noon to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call. Any interested person may call 1–866–210–1669, passcode 5253902# to participate in the meeting.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the ''Board'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of the meeting will include:

Agenda

Open to the Public

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call

roll for the Board, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and in the **Federal Register**.

III. Review and Approval of Board Agenda and Setting of Ground Rules—UCR Board Chair

For Discussion and Possible Action

Agenda will be reviewed and the Board will consider adoption.

Ground Rules

➢ Board action only to be taken in designated areas on agenda
➢ Please MUTE your phone
➢ Please do NOT place the call on HOLD

IV. Approval of Minutes of the October 17, 2019 UCR Board Meeting—UCR Executive Director

For Discussion and Possible Action

• Minutes of the October 17, 2019 Board meeting will be reviewed. The Board will consider action to approve.

V. Report of FMCSA—FMCSA Representative

FMCSA will provide a report on any relevant activity or rulemaking, including any pending appointments, as well as any update available regarding a final rulemaking on 2020 UCR fees.

VI. UCR/FMCSA Memorandum of Understanding—Chief Legal Officer

The Chief Legal Officer will report on the status of efforts to renew the UCR/FMCSA memorandum of understanding and answer questions.

VII. Proposed Written Information Security Policy—Chief Legal Officer

For Discussion and Possible Action

A revised draft of a proposed policy to ensure the security, confidentiality, integrity, and availability of personal and other sensitive information collected, created, used, and maintained by the UCR, will be reviewed. The Board may act to adopt the proposed policy.

VIII. Proposed Incident Response Action Plan—Chief Legal Officer

For Discussion and Possible Action

A revised draft of a proposed policy to provide a structured and systematic incident response process for all information security incidents that affect any of the UCR's information technology systems, network, or data, including the UCR's data held or IT services provided by third-party vendors or other service providers, will be reviewed. The Board may act to adopt the proposed policy.

IX. Data Event Update—Chief Legal Officer

The Chief Legal Officer will provide an update to the Board on the action items approved at its August 1, 2019 meeting related to the March 2019 data event.

X. Subcommittee Reports

Audit Subcommittee—Audit Subcommittee Chair

A. Report from States Delinquent on 2018 Carrier Audits

The UCR Board will hear from representatives in the two states that have not submitted an annual carrier audit report for the 2018 Registration Year as required by the UCR Agreement. These two states will address their reasons for being delinquent, as well as their corrective action plan, including timelines, for attaining compliance.

▪ Idaho
▪ Illinois

B. Reminder to State Auditors

Remind state auditors that they can collect UCR registrations for both 2018 and 2019 through December 31, 2019, as part of their active investigation. This applies to any of the following scenarios:

▪ MCS–150 Retreats
▪ FARs
▪ If the audit indicates any of the following:
  • Intrastate motor carriers with a current inspection with interstate activity.
  • Intrastate motor carriers with an active MC number.
  • Intrastate motor carriers with an accident in interstate commerce.
  • Inactive interstate motor carriers with a current inspection.

C. Focused Anomaly Reviews (FARs)

• Currently states have closed approximately 55% of their FARs.
• DSL is assigning FARs as they are discovered, continue to monitor.

D. MCS–150 Retreats

• You must work these retreats through the National Registration System (NRS).
• The system assigns these retreats as they are discovered, continue to monitor.

E. Annual State Reports

• Currently, Section #19 of the Procedures Manual requires the states to perform their MCS–150 retreat audits in the NRS.
• FARs are in a separate database administered by the UCR Consultant and reviewed by the Audit Chair, these reports are monitored daily.
• Since there is no report to submit, we should update the Audit Procedures to simply have the state reports final on June 1st of each year.

Education and Training Subcommittee—Operations Manager and Executive Director

An update will be given to the Board regarding the development of three training modules, UCR 101, Enforcement, and the National Registration System.

XI. Updates Concerning UCR Legislation—UCR Board Chair

The UCR Board Chair will call for any updates regarding UCR Legislation since the last Board meeting.

XII. Proposed Board Subcommittee Policy—UCR Administrator

For Discussion and Possible Action

A revised draft of a proposed policy to establish criteria for individuals serving on UCR Board Subcommittees, as well as the composition of the Subcommittees, will be reviewed. The Board may act to adopt the proposed policy. The Board Chair will also list appointments made to leadership posts of various Subcommittees.

XIII. Possible Revisions to 2020 Budget—UCR Administrator

For Discussion and Possible Action

The Depository Manager will lead a discussion concerning the need for revisions to the budget for 2020. The Board may take action to adopt the suggested revisions to the budget.

XIV. Proposed Calendar for 2020 UCR Meetings—UCR Executive Director

For Discussion and Possible Action

The Board will review a revised calendar of proposed meetings (Board and Subcommittees) for 2020. The Board may act to adopt the calendar for 2020.

XV. Contractor Reports—UCR Executive Director

• UCR Executive Director

The Executive Director will provide a report covering recent activity for the UCR Program.

• UCR Administrator (Kellen)

The UCR Administrator will provide their management report covering recent activity for the Depository, Operations, and Communications.

• DSL Transportation Services, Inc.

DSL will report on the latest data on state collections based on reporting from the Focused Anomalies Review (FARs) program.

• Seikosoft

Seikosoft will provide an update on recent/new activity related to the National Registration System.

XVI. Other Business—UCR Board Chair

The UCR Board Chair will call for any business, old or new, from the floor.

XVII. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern time, November 25, 2019 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2019–25790 Filed 11–22–19; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Agency Information Collection Activity Under OMB Review: Monthly Certification of Flight Training

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 26, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov*, or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0162'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green at (202) 421–1354.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3032(e), 3231(e), 3313(g)(3)(C), and 3680(g).

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: Veterans, individuals on active duty training and individuals on reservist training may receive benefits for enrolling in or pursuing vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and the termination of this flight training. Payments are based on the number of hours of flight training the individual completed during each month.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 175 on September 10, 2019, pages 47637 and 47638.

Affected Public: Individuals.

Estimated Annual Burden: 11,343.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion (6 responses per respondent annually).

Estimated Number of Respondents: 22,686.

By direction of the Secretary.

Danny S. Green,

VA Interim Clearance Officer, Office of Quality, Privacy and Risk, Department of Veterans Affairs.

[FR Doc. 2019–25670 Filed 11–25–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Environmental Hazards Registry (EHR) Worksheet (VA Form 10–10176)

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 26, 2019.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Environmental Hazards Registry (EHR) Worksheet (VA Form 10–10176).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Legal authority for this data collection is found under the following Congressional mandates that authorize the collection of data that will allow measurement and evaluation of the Department of Veterans Affairs Programs, the goal of which is improved health care for Veterans.

- *Agent Orange Registry:* Public Laws 102–4, 102–585 Section 703, 100–687 and 38 United States Code (U.S.C.) 527, 38 U.S.C. 1116.
- *Gulf War Registry:* Public Laws 102–585, 103–446 and 38 U.S.C. 1117.
- *Ionizing Radiation:* Public Laws 102–585 Section 703, 100–687 and 38 U.S.C. 527, 38 U.S.C. 1116.

The new Environmental Health Registry (EHR) Worksheet, VA Form 10–10176, supersedes VA Form 10–9009 (June 2005), VA Form 10–9009A (March 2010) and VA Form 10–0020A (June 2005). Post Deployment Health Services (PDHS) plans to have this form electronically accessible to Environmental Health Coordinators and Clinicians once the EHR is in place. Until then, PDHS requests to consolidate 3 existing forms into one comprehensive form.

Currently, VA is exploring the performance of limited registry examinations via telemedicine, in order to reduce Veterans' need to travel and potentially reduce waiting times for exams. The form information would be the same, and otherwise the process to collect and put data into the registry database will not change. Once the exam template is available, it can be used to import information more seamlessly into the Veteran patient record.

VA Environmental Health Registry evaluations are free, voluntary medical

assessments for Veterans who may have been exposed to certain environmental hazards during military service. Evaluations alert Veterans to possible long-term health problems that may be related to exposure specific to environmental hazards during their military service. The registry data may help VA understand and respond to these health problems more effectively and may be useful for research purposes.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 42993 on August 19, 2019, page 42993.

Affected Public: Individuals or Households.

Estimated Annual Burden: 20,000.

Estimated Average Burden per Respondent: 60 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 20,000.

By direction of the Secretary.

Danny S. Green,

Interim VA Clearance Officer, Office of Quality, Performance and Risk (OQPR), Department of Veterans Affairs.

[FR Doc. 2019–25676 Filed 11–25–19; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Creating Options for Veterans Expedited Recovery (COVER) Commission, Notice of Meeting

In accordance with the Federal Advisory Committee Act, the Creating Options for Veterans Expedited Recovery (COVER) Commission gives notice of meetings to be held in the Washington, DC area on December 12 and 13, 2019, at the following times and locations:

Dates:	Times:	Location
December 12, 2019	9:00 a.m.–5:00 p.m., Eastern Standard Time.	Capitol Hill Visitors Center Room SVC 212–10, First Street NE, Washington, DC 20515.
December 13, 2019	9:00 a.m.–1:30 p.m. EST, Eastern Standard Time.	VHA National Conference Center, 2011 Crystal Drive, Crystal City, Virginia 22202.

The purpose of the COVER Commission is to examine the evidence-based therapy treatment model used by the Department of Veterans Affairs (VA) for treating mental health conditions of Veterans and the potential benefits of incorporating complementary and integrative health approaches, and other non-conventional therapies identified by the Commission, as standard practice throughout the Department.

Members of the public are invited to attend open sessions on both dates and locations in-person. Attendees must RSVP in writing via an email to *COVERCommission@va.gov* no later than December 10, 2019. A limited amount of seating will be available, and members of the public will be seated on a first come-first served basis. Use of videotaping or recording on December 12th is prohibited in accordance with Capital Visitor Center regulations and is discouraged for the December 13th session.

Members of the public are invited to provide in-person comments to the commission from 10:00 a.m.–11:00 a.m. on December 12, 2019. Individuals interested in providing comments must request time on the agenda via email to *COVERCommission@va.gov,* no later than December 6, 2019. The written request must include the presenter's name, the organizations, associations, or persons they represent and the topic of the comments. In-person comments will be limited to no more than 5 minutes per organization and the number of presenters will be limited due to time constraints; those approved to address the commission will be notified in writing by 12:00 p.m. EST on December 9, 2019. The COVER Commission will also accept written comments which may be sent to the email address noted.

Any member of the public seeking additional information including copies of materials referenced during open sessions should email the Designated Federal Officer for the Commission, Mr. John Goodrich, at *COVERCommission@va.gov.* In communications with the Commission, the writers must identify themselves and state the organizations, associations, or persons they represent.

Dated: November 20, 2019.

LaTonya L. Small,

Federal Advisory Committee Management Officer.

[FR Doc. 2019–25583 Filed 11–25–19; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 84 Tuesday,

No. 228 November 26, 2019

Part II

Small Business Administration

13 CFR Parts 115, 121, et al.

Small Business HUBZone Program and Government Contracting Programs; Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 115, 121, 125, 126, and 127

RIN 3245–AG38

Small Business HUBZone Program and Government Contracting Programs

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending its regulations for the Historically Underutilized Business Zone (HUBZone) Program to reduce the regulatory burdens imposed on HUBZone small business concerns and government agencies, implement new statutory provisions, and eliminate ambiguities in the regulations. This comprehensive revision to the HUBZone Program clarifies current HUBZone Program policies and procedures and makes changes that will benefit the small business community by making the HUBZone Program more efficient and effective. The rule is intended to make it easier for small business concerns to understand and comply with the program's requirements and to make the HUBZone program a more attractive avenue for procuring agencies.

DATES: This rule is effective on December 26, 2019.

FOR FURTHER INFORMATION CONTACT: Brenda Fernandez, Office of Government Contracting, 202–205–7337 or *brenda.fernandez@sba.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 30, 2017, President Trump issued Executive Order 13771 directing federal departments and agencies to reduce regulatory burdens and control regulatory costs. In response to this directive, SBA initiated a review of all of its regulations to determine which might be revised or eliminated. This final rule implements revisions to the HUBZone program. The HUBZone program was established pursuant to the HUBZone Act of 1997 (HUBZone Act), Title VI of the Small Business Reauthorization Act of 1997, Public Law 105–135, enacted December 2, 1997. The stated purpose of the HUBZone program is to provide for Federal contracting assistance to HUBZone small business concerns. 15 U.S.C. 657a(a).

On October 31, 2018, SBA published in the **Federal Register** a comprehensive proposal to amend the HUBZone program. 83 FR 54812. SBA had not issued a comprehensive regulatory amendment to the HUBZone program since the program's initial implementation over twenty years ago. SBA's review of the HUBZone program in response to President Trump's directive highlighted several areas that needed revision. In order to address these deficiencies, SBA proposed to clarify and modify a number of the regulations implementing the program to reflect current policies, eliminate ambiguities in the regulations, and reduce burdens on small businesses and procuring agencies.

The proposed rule initially called for a 60-day comment period, with comments due by December 31, 2018. Due to the scope and significance of the proposed changes, SBA subsequently published a notice in the **Federal Register** on December 31, 2018 that extended the comment period to February 14, 2019. 83 FR 67701.

In addition, SBA proposed to implement section 1701(i) of the National Defense Authorization Act for Fiscal Year 2018 (NDAA 2018), Public Law 115–91, 131 Stat. 1283 (December 12, 2017), which by amending the definition of ''HUBZone small business concern,'' allows certain certified HUBZone small business concerns to maintain their HUBZone status until 2021. In addition, based on comments received, SBA is implementing sections 1701(b), 1701(c), and parts of section 1701(h) of the NDAA 2018 that are effective January 1, 2020, as discussed further below.

A challenge HUBZone participants have faced over the last two decades is understanding the definitions of key components of the program requirements. HUBZones change based on economic data. Once certified, it is unrealistic to expect a business concern or its employees to relocate in order to attempt to maintain the concern's HUBZone status if the area where the business is located or employees reside loses its HUBZone status. The proposed rule detailed changes to help the HUBZone program achieve its intended results: Investment and continued employment in distressed communities. First, the rule proposed to treat an individual as a HUBZone resident if that individual worked for the firm and resided in a HUBZone at the time the concern was certified or recertified as a HUBZone small business concern and he or she continues to work for that same firm, even if the area where the individual lives no longer qualifies as a HUBZone or the individual has moved to a non-HUBZone area. Second, the rule proposed to eliminate the burden on HUBZone small businesses to continually demonstrate that they meet all eligibility requirements at the time of each offer and award for any HUBZone contract opportunity.

SBA recognizes the challenge many firms face in attempting to meet the requirement that at least 35% of the firm's employees live in a HUBZone. Firms with a significant number of employees may have a hard time meeting this requirement because it is often difficult to find a large number of individuals living in a HUBZone who possess the necessary qualifications. Smaller firms also have a hard time meeting this requirement because the loss of one employee could adversely affect their HUBZone eligibility. If a certified HUBZone small business receives a Federal contract (HUBZone or otherwise), it often must hire additional employees to perform the contract, thus jeopardizing its status as a certified HUBZone small business if it no longer meets the requirement that at least 35% of its employees reside in a HUBZone. This would make it ineligible for any future HUBZone contracts. The 35% HUBZone residency requirement can also make it hard for service contractors to perform contracts in other locations. For example, if a firm wins a contract in another state, it would most likely need to hire additional employees from that state. If there is no HUBZone near that location, the firm would have to hire non-HUBZone residents to perform the contract, which would most likely make it ineligible for future HUBZone contracts.

To alleviate these problems, § 126.500(a) of the final rule requires only annual recertification rather than immediate recertification at the time of every offer for a HUBZone contract award. This reduced burden on certified HUBZone small businesses will allow a firm to remain eligible for future HUBZone contracts for an entire year, without requiring it to demonstrate that it continues to meet all HUBZone eligibility requirements at the time it submits an offer for each additional HUBZone opportunity. A concern would represent that it is a certified HUBZone small business concern at the time of each offer, but its eligibility would relate back to the date of its certification or recertification, not to the date of the offer. The concern would be required to come into compliance with the 35% HUBZone residency requirement again at the time of its annual recertification in order to continue to be eligible for additional HUBZone contracts after the one-year certification period. SBA also requested comments on whether seasonal

employees can or should be counted and still maintain the integrity of the HUBZone eligibility requirements.

SBA received extensive responses to the proposed rule from 98 commenters, which comprised about 370 specific comments. SBA addresses each proposed amendment below, including the disposition of any comments.

II. Section-by-Section Analysis and Comments Received

1. Definitions

The proposed rule revised, added, or eliminated several definitions set forth in 13 CFR 126.103 in order to remove ambiguities and make the HUBZone program easier for firms to use.

SBA proposed to delete the definitions of ''Alaska Native Village'' and ''ANCSA'' (*i.e.,* Alaska Native Claims Settlement Act) and incorporate those terms in an amended definition of ''Alaska Native Corporation (ANC)'' to make the regulations more readable. SBA received several comments that did not oppose the proposed change but asked SBA to be careful about conflating or confusing terms such as ANCSA, Alaska Native Village, and Alaskan Native Corporation. SBA does not believe it has incorrectly merged or eliminated any terms in the revised definition, but SBA will continue to be careful when defining these terms and other related terms.

SBA proposed to amend the definition of ''attempt to maintain'' to clarify what happens if a HUBZone small business concern's HUBZone residency percentage drops significantly below the 35% employee HUBZone residency requirement. The Small Business Act provides that a HUBZone small business concern must ''attempt to maintain'' compliance with the 35% residency requirement during the performance of a HUBZone contract. 15 U.S.C. 632(p)(5)(A)(i)(II). As noted in the proposed rule, this statutory requirement seeks to ensure that funds from HUBZone contracts flow to HUBZone areas and the residents of those areas, while at the same time recognizing that a HUBZone small business may need to hire additional employees in order to meet the terms of a contract. Under the ''attempt to maintain'' requirement, when hiring additional employees to perform on a HUBZone contract, the HUBZone small business must make efforts to hire HUBZone residents in order to try to maintain compliance with the 35% HUBZone residency requirement. The current regulation provides that ''attempt to maintain'' means ''making substantive and documented efforts such as written offers of employment, published advertisements seeking employees, and attendance at job fairs.'' 13 CFR 126.103.

SBA believes that it would be helpful to have clearer guidelines that would allow firms to adequately plan and ensure that they are in fact maintaining compliance and continued eligibility. SBA proposed to amend this definition by adding that falling below 20% HUBZone residency during the performance of a HUBZone contract would be deemed a failure to attempt to maintain compliance with the statutory 35% HUBZone residency requirement. In such a case, SBA would propose that the concern be decertified from the HUBZone program. SBA requested comments on how best to look at this 20% minimum requirement, specifically as to whether a different percentage is also reasonable and would accomplish the objectives of the HUBZone program while not unduly burdening firms performing HUBZone contracts.

SBA received 20 comments on the proposed change. Several commenters opposed the changes and preferred the current language because of the flexibility of the current standard. One commenter said the current flexible standard was better for firms with a very low total number of employees. The remaining commenters supported SBA's change. One commenter supported the change to a fixed percentage but thought 15% would be better. Another commenter supported the change to a fixed percentage but thought 25% would be better. SBA received five comments that supported the change to a fixed percentage but expressed concerns about the inflexibility this would create and the consequence of decertification. These commenters recommended several alternatives, including establishing a rebuttable presumption and not decertifying firms that do not meet the requirements. One commenter effectively recommended changing the 35% residency requirement to a 20% requirement where participants would only need to show demonstrable efforts if they fell below 20%.

After considering the comments, SBA is adopting the change implementing a 20% floor within the definition of ''attempt to maintain''. SBA believes that it is important to remember the goals of the HUBZone program: To provide capital infusion into and hire individuals living in distressed areas. SBA believes that allowing any number below 20% would not properly capture the intent of the program. In addition, most commenters agreed that 20% was a reasonable standard. The final rule also maintains the proposed consequences for firms that do not meet the standard. SBA believes that it is important that firms adhere to the requirements. The attempt to maintain standard is already an exception to the general 35% residency requirement, and SBA believes that a situation in which a firm that does not meet this relaxed standard and faces little or no consequence would not further SBA's goal of ensuring firms meet the requirements of the program.

Two comments supported the change but requested clarity as to what it means to attempt to maintain in relation to recertification, continued eligibility, and the change made in § 126.501 providing that certification lasts for one year. These commenters raised concerns about firms merely hiring several employees immediately before an upcoming recertification date, employing those individuals for a short time to meet the 20% threshold, but only for a small window of time right before recertification. SBA agrees with this commenter and has provided clarity on this issue in other sections of this final rule. Specifically, SBA makes clear that the 20% threshold is the floor only for firms performing HUBZone contracts, and if a concern falls below that threshold during the year, it will be decertified according to the standards in § 126.602(d). SBA also made clear that firms have an affirmative duty to notify SBA if they fall below the 20% attempt to maintain standard in § 126.501(a)(2).

SBA proposed eliminating the definition of ''county unemployment rate'' as a separate definition and incorporating it into the definition of ''qualified non-metropolitan county (QNMC)'' and amending the definition of ''D/HUB'' to make clear that this term refers to the Director of SBA's Office of HUBZone. SBA received no comments on these changes to the proposed rule.

SBA proposed to amend the definition of ''decertify'' to clarify that the decertification procedures described in part 126 also apply to firms that voluntarily withdraw from the HUBZone program, and not solely to situations where SBA initiates a decertification action. SBA received three comments on the proposed changes to the definition of ''decertify.'' All three comments supported the change. As such, SBA is adopting the definition as proposed.

The proposed rule also sought to amend the definition of the term ''employee.'' This term is crucial to the HUBZone program since the HUBZone eligibility requirements for a small business are to have at least 35% of its employees residing in a HUBZone and

to have a principal office located in a HUBZone. The proposed rule intended to clarify how SBA determines whether an individual worked ''a minimum of 40 hours per month.'' The proposed rule explained that an individual is considered an employee for HUBZone program purposes if he or she works at least 40 hours during the four-week period immediately prior to the relevant date of consideration, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. Per the proposed rule, SBA will review a firm's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. If the firm has weekly pay periods, then SBA will review the payroll records for the most recently completed last four pay periods. If the firm has two-week pay periods, then SBA will review the payroll records for the last two most recently completed pay periods. If the payroll records demonstrate that an individual worked forty or more hours during that four-week period, he or she would be considered an employee of the concern. Most commenters favored this proposed clarification, and SBA has finalized it in this rule.

SBA also sought comments on whether it should revise the requirement from 40 hours per month to 20 hours per week, due to concerns that the 40 hours per month standard may be insufficient to stimulate employment in HUBZones. SBA received 35 comments opposing this possible change to the definition of ''employee.'' Of these, 20 commenters cited concerns about the administrative and financial burdens on HUBZone firms and the restrictions it would place on firms' ability to hire certain groups of potential employees such as students, working parents, interns, individuals with more than one job, or individuals who are otherwise unable to work for a firm 20 hours or more per week. One of the purposes of the HUBZone program is to provide meaningful employment opportunities for residents of HUBZone areas. After reviewing the comments, SBA agrees that changing the requirement to 20 hours per week would hinder, rather than encourage, firms' efforts to hire and retain HUBZone-resident employees. Therefore, SBA will retain the existing requirement that an ''employee'' is an individual who works at least 40 hours per month.

SBA also sought comments on whether the definition of ''employee'' should continue to include temporary and leased employees, individuals obtained through a union agreement, and those co-employed through a professional employer organization (PEO) agreement, or if SBA should count only full-time employees or full-time equivalents. SBA received 30 comments on this issue, with 18 commenters in favor of continuing to use a broad definition of ''employee'' and 12 in favor of a narrower approach that would count only full-time employees or full-time equivalents. After reviewing the comments, SBA will retain the definition of ''employees'' that includes temporary and leased employees, individuals obtained through a union agreement, and those employed through a PEO agreement. As discussed above, the purpose of the program is to increase employment opportunities for individuals residing in HUBZones. A more inclusive definition of ''employee'' allows a wider group of people to apply for positions at HUBZone firms and thus gives the firms more opportunities to find employees who fit their needs.

The proposed definition of ''employee'' also clarified that all owners of a HUBZone applicant or HUBZone small business who work at least 40 hours per month will be considered employees, regardless of whether they receive compensation. This is SBA's current policy, and it is intended to prevent a firm owner from being able to circumvent the HUBZone rules by not paying himself a salary to remove himself from the employee count. SBA believes that any time an owner works at least 40 hours per month for the concern, he or she should be counted as an employee. The proposed rule also included a provision that if the sole owner of a firm works less than 40 hours during the four-week period immediately prior to the relevant date of review but has not hired another individual to direct the actions of the concern's employees, then that owner will be considered an employee. All five comments received on this issue favored this change. The proposed change is adopted as final.

The proposed definition of ''employee'' also clarified SBA's existing rule that individuals who do not receive compensation and those who receive deferred compensation are not considered employees (other than owners who work at least 40 hours per month, as described above). As SBA's current rules provide, such individuals are considered volunteers, and volunteers are not considered employees. Deferred compensation means compensation that is not received at the time it is earned but is received sometime in the future. SBA does not treat individuals receiving deferred compensation as employees for HUBZone purposes because such individuals are not receiving a present economic benefit from working for the firm, which is not consistent with the purpose of the HUBZone program. The Court of Federal Claims has found this policy to be reasonable. In *Aeolus Systems, LLC* v. *United States,* 79 Fed. Cl. 1, 9 (2007), the Court held that: ''(1) the concept of deferred compensation is contrary to the program's goal of increasing gainful employment in HUBZones, and (2) the identification of non-owner individuals who work for deferred compensation as 'employees' would open up the HUBZone program to potential abuse.'' SBA received three comments in support of continuing to exclude individuals who receive deferred compensation from the definition of ''employee.'' Thus, the final rule will continue to exclude individuals who receive deferred compensation from the definition of ''employee.''

In addition, the proposed definition clarified that individuals who receive in-kind compensation are not considered volunteers and will be considered employees, as long as such in-kind compensation is commensurate with the work performed by the individual. This means that an individual who works 40 hours per month but receives in-kind compensation equaling the value of only 10 hours would generally not be considered an employee. These clarifications were intended to address confusion about what SBA considers in-kind compensation and whether someone who receives in-kind compensation should be considered an employee. In general, in-kind compensation is non-monetary compensation, or anything other than cash, wages, salary or other monetary benefit received in exchange for work performed. An example of in-kind compensation is housing received in exchange for work performed. SBA generally treats individuals receiving in-kind compensation as employees because they are receiving an economic benefit from working for the firm, which is consistent with the purposes of the HUBZone program. In a previous proposed rule amending the definition of ''employee'' to provide that volunteers are not considered employees, SBA explained: ''SBA intends the term compensation to be read broadly and to be more than wages. Thus, a person who receives food, housing, or other non-monetary

compensation in exchange for work performed would not be considered a volunteer under this regulation. SBA believes that allowing volunteers to be counted as employees would not fulfill the purpose of the HUBZone Act—job creation and economic growth in underutilized communities.'' 67 FR 3826 (January 28, 2002).

SBA requested comments on whether it is reasonable to continue treating in-kind compensation this way, and on how to measure whether in-kind compensation is commensurate with work performed. Of the eight comments received on this issue, half supported a definition of ''employee'' that includes commensurate in-kind compensation and half opposed this definition. The former noted that they supported this element of the definition, as long as the in-kind compensation offered financial value to the employee because that would in turn benefit the HUBZone area. For example, one commenter supported in-kind compensation in the form of housing for the employee. Another supported in-kind compensation as long as it was equivalent to the minimum wage. The commenters who opposed the proposed regulation expressed concern about the difficulty of ensuring in-kind compensation complies with all relevant labor and tax laws and were concerned that it would be too subjective. In response to these concerns, SBA has revised the definition to provide that ''in-kind compensation commensurate with the work performed'' means compensation that is of demonstrable financial value to the individual and compliant with relevant laws. In general, a firm would be able to meet this standard by providing documentation such as: Employment agreements for any individuals receiving in-kind compensation, showing the employment relationship between the individuals and the firm, including the terms of employment, work requirements, and form of compensation for work performed; records showing that the individuals worked the required minimum of 40 hours per month at the time of evaluation (*e.g.,* signed timesheets, job logs, etc.); documentation showing the value of the in-kind compensation; and documentation showing that the firm is reporting and withholding appropriate taxes from the compensation provided. SBA notes that this is not a change in policy, but a clarification of what SBA currently requires. SBA believes this fulfills the public policy aim of facilitating the advantages that accrue to communities where individuals have increased employment opportunities, while also allowing firms flexibility to offer benefits such as housing that could make them more competitive to qualified individuals.

The proposed definition of ''employee'' clarified that independent contractors who receive compensation through Internal Revenue Service (IRS) Form 1099 generally are not considered employees, where such individuals would not be considered employees for size purposes under SBA's Size Policy Statement No. 1. 51 FR 6099 (February 20, 1986). SBA believes that it does not make sense to find an individual who receives a Form 1099 to be an employee of a firm when determining the concern's size, but to then not consider that same individual to be an employee when determining compliance with HUBZone eligibility rules. If an independent contractor meets the employee test under SBA Size Policy Statement No. 1, then that individual should also be considered an employee for HUBZone eligibility purposes. If an individual is truly acting as an independent contractor, that individual is acting as a subcontractor, not an employee. Such an individual does not receive the same benefits as an employee and is also not under the same control as an employee.

SBA received four comments in favor of counting independent contractors as employees for HUBZone purposes if they are considered employees for size purposes, and three comments opposed to counting them as employees under any circumstances (including for size purposes). It is beyond the scope of this rulemaking to consider whether independent contractors should be treated as employees for size purposes. Thus, SBA did not consider those comments in finalizing this rule. SBA proposed including similar treatment for HUBZone eligibility because there is value in ensuring uniformity and consistency among its programs where possible. More importantly, SBA believes having one definition for size standards and another for HUBZone eligibility will lead to confusion and ultimately make it more difficult for firms to comply with SBA's regulations. As noted above, SBA intends for these revisions to clarify participants' and applicants' understanding of the program requirements. As such, the final rule adopts the language noting that an independent contractor considered an ''employee'' for size regulations is also an employee for HUBZone purposes.

SBA requested comments on how SBA should treat individuals who are employed through an agreement with a third-party business that specializes in providing HUBZone resident employees to prospective HUBZone small business concerns for the specific purpose of achieving and maintaining HUBZone eligibility. Under such an arrangement, one individual could work 10 hours per month for four separate businesses and be counted as a HUBZone resident employee for each of those businesses. SBA requested public input on whether such an arrangement is consistent with the purposes of the HUBZone program and how such arrangements could be structured in order to be consistent with the goals of the program. SBA received two comments in favor of allowing firms to count individuals employed through third-party businesses as employees and one comment opposed. One commenter noted that these arrangements help HUBZone firms connect with potential employees who may not otherwise be familiar with the program or its benefits. By connecting HUBZone firms with eligible employees, third-party businesses serve the program goal of increasing employment opportunities for individuals in HUBZones. Another commenter noted that an applicant seeking HUBZone status (or one already in the program) may not need a full-time employee, and that concern should not be burdened with employing someone beyond its needs. Thus, arrangements allowing one individual to be counted as a HUBZone employee for more than one concern provides flexibility to firms to meet their needs and provides the opportunity for an individual to be fully employed where they otherwise might not be. SBA has considered all the comments received and is not changing the current policy allowing these arrangements where the arrangement appears legitimate and the HUBZone applicant (or participant) shows that the individuals being hired through the third-party business are doing legitimate work.

SBA proposed to revise the definition of ''HUBZone small business concern'' to remove ambiguities in the regulation. Currently, the definition of this term is copied directly from the Small Business Act and addresses only the ownership and control requirements. SBA proposed to revise the definition to state that ''HUBZone small business concern or certified HUBZone small business concern'' means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program. In addition, SBA proposed to replace the term ''qualified

HUBZone SBC'' through the regulations with the term ''certified HUBZone small business concern'' (or ''HUBZone small business concern'') to make the regulations more clear, since firms must apply to SBA and be certified as HUBZone small business concerns before they are can qualify to receive the benefits of the HUBZone program.

In addition, SBA proposed to implement section 1701(i) of the NDAA 2018 in the amended definition of ''HUBZone small business concern.'' In enacting section 1701(i), Congress intended for small businesses located in expiring redesignated areas to retain their HUBZone eligibility until the date on which SBA updates the HUBZone maps in accordance with the broader changes described in section 1701. In other words, firms that were certified HUBZone small business concerns as of the date of enactment of the NDAA 2018 (December 12, 2017), and that had principal offices located in redesignated areas set to expire prior to January 1, 2020, shall remain certified HUBZone small business concerns until SBA updates the HUBZone maps after the 2020 decennial census, so long as all other HUBZone eligibility requirements described in § 126.200 are met. This means that in order to continue to be considered a certified HUBZone small business concern, the firm must: Continue to meet the HUBZone ownership and control requirements; continue to meet the 35% HUBZone residency requirement; and maintain its principal office in the redesignated area or another qualified HUBZone. SBA notes that to implement this change, SBA will ''freeze'' the HUBZone maps with respect to qualified census tracts, qualified non-metropolitan counties, and redesignated areas. As a result, for all redesignated areas in existence on December 12, 2017, the expiration of their HUBZone treatment has been extended until December 31, 2021. SBA selected this date because SBA estimates that the HUBZone maps will have been updated to incorporate the results of the 2020 census and to reflect the broad changes mandated by section 1701 by that time, and selecting a specific date provides stability to program participants. SBA did not receive any comments on the proposed definition of ''HUBZone small business concern'' and is implementing the changes as proposed.

SBA proposed to amend the definition of ''principal office'' to eliminate ambiguities in the regulation. Specifically, SBA proposed to make more clear that when determining whether a concern's principal office is located in a HUBZone, SBA counts all employees of the concern other than those employees who work at job-sites. In addition, SBA proposed to clarify that a concern must demonstrate that it conducts business at a location in order for that location to be considered its principal office. SBA believes HUBZone firms should provide evidence that business is being conducted at the location to ensure the purposes of the HUBZone Program are being fulfilled. A firm that simply owns or leases a building but conducts no business there is not fulfilling the purposes of the program. Finally, SBA proposed to add clarifying language and examples to the definition of principal office, to illustrate how the agency treats situations in which employees work at multiple locations. SBA received three comments supporting these proposed changes. SBA also received two comments asking if SBA intended for ''job-site'' to refer only to firms whose primary industry classification is construction. The final rule clarifies that ''job-site'' refers to locations where work is performed for all service or construction contracts.

SBA proposed to amend the definition of ''qualified base closure area'' to remove ambiguities in the regulation and to be consistent with SBA's interpretation of the statutory text. SBA received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but clarifies that ''qualified base closure areas'' are base closure areas that are treated as HUBZones for at least eight years. SBA agrees with this comment and has revised this definition accordingly.

SBA proposed to amend the definition of ''qualified census tract'' to make the regulation more readable. The proposed definition described the criteria used to define this term in the Internal Revenue Code, rather than simply cross-referencing it as the regulation currently does. SBA received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but simply adds a reference to the HUBZone maps. SBA agrees with this comment and has amended this definition accordingly.

SBA proposed to amend the definition of ''qualified non-metropolitan county'' to include Difficult Development Areas (DDAs) and to reflect SBA's current policy of utilizing the most recent data from the Local Area Unemployment Statistics report, which is annually produced by the Department of Labor's Bureau of Labor Statistics. The proposed definition explains that a DDA is an area defined by the Department of Housing and Urban Development that is within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous states. DDAs may be HUBZones if they are also nonmetropolitan counties. The proposed rule noted that it has been including qualified non-metropolitan counties that are DDAs in its program since the statutory authority was enacted, but had not yet amended the term qualified non-metropolitan county to include DDAs. SBA received a comment noting that section 1701 of the 2018 NDAA amends this definition effective January 1, 2020, and suggesting that SBA amend this definition to reflect this change. The statutory amendment does not make a substantive change but adds a reference to the HUBZone maps, corrects a reference to the Internal Revenue Code, and clarifies that qualified nonmetropolitan counties are designated based on a 5-year average of the available data. SBA agrees with this comment and has amended this definition accordingly.

The proposed rule also amended the definition of ''reside.'' This term is used when analyzing whether an employee should be considered a HUBZone resident for purposes of determining a firm's compliance with the 35% HUBZone residency requirement. SBA proposed to remove the reference to primary residence, to eliminate the requirement that an individual demonstrate the intent to live somewhere indefinitely, and to provide clarifying examples. SBA proposed to remove the reference to primary residence because many individuals do not have primary residences as the term is traditionally defined. SBA proposed to remove the requirement to prove intent to live somewhere indefinitely because SBA does not have a reasonably reliable method of enforcing this requirement. In the alternative, SBA proposed that ''reside'' means to live at a location full-time and for at least 180 days immediately prior to the date of application or date of recertification, as applicable. The definition also makes clear that to determine an individual's residence, SBA will first look to an individual's address as identified on his or her driver's license or voter's registration card, which is SBA's current and long-standing policy. Where such documentation is not available, SBA

will require other specific proof of residency, such as deeds or leases, or utility bills. Additionally, this rule also proposed examples to add clarity to these revisions. SBA specifically requested comments on these proposed changes.

SBA received 36 comments on the proposal that ''reside'' requires that an individual live in a place for at least 180 days before certification. Of these comments, 24 opposed the proposed changes, 9 supported them as proposed, and 3 supported SBA's intent behind the proposed changes but suggested alternate language to convey that intent. Of the comments opposed, most expressed concern that the 180-day requirement would further limit the pool of eligible employees for HUBZone firms. Several commenters suggested shorter timeframes, including 90 days or 30 days. SBA understands these concerns but believes that a shorter timeframe, or no timeframe at all, would allow firms seeking HUBZone status to circumvent the intent of the program by encouraging individuals to move into a HUBZone designated area shortly before the concern applies for certification and then move out of that area immediately after the concern is certified, yet still be counted as a HUBZone employee. That clearly would not serve the purpose of the HUBZone program, which is to promote capital infusion into HUBZone areas and to employ individuals living in HUBZones. This aim is best achieved by counting as employees individuals who have long-term connections in an area. However, SBA agrees with comments noting that a residency requirement that is defined too narrowly may constrain firms' ability to attract and hire qualified employees, such as students. SBA notes that this rule does not intend to prohibit students from counting as HUBZone employees if they reside in a HUBZone area for at least 180 days.

Several commenters raised concerns that the proposed rule did not require any specified period of HUBZone residency after certification and believed some period of residence after certification should be required in order to reduce the likelihood of firms trying to circumvent the residency requirements. SBA believes that the regulation requiring an individual to demonstrate an intent to continue to reside in a HUBZone indefinitely has been hard to enforce. As such, SBA does not believe it would be helpful to keep that requirement. SBA does agree, however, that some post-certification residency requirement should be imposed. As discussed further below, SBA has revised proposed § 126.200(d)(3) to require that an individual must live in a HUBZone for at least 180 days after certification in order for that individual to be counted as a resident of a HUBZone beyond the first year after certification. The same rule will apply to new HUBZone resident employees at the time of recertification—meaning that an individual who is being considered a HUBZone resident employee for the first time at the time of recertification must have lived in a HUBZone for at least 180 days prior to the date of recertification to be counted towards the 35% requirement, and then must continue to live in a HUBZone at least 180 days after recertification in order to count as a HUBZone resident employee thereafter. Consequently, as long as an individual lived in a HUBZone for at least 180 days prior to certification (or recertification, as applicable), he or she will count as a HUBZone employee for that entire HUBZone program year, even if the individual moves out of a HUBZone within 180 days of certification or recertification. However, if an individual moves out of a HUBZone within 180 days of certification (or recertification, as applicable), that person will not be considered a HUBZone employee in subsequent years.

In addition, the proposed rule acknowledged that more small businesses are performing contracts overseas and are faced with the problem of how to treat those employees who reside in a HUBZone when in the United States or its territories, but are temporarily residing overseas to perform a contract. SBA proposed that it will consider the residence located in the United States as an employee's residence, if the employee is working overseas for the period of a contract. SBA believes that as long as that employee can provide documents showing he or she is paying rent or owns a home in a HUBZone, then the employee should be counted as a HUBZone resident in determining whether the small business meets the 35% HUBZone residency requirement. Because of the change in § 126.200(d)(3), discussed below—which treats an individual as a HUBZone resident if that individual resided in a HUBZone at the time his or her employer was certified into the HUBZone program or at the time he or she first worked for the certified HUBZone small business concern (*i.e.,* the individual was hired after the firm was certified into the HUBZone program), so long as he or she continues to work for that same firm, even if the area where the individual lives no longer qualifies as a HUBZone or the individual has moved to a non-HUBZone area—this provision would have meaning only with respect to firms that have employees performing overseas contracts and are applying to the HUBZone program for the first time. An individual who already qualified as a HUBZone resident for a certified HUBZone small business would continue to be treated as a resident of a HUBZone for HUBZone program eligibility purposes as long as he or she continued to work for the same certified HUBZone small business.

SBA received six comments in favor of considering the U.S. address of individuals working on overseas contracts as their addresses for HUBZone residency purposes and one comment opposed to this change. SBA also received three comments suggesting that SBA not consider the address of employees working on overseas contracts at all as long as they resided in HUBZones at the time of certification. As discussed below, that is exactly what the change at § 126.200(d)(3) will accomplish. As such, SBA is adopting the rule as proposed.

SBA also proposed changes to or the elimination of the following definitions: Non-metropolitan county, redesignated area, median household income, metropolitan statistical area, primary industry classification, small disadvantaged business (SDB), and statewide average unemployment rate. SBA did not receive any comments regarding these definitions and is adopting the changes as proposed.

2. Eligibility Requirements

Section 126.200

SBA proposed to reorganize § 126.200 to make the section more readable and to make the HUBZone eligibility requirements clearer. SBA received one comment on proposed § 126.200(a), which addressed the ownership requirements for HUBZone small business concerns. The commenter requested that SBA make clear that firms owned by tribes and Native Hawaiian Organizations (NHOs) need not be structured as corporations to be eligible for the HUBZone program but can take any legal form. SBA believes this is clear in the regulations. Proposed §§ 126.200(a)(3) and 126.200(a)(6) provided that in order to be eligible for HUBZone certification, a ''concern must be . . . [a]t least 51% owned by one or more Indian Tribal Governments or by a corporation that is wholly owned by one or more Indian Tribal Governments'' or ''[a]t least 51% owned

by one or more NHO[s], or by a corporation that is wholly owned by one or more NHO[s].'' The current HUBZone regulations define ''concern'' to mean ''a firm which satisfies the requirements in §§ 121.105(a) and (b) of this title.'' Section 121.105(b) provides: ''A business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.'' SBA has implemented this paragraph as proposed.

In proposed § 126.200(b), which addresses the size requirements for HUBZone small business concerns, SBA clarified that in order to remain eligible as a certified HUBZone small business concern, a firm must qualify as small under the size standard corresponding to one or more NAICS codes in which it does business. This clarification was meant to prevent firms that have grown to be other than small in all industries from remaining in the HUBZone program. SBA did not receive any comments on this paragraph and it has been adopted as proposed.

In proposed § 126.200(c), which addresses the principal office requirement, SBA proposed to replace the word ''adjoining'' with the word ''adjacent'' as it was used to describe HUBZones neighboring Indian reservations, because SBA believes this term is more accurate. SBA did not receive any comments on this change and will adopt the provision as proposed. SBA did, however, receive several comments recommending changes to the principal office requirement that would take into account long-term investment in a qualified HUBZone area. Two commenters recommended that SBA adopt a provision similar to that proposed for HUBZone residency, meaning that if a concern makes a substantial investment to establish a principal office in a qualified HUBZone area and that area loses its HUBZone status, the concern should be deemed to continue to have its principal office located in a HUBZone for some extended period of time. One of the commenters suggested that such period of time should be for at least ten years or for the length of a long-term lease. They argue that with such a change, firms would make more permanent investments and more substantial leasehold improvements in a HUBZone, which would benefit the community at large. Another commenter suggested that any firm that has moved its principal office into a qualified HUBZone area should be able to have that principal office location be considered to be in a HUBZone for at least a known, specified amount of time. The commenter believes that firms would otherwise be hesitant to expend the substantial resources necessary to move into a HUBZone if there is uncertainty as to how long such status would last. The commenter points to the possibility that a firm could move into a qualified HUBZone area one year, have the area lose its HUBZone status the next year, and then get an additional three years of HUBZone eligibility through the area's redesignated status. The commenter argues that that is not enough time for a firm to recoup its moving costs, and, thus, firms would choose not to relocate into a HUBZone area. Another commenter noted that even if a small business concern located in an area that lost its HUBZone status were willing to relocate its principal office to another qualified HUBZone, its existing employees might be unable or unwilling to relocate with the business. SBA agrees with the commenters that establishing a principal office in a HUBZone can be a significant investment for any business, especially small businesses, and that by providing more certainty regarding a firm's eligibility for the program will further the programmatic purpose of encouraging firms to invest in these areas for the long term. In response to the comments, the final rule provides that a concern that owns or makes a long-term investment (*i.e.,* a lease of at least 10 years) in a principal office in an area that qualifies as a HUBZone at the time of its initial certification will be deemed to have its principal office located in a HUBZone for at least 10 years from the date of that certification as long as the firm maintains the long-term lease or continues to own the property upon which the principal office designation was made. This means that in the example cited by the commenter above, the firm's principal office would be deemed to be located in a HUBZone for 10 years from the date of its certification even though the area's redesignated status would have ended after five years. In order to be eligible for a HUBZone contract, the firm would still have to meet the 35% HUBZone residency requirement and continue to qualify as a small business concern under the size standard corresponding to the NAICS code assigned to the contract. The final rule also provides that this change would not apply to leases of office space that are shared with one or more other concerns or individuals, or to other co-working arrangements. SBA does not believe that ''virtual offices'' or co-working arrangements rise to the level of a significant investment in a HUBZone area that would warrant this exception. Similarly, SBA does not believe that the exception should apply to subleases, which also do not create a significant investment in a HUBZone area.

Proposed § 126.200(d) addressed the 35% HUBZone residency requirement, and SBA received numerous comments in response to this paragraph. In proposed § 126.200(d)(1), SBA proposed to change how SBA requires a firm to meet the 35% residency requirement when the calculation results in a fraction. Previously, when the calculation of 35% of a concern's total employees resulted in a fraction, SBA would round up to the nearest whole number. For example, under the current rule, if a firm has 6 total employees, since 35% of 6 is 2.1, then SBA would round 2.1 up to 3 and require the firm to employ 3 HUBZone residents to meet the 35% HUBZone residency requirement. Under the proposed rule, SBA would round to the nearest whole number, rather than rounding up in every instance. This means that if 35% of a firm's employees equates to X plus .49 or less, SBA would round down to X and not up to the next whole number. Thus, in the example above, SBA would round 2.1 down to 2 and would require the firm to employ only 2 HUBZone residents. SBA received 11 comments in support of the proposed change and one opposed. The commenter who opposed the change argued that firms should be allowed to round up to meet the requirement. SBA believes that this commenter misinterpreted SBA's intent because the new rule will provide more flexibility and allow an even greater number of firms to meet the 35% residency requirement. Moreover, a rule that mirrors the common usage of rounding will reduce confusion for participants and applicants. This final rule adopts this change as proposed.

In order to provide stability and certainty for program participants, in proposed § 126.200(d)(3), SBA proposed that an employee that resides in a HUBZone at the time of a HUBZone small business concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located ceases to be qualified as a HUBZone. Under this change, a certified HUBZone small business concern would have to maintain records of the employee's original HUBZone address, as well as records of the individual's continued

and uninterrupted employment by the HUBZone small business concern, for the duration of the firm's participation in the HUBZone program.

SBA received 21 comments in support of the proposed change, two partially supporting the proposed change, four opposed, and two requesting clarification. The comments in support of the proposed change agreed with SBA's intent, which is to avoid penalizing successful HUBZone firms with employees who, as a result of the firm's success, have increased flexibility in deciding where to live. The unsupportive comments noted that the change would enable firms to maintain their HUBZone status even if they are no longer benefiting the communities in which they are located by providing employment opportunities to residents. SBA recognizes this legitimate concern, but believes it would be more harmful to the public policy goals of the program for firms to be punished by their own success by requiring them to either fire employees who have moved out of a HUBZone, or to have to seek out and hire additional employees who currently live in HUBZones, regardless of their staffing needs. In addition, a HUBZone concern would always be required to maintain its principal office in a HUBZone, which would support increased economic activity in the HUBZone. In response to the change made to the term ''reside,'' the final rule also makes a change to § 126.200(d) to require an employee to continue to live in a HUBZone for at least 180 days after certification (or recertification if that was the first time that the individual's HUBZone residency was used to qualify the concern). Then, as long as he or she continuously remains an employee of the concern, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone, he or she will continue to count as a HUBZone employee for that concern. However, if an individual moves out of a HUBZone, or the area where he or she lives loses its status as a HUBZone within 180 days, the individual will not count as a HUBZone employee at the time the firm seeks recertification. Similarly, if an individual has a break in employment by the HUBZone firm, he or she will not count as a HUBZone employee upon reemployment unless the individual has resided in a HUBZone for at least 180 days prior to the date the firm seeks recertification.

Finally, one commenter asked for clarification regarding an employee who lived in a HUBZone at the time he or she was employed by a certified HUBZone small business concern, but who moved out of the HUBZone prior to the change specified in this final rule. The commenter asked for clarification as to whether such an employee, who lost his or her status as a HUBZone employee when he or she moved out of a HUBZone but is still employed by the certified HUBZone small business concern, would once again count as a HUBZone employee under this final rule. The new regulatory language of § 126.200(d)(3) specifies that an employee who resides in a HUBZone at the time of certification or recertification shall continue to count as a HUBZone resident employee as long as the individual continues to live in the HUBZone for at least 180 days after certification. There are three requirements in this provision. First, the individual must live in a HUBZone at the time he or she is counted as a HUBZone resident in order to qualify a firm as a certified HUBZone small business concern. Second, the individual must continue to live in a HUBZone for at least 180 days after the certification. Third, the individual must continuously work for the certified HUBZone small business concern. In the case questioned in the comment, the individual lived in a HUBZone at the time he or she was counted as a HUBZone resident to qualify a firm as a certified HUBZone small business concern. That individual has continued to work for the certified HUBZone small business concern since its certification. Thus, as long as the individual continued to live in a HUBZone for at least 180 days after the certification date, that individual would count today as a HUBZone employee. It would not matter that for some certain amount of time the individual did not count as a HUBZone employee.

SBA proposed to clarify in § 126.200(g) that the concern and its owners cannot have an active exclusion in the System for Award Management and be certified into the program. SBA believes that this logically follows from a debarred or suspended status, but amended the regulations for clarity nevertheless. Debarred and suspended entities are ineligible for Federal contracting assistance and would thus not receive any benefits from being certified as a HUBZone small business concern. SBA received one comment in support of this change and is adopting the rule as proposed.

Section 126.204

SBA proposed changes to § 126.204 in order to clarify that a HUBZone small business concern may have affiliates, but the affiliate's employees may be counted as employees of the HUBZone applicant/participant when determining the concern's compliance with the principal office and 35% percent HUBZone residency requirements. The proposed changes to § 126.204 clarified that where there is evidence that a HUBZone applicant/participant and its affiliate are intertwined and acting as one, SBA will count the employees of one as employees of the other. Further, the proposed rule stated the HUBZone applicant or concern must demonstrate to SBA a clear line of fracture between it and any affiliate in order for SBA to not count the affiliate's employees when determining the concern's principal office or compliance with the 35% residency requirement. This has always been SBA's policy and SBA merely sought to eliminate ambiguities in the regulation.

When looking at the totality of circumstances to determine whether individuals are employees of a concern, SBA will review all information, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1. This means that SBA will consider the employees of an affiliate firm as employees of the HUBZone small business if there is no clear line of fracture between the business concerns in question, the employees are in fact shared, or there is evidence of intentional subterfuge. When determining whether there is a clear line of fracture, SBA will review, among other criteria, whether the firms operate in the same or similar line of business; operate in the same geographic location; share office space or equipment; share any employees; share or have similar websites or email addresses; share telephone lines or facsimile machines; have entered into agreements together (*e.g.,* subcontracting, teaming, joint venture, or leasing agreements) or otherwise use each other's services; share customers; have similar names; have key employees participating in each other's business decisions; or have hired each other's former employees. Conversely, SBA would not treat the employees of one company as employees of another for HUBZone program purposes if the two firms would not be considered affiliates for size purposes. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of one concern as employees of another for HUBZone program purposes only where SBA first determines that the two firms should be considered affiliates for size purposes.

SBA received seven comments on this proposed change. All seven comments supported SBA's proposed amendment clarifying that employees of affiliates are considered employees of a HUBZone participant or applicant if there is no clear line of fracture between the two. Several of the comments requested clarifying examples. One commenter was concerned that any contact between a parent company or one or more sister companies could cause SBA to aggregate the employees of those concerns in determining whether 35% of the concern's employees reside in a HUBZone. That was not SBA's intent. In response, SBA has clarified that minimal business activity between the concern and its affiliate and the use of common back office or administrative services between parent and/or sister concerns will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern. Several commenters requested additional clarification on how SBA would treat the employees of sister companies for entity-owned companies. These comments recommended that SBA state that there would be a presumption that the employees of sister-owned companies of entities should not be counted. SBA does not believe that such a presumption is needed. This section clarifies when employees ''of an affiliate'' should be counted as employees of the applicant or HUBZone small business concern. Under § 121.103(b)(2)(ii) of SBA's size regulations, business concerns owned and controlled by Indian Tribes, ANCs, NHOs, or CDCs are not considered to be affiliated with other concerns owned by these entities because of their common ownership, common management, or common administrative services. Affiliation may be found for other reasons. Thus, if the interconnections between sister companies of a tribe, ANC, NHO or CDC are merely based on common ownership, management or performance of administrative services, the firms would not be considered affiliates and would not be aggregated for HUBZone eligibility purposes. It is only where affiliation exists between entity-owned sister companies that SBA might count employees of a sister company as employees of the HUBZone applicant/participant when determining the concern's compliance with the principal office and 35% percent HUBZone residency requirements, and then only if there is not a clear line of fracture between the business concerns.

SBA has also added an example to § 126.204, which refers to the definition of ''employee'' laid out in § 126.103.

Section 126.205, Section 126.206, Section 126.207

In § 126.205, SBA proposed to delete the statement that ''Participation in other SBA Programs is not a requirement for participation in the HUBZone Program.'' SBA believes that this language is unnecessary and may merely confuse prospective HUBZone small businesses.

In § 126.206, SBA proposed to replace the term ''non-manufacturers'' with ''nonmanufacturers'' to be consistent with SBA's regulations at § 121.406(b).

SBA proposed to amend the title and text of § 126.207 to clarify that a HUBZone small business concern may have multiple offices, as long as the firm's principal office is located in a HUBZone, and to clarify that a different rule applies to concerns owned by Indian Tribal Governments.

SBA did not receive any comments in response to the proposed changes to §§ 126.205, 126.206, and 126.207. Therefore, SBA is adopting the proposed changes as final.

3. Certification

The HUBZone program is a certification program. In other words, a small business concern must submit an application and supporting documents to SBA in order for SBA to determine eligibility and certify the company into the program. SBA proposed several clarifications to its certification process.

Section 126.300

SBA proposed to divide § 126.300 into several paragraphs to make it clearer and more readable, to move the discussion of the adverse inference rule to § 126.306, and to clarify that SBA may conduct site visits, conduct independent research, and review additional information (such as tax and property records, public utility records, postal records, and other relevant information). SBA received no comments on § 126.300 and is adopting the proposed changes as final.

Section 126.303

SBA proposed to revise § 126.303 to update the instructions for submitting electronic applications. The proposed rule clarified that an applicant must submit a completed application and all documents and a representation that it meets the program's requirements as of the date of the application and that the information provided and any subsequent information provided is complete, true and accurate. Further, SBA proposed to require that the application and any supporting documentation must be submitted by a person authorized to represent the concern. SBA did not receive any comments regarding this section and is adopting the proposed changes as final.

Section 126.304

SBA proposed several changes to § 126.304. The proposed rule clarified that an applicant must submit a completed application and all documents and a representation that it meets the program's requirements as of the date of the application and that the information provided and any subsequent information provided is complete, true and accurate. The rule also proposed to require that the representation be electronically signed by a person who is authorized to represent the concern. SBA believes that this should either an owner or officer of the applicant, and not an administrative employee acting on behalf of an officer.

Further, SBA proposed to clarify that after an application has been submitted, the applicant must immediately notify SBA of any changes that could affect its eligibility. The applicant would have to provide information and documents to support the changes.

Finally, SBA proposed to clarify that if an applicant believes that an area is a HUBZone but SBA's website is not showing the area to be a qualified HUBZone, the applicant must note this on the application. Further, the applicant must provide documents demonstrating why it believes that the area meets the statutory criteria of a HUBZone. It cannot merely assert that it believes the area is underutilized and should be a HUBZone; it must show that the area meets the statutory criteria.

SBA received four comments to the changes proposed to § 126.304. One commenter disagreed with requiring electronic signatures, believing that not all small businesses have the capability to e-sign. SBA agrees. The final rule merely requires that an authorized representative of the concern submit the application and supporting documentation. SBA will accept electronic signatures but will not require them. In addition, a commenter noted that while proposed § 126.304(a) required representations to be made only by an owner of the applicant, the supplementary information to the proposed rule noted that the person making representations on behalf of a concern should either be an owner or officer of the applicant, and not an administrative employee acting on behalf of an officer. The commenter supported the flexibility provided for in

the supplementary information. In response to the comment, the final rule authorizes either an owner or officer to represent the concern.

SBA received one comment on § 126.304(c). The commenter did not think a concern should have to wait 90 days to resubmit its application. This requirement however is not new. The proposed regulation moved the requirement to a new section for clarity and consistency. The current requirement can be found in § 126.309. This provision is consistent with other proposed sections of the regulations that require concerns that are found ineligible to wait 90 days before submitting a new application for the program. As such, the final rule does not shorten the 90-day time period to reapply for HUBZone certification after initially being declined.

SBA did not receive any comments to proposed § 126.304(d), which authorized an applicant to represent that it believes that an area is a qualified HUBZone where SBA's website is not showing the area as such. This rule adopts the proposed language as final.

SBA received one comment on § 126.304(e), which required concerns to retain records demonstrating their eligibility for six years. The commenter believed this requirement was overly burdensome. However, this is not a new requirement. SBA moved the requirement and simplified the wording to provide more clarity. The requirement to maintain these records for six years is currently in § 126.401(b). Given that this is not a new requirement, SBA is adopting the rule as proposed.

Section 126.306

SBA proposed several changes to § 126.306. SBA proposed to clarify that the agency must receive all required information, supporting documents, and a completed HUBZone representation before it will begin processing a concern's application and that SBA will make a final decision within 90 calendar days after receipt of a complete package, whenever practicable. SBA proposed to clarify that the burden of proof to demonstrate eligibility is on the applicant concern and if the concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may presume that disclosure of the missing information would adversely affect the business concern and demonstrate a lack of eligibility in the area or areas to which the information relates and decline the applicant. Finally, SBA proposed to clarify that an applicant must be eligible as of the date it submitted its application and up until the time the D/HUB issues a decision. SBA cannot certify a business into the program that does not meet the eligibility requirements at that time.

SBA received three comments. The first comment suggested that applications should be processed within thirty days of SBA receiving a complete application submission. The second comment noted that the 2018 NDAA requires applications to be processed in 60 days, starting January 1, 2020, and suggested that the rule be changed to be consistent with this upcoming statutory requirement. SBA agrees with this second comment and has made this change to the rule. The third comment discussed issues with the current application process that are beyond the scope of this rulemaking.

Section 126.307

SBA proposed to amend § 126.307 to make a general reference to the website where SBA identifies where firms are listed as certified HUBZone small business concerns so that the regulation itself does not have to be updated every time a change in the website location occurs. The proposed rule deleted the reference to the ability of requesters to obtain a copy of the list of certified HUBZone small business concerns by writing to the D/HUB at SBA. An interested party may find all firms that are certified HUBZone small business concerns by searching the Dynamic Small Business Search (DSBS) system, and can verify a specific concern's HUBZone certification. SBA believes that the availability of this search function makes written requests an outdated and inefficient way of obtaining current information about certified HUBZone small business concerns. SBA did not receive any comments on this change and will adopt the rule as proposed.

Section 126.308

SBA proposed to amend § 126.308 to clarify that certified HUBZone small business concerns cannot ''opt out'' of being publicly displayed in the DSBS system. All certified HUBZone small business concerns appear in DSBS as certified HUBZone small business concerns, and those not so appearing will not be eligible for HUBZone contracts. SBA did not receive any comments on this change and will be adopting the rule as proposed.

Section 126.309

SBA proposed to revise § 126.309 to add a new provision permitting a firm to submit a formal request for reconsideration when it receives a determination denying admission to the HUBZone program. SBA proposed this change in order to make the HUBZone program more consistent with the 8(a) BD program, where a firm that is declined admission may request reconsideration of that decision and have an opportunity to demonstrate its eligibility within 45 days of the decline decision rather than having to wait a year to reapply. SBA received three comments regarding this section. One commenter supported the changes to § 126.309 as proposed. One commenter believed that the 15-day timeframe set forth in the proposed rule for submitting a request for reconsideration was insufficient and recommended extending the amount of time to submit a request for reconsideration. One commenter thought that a reconsideration process that in effect amounted to allowing a concern to submit a totally revised application contradicted the provision requiring applicants to wait 90 days before submitting a new application. If SBA were to proceed with authorizing reconsideration, SBA agrees with the commenter that the 15-day timeframe should be lengthened. Since SBA allows a concern to submit a new application after 90 days from the date of the decline decision, it would not make sense to extend the reconsideration process to that extent. With 15 days being too short and 90 days not making sense with the ability to reapply at that point, SBA would have to determine some point in between to be the appropriate amount of time. In response to the comments and upon further consideration, SBA believes that a reconsideration process is not needed. Unlike the 8(a) BD program, where a concern must wait one year from the date of a final decline decision to reapply to the program, a concern can reapply to the HUBZone program 90 calendar days after the date of decline. Thus, a reconsideration process that allows changes to overcome deficiencies in an application in a shortened timeframe becomes redundant. The current HUBZone application process does not authorize reconsideration, and SBA has not been inundated with recommendations calling for a reconsideration process. SBA merely sought to make applying to the HUBZone program consistent with that for the 8(a) BD program. Upon further review, SBA believes that is not necessary in this instance. Allowing a concern to reapply for the HUBZone program 90 days after a decline decision appears to be a reasonable and

appropriate amount of time. As such, the final rule does not adopt the proposed reconsideration process.

4. Program Examinations

As part of SBA's oversight responsibilities for the HUBZone program, SBA monitors certified HUBZone small business concerns, and verifies information submitted by HUBZone applicants, by conducting program examinations.

Section 126.401

SBA proposed to revise § 126.401 to clarify what a program examination is. The proposed rule provided that a program examination is a review by SBA that verifies the accuracy of any certification made or information provided as part of the HUBZone application or recertification process. SBA did not receive any comments on this provision and is adopting § 126.401 as proposed.

Section 126.402

SBA did not receive any comments on the minor proposed wording change to § 126.402. However, SBA did receive numerous comments on §§ 126.500 and 126.501 concerning the lack of clarity regarding the burden on participants during the recertification process. In order to provide more clarity, SBA has made changes to § 126.402 related to program examinations and when program examinations may be part of the recertification process. SBA is adding new language to § 126.402 to provide clarity as to when a program examination will be initiated. The new language specifically references § 126.500 and the recertification process. The final rule also provides that SBA will conduct program examinations when determined to be necessary during recertification. In order to provide additional clarity, the final rule also incorporates language similar to that contained in § 124.112(c) for the 8(a) BD program into § 126.402. Specifically, the final rule provides that SBA will examine a certified HUBZone small business concern's eligibility for continued participation in the program upon the receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility.

Section 126.403

SBA proposed to revise § 126.403 to clarify what SBA will review during a program examination. The rule stated that SBA would be able to review any information related to the concern's HUBZone eligibility, including documentation related to the concern's ownership and principal office, compliance with the 35% HUBZone residency requirement, and the concern's ''attempt to maintain'' 35% of its employees from a HUBZone during the performance of a HUBZone contract. SBA did not receive any comments on this section and is adopting the proposed language as final.

Section 126.404

SBA proposed to add a new § 126.404 to provide the procedures and possible outcomes of a program examination. Whether a concern is applying to the HUBZone program for the first time, is undergoing recertification, or is subject to a program examination for another reason, SBA's program examination can result in a decision finding the concern either to be eligible to participate in the program (either for the first time or to be able to continue in the program), or not eligible to participate in the program (which would result in a disapproval of an application or the decertification of a HUBZone concern). SBA received a comment noting that section 1701(h) of the 2018 NDAA requires that starting January 1, 2020, firms found ineligible as a result of a program examination be given 30 days to provide documentation showing that they are in fact eligible. During this time, firms cannot compete for or be awarded HUBZone contracts. If after the 30-day period, the firm has not demonstrated its HUBZone eligibility, it shall be decertified. SBA agrees with this comment and makes these changes to the final rule.

5. Maintaining HUBZone Status

Section 126.500

SBA proposed to amend § 126.500 to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years as required prior to the proposed change. The proposed rule also provided that when a concern fails to submit its annual recertification to SBA, SBA will start proceedings to decertify the concern.

SBA received 24 comments in response to this proposed change. Although many commenters supported the change, a majority thought that recertification on an annual basis would be burdensome for certified HUBZone small business concerns if recertification entailed a full programmatic review of concerns each year. If, however, recertification required some sort of less exhaustive process, a majority of commenters favored the change. Several commenters believed that the current process of requiring recertification by SBA every three years should be retained and one commenter recommended recertification every five years.

SBA does not seek to impose unnecessary burdens on certified HUBZone small business concerns. However, SBA takes seriously its responsibility to ensure that only eligible concerns remain as certified HUBZone small business concerns. In response to comments received from both small business concerns and procuring agencies, SBA agrees that a full document review recertification process is not needed annually. Such a process could be burdensome on small businesses, difficult for SBA to timely accomplish, and, therefore, could be inefficient for procuring agencies seeking to make awards through the HUBZone program. The final rule keeps the requirement that certified HUBZone small business concerns must annually represent that they continue to meet all HUBZone eligibility criteria. However, SBA will accept the representation without requiring the certified HUBZone small business concern to submit any supporting information or documentation unless SBA has reason to question the concern's recertification. If at the time of its recertification the certified HUBZone small business concern is not currently performing a HUBZone contract, its recertification means that at least 35% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone. If at the time of its recertification the certified HUBZone small business concern is currently performing a HUBZone contract, its recertification means that at least 20% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone. This requirement is no different or any more burdensome than the current requirement that concerns must annually certify their size status in the System for Award Management (SAM). SBA will then require a full document review recertification, or program examination, every three years, which is the same as currently required. SBA believes this approach balances the need to not impose unnecessary burdens while promoting program integrity and ensuring only eligible firms remain as certified HUBZone small business concerns.

Section 126.501

SBA proposed to amend § 126.501 to provide that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification (as long as the concern qualifies as small for the size standard corresponding to the NAICS code assigned to any such contract). On the one-year anniversary of the firm's HUBZone certification, the firm would be required to recertify to SBA that it continues to meet the HUBZone eligibility requirements or voluntarily withdraw from the HUBZone program.

SBA received 19 comments on proposed § 126.501. Of the comments, 16 supported the change. One comment, while supportive, was also concerned about the burden that could be caused by requiring a full re-application process each year for recertification. This comment also recommended keeping the certification good for a year, and only doing a full application-type certification every three years. SBA believes it has addressed the concerns raised by this comment in changes made to § 126.500, discussed above. The final rule has made some clarifications to § 126.501 to take into account the changes made by this rule to § 126.500.

SBA received two comments that opposed the changes generally. The commenters believed that the change could lead to issues with employees being fired near the time of recertification or concerns generally not meeting the eligibility requirements throughout the year. The comments either requested the change not be adopted, or that additional regulations be added to allow additional opportunities for SBA to review a concern's eligibility, possibly a protest mechanism. SBA does not believe these changes are needed to this section. As noted above, the final rule has amended § 126.402 to provide that SBA will examine a certified HUBZone small business concern's eligibility for continued participation in the program upon the receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility. In addition, SBA can perform a program examination with respect to a concern's continued eligibility at any time SBA deems it to be warranted.

In order to clarify SBA's intent in response to some of the concerns raised by the commenters, the final rule adds language requiring a certified HUBZone small business concern to timely notify SBA if the concern acquires, is acquired by, or merges with another business entity or fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103) where the concern is performing a HUBZone contract. Either case will then trigger a program examination to determine whether the concern continues to be eligible to participate in the HUBZone program.

Section 126.502

Proposed § 126.502 provided that there is no limit to the length of time a concern may remain qualified as a certified HUBZone small business concern in DSBS (or successor system) so long as it continues to comply with all eligibility requirements. SBA did not receive any comments on this section and is adopting § 126.502 as proposed.

Section 126.503

SBA proposed to amend § 126.503 to provide the procedures for program decertification and certain program examinations. The proposed rule also authorized SBA to propose decertification of a HUBZone small business concern that is performing one or more HUBZone contracts if SBA determines that the concern no longer has at least 20% of its employees living in a HUBZone.

SBA received several comments on this section. One comment supported the proposed change. One commenter recommended that firms found ineligible pursuant to a HUBZone status protest should not be decertified. SBA does not agree with this comment. It is important for concerns' certifications and recertifications to be accurate. If a concern is found to not meet the eligibility requirements at the time of its certification or recertification, SBA believes it should be decertified from the program. The concern will be allowed to reenter the program by re applying at a later date.

One comment recommended that the regulation should provide a specific amount of time for a concern proposed for decertification to respond to SBA instead of merely stating that the concern must respond to the notice of proposed decertification within the timeframe specified in the notice. SBA agrees and has amended this section to require a response to SBA within 30 days from the date it receives the letter. This 30-day response time is the same as that set forth in the 8(a) BD program for a concern to respond to a notice of proposed termination.

Section 126.504

SBA proposed to amend § 126.504 to reflect the various ways that a HUBZone small business concern could lose its designation in DSBS as a certified HUBZone small business concern, including if it has: (1) Been decertified as a result of a protest; (2) been decertified as a result of the procedures set forth in the regulations; or (3) submitted a voluntary withdrawal agreement to SBA.

SBA did not receive any comments on this section. On further consideration, SBA believes that some clarification is needed. As proposed, § 126.504(c) provided that after a concern has been removed as a certified HUBZone small business concern in DSBS (or successor system), it is ineligible for the HUBZone program and may not submit an offer on or be an awarded a HUBZone contract. When SBA's regulations required a concern to be an eligible HUBZone small business both at the time of offer and time of award, it made sense to say that as soon as a concern was decertified it would be ineligible for any future HUBZone contract. However, under the proposed rule and now this final rule, where a concern is certified as of a particular date, it remains eligible to submit offers for HUBZone contracts for a year, and if an award occurs after that one-year period, the concern would still be eligible for the award even if it could not recertify its status as an eligible HUBZone for the following year. Thus, as long as the concern was eligible at the time of its offer (and eligibility relates back to the date of its certification or recertification), it could be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS on the date of award. However, if SBA determines that the concern's recertification was invalid (*i.e.,* based on a protest or program examination SBA determines that the concern did not qualify as a HUBZone small business concern on the date of its recertification), the concern will be ineligible for the award of any HUBZone contract for which it previously certified its HUBZone status.

6. Contractual Assistance

Section 126.601

SBA proposed to revise § 126.601 to remove the discussion of the acquisition-related dollar thresholds in paragraph (a) because this does not relate to additional requirements a certified HUBZone small business concern must meet in order to submit an offer on a HUBZone contract. In addition, SBA proposed to move the discussion of compliance with the limitations on subcontracting for multiple award contracts currently in paragraph § 126.601(g) to proposed

§ 126.700, which specifically addresses the limitations on subcontracting requirements for HUBZone contracts. Finally, SBA proposed to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new § 126.619, which includes the requirement for firms to recertify their HUBZone status for HUBZone set-aside orders and Blanket Purchase Agreements. SBA received one comment in support of these changes and adopts § 126.601 as proposed.

Section 126.602

SBA proposed to amend § 126.602 to be consistent with the proposed change requiring certified HUBZone small businesses to demonstrate their eligibility at the time of initial certification and annual recertification only. Under the proposed regulation, certified HUBZone small business concerns would no longer be required to meet the 35% HUBZone residency requirement at all times while certified in the program. This means that they no longer would have to meet this requirement at the time of offer and time of award for a HUBZone contract. However, HUBZone small businesses would continue to have to ''attempt to maintain'' compliance with this requirement during the performance of a HUBZone contract.

In order to be consistent with the changes made to § 126.500 in response to comments, the final rule makes similar corresponding changes to § 126.602. The final rule clarifies that a certified HUBZone small business concern that has received a HUBZone contract must have at least 20% of its employees residing in a HUBZone during the performance of any HUBZone contract and at the time of its annual recertification.

SBA received two comments on § 126.602. One commenter recommended that SBA clarify § 126.602(b) regarding how the attempt to maintain requirement should be applied to indefinite delivery, indefinite quantity contracts, including multiple award contracts. SBA believes the regulatory language is clear. If the base contract is set aside or reserved exclusively for eligible HUBZone small business concerns, then the certified HUBZone small business concern must maintain at least 20% of its employees residing in a HUBZone throughout the full contract. However, if the concern is performing an order that was set aside or reserved for HUBZone small business concerns on a contract that was not itself set aside or reserved for HUBZone small business concerns, then the certified HUBZone small business concern must maintain at least 20% of its employees residing in a HUBZone only while preforming that task order.

Section 126.619

SBA proposed to move the discussion of recertification currently in paragraph § 126.601(h) to proposed new § 126.619. The proposed rule required an offeror to be a certified HUBZone small business concern at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract. SBA received one comment on § 126.619. The commenter believed that orders or Blanket Purchase Agreements issued under any General Services Administration Federal Supply Schedule (FSS) contract should be excluded from this requirement. The commenter argued that the FSS program has a successful track record of increasing small business opportunities under current ordering procedures and was concerned that changing those procedures could have an adverse effect on small business. The final rule adopts this recommendation to exclude orders and Blanket Purchase Agreements issued under any FSS contract at this time. Under this requirement, an offeror must be identified as a certified HUBZone small business concern in SAM at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract, except for FSS contracts. Being a certified HUBZone small business at the time of offer for an order merely means that the concern has been certified or recertified within a year of that offer and is identified in SAM as a certified HUBZone small business concern. Specifically, time of eligibility for the order relates back to the certification or recertification date, not to the date of the offer for the order. The final rule also adds language at the end of paragraph (a)(5) to clarify that a procuring agency may not count options as an award to a HUBZone small business concern where the concern has been found ineligible for the award of the contract pursuant to a HUBZone status protest pursuant to § 126.803.

Section 126.700

As noted above, SBA proposed to move the discussion of compliance with the limitations on subcontracting for multiple award contracts currently in paragraph § 126.601(g) to proposed § 126.700, which specifically addresses the limitations on subcontracting requirements for HUBZone contracts SBA did not receive any comments on this section and is adopting § 126.700 as proposed.

7. Protests

Section 126.800

The proposed rule amended § 126.800 by changing the phrase ''qualified HUBZone SBC'' to ''certified HUBZone small business concern'' throughout the section. SBA received no comments in response to the proposed changes. The final rule makes minor, non-substantive edits to the wording of the section for clarity.

Section 126.801

SBA proposed to amend § 126.801 to clarify how a HUBZone status protest should be filed and referred to SBA. Among other clarifications, SBA proposed to clarify that HUBZone status protests may be filed against HUBZone joint ventures. For consistency purposes, SBA proposed to also make these clarifications for Service-Disabled Veteran-Owned (SDVO) small business joint ventures and Women-Owned Small Business (WOSB) joint ventures by amending §§ 125.28(b) and 127.602. SBA did not receive any comments on these amendments. In addition, SBA received a comment suggesting that SBA clarify that it dismisses protests that are moot or not filed by an interested party. SBA agrees with this commenter and has amended § 126.804, which addresses this issue more specifically.

Section 126.803

SBA proposed to amend § 126.803 to specify the date at which a protested concern's eligibility will be determined, in light of the changes contained in § 126.501 providing that once certified, a HUBZone small business concern will remain eligible for HUBZone contract awards for one year from the date of certification. Proposed § 126.803(a) provided that SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial certification or its most recent recertification, whichever is later in time. This means that if a concern is certified on January 1, and the concern submits an offer on June 1 of the same year and its status is protested, SBA will determine the concern's eligibility as of January 1. After the firm completes its annual recertification, any subsequent protests during that year will relate back to its eligibility as of the date its of recertification. SBA did not receive any comments on this change and adopts it as final in this rule.

SBA also proposed to amend § 126.803 to state that a concern that is

the subject of a HUBZone protest must submit responsive information within three days of receiving notification of a timely and specific protest. The current rule is that a concern must submit such information within five days. SBA received twelve comments on the proposed change, all of which opposed it. In response to the comments, SBA has revised this provision in the final rule to reflect that concerns will continue to have five business days to respond to protests.

In addition, SBA proposed to update all instructions contained in the HUBZone regulations related to submission of information and documentation to SBA to specify that such submissions must be completed electronically. The appropriate email addresses have been added and updated where necessary, and mailing addresses and fax numbers have been removed. This change is intended to reduce the paperwork burden on program applicants and participants. There were no comments on these proposed changes and SBA adopts them as final in this rule.

Section 126.804

As discussed above, in response to a comment received, SBA has revised § 126.804 to clarify that SBA will dismiss any HUBZone status protest that is premature, untimely, unspecific, moot, or not filed by an interested party. This is simply a clarification of SBA's current policy.

Compliance With Executive Orders 12866, 13563, 12988, 13132, 13175, and 13771, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this final rule is a significant regulatory action for purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 801, *et seq.*

Regulatory Impact Analysis

1. Is there a need for the regulatory action?

SBA is making several changes to clarify its regulations. Through the years, SBA has spoken with small business representatives and has determined that several regulations needed further refinement so that they are easier to understand and implement. In addition, the major challenge with the HUBZone program over the last two decades is the lack of stability and predictability for program participants and procuring agencies. This rule attempts to make it easier for small business concerns to understand and comply with the program's requirements and to make the HUBZone program a more attractive avenue for procuring agencies. In addition, this rule implements section 1701(i) of the NDAA 2018, which allows certain certified HUBZone small business concerns to maintain their HUBZone status until 2021, and section 1701(h) of the NDAA 2018, which provides that HUBZone application decisions will be made within 60 days and that firms found ineligible under a program examination will have 30 days to provide documentation demonstrating their eligibility.

2. What are the potential benefits and costs of this regulatory action?

The rule addresses or clarifies issues, which will provide clarity to small businesses and contracting personnel. SBA believes that improved clarity will necessarily alleviate burdens on small business and make it easier to participate in the program.

The proposed rule sought to implement a formal request for reconsideration process with an associated annual cost of about $500. Because this final rule is not adopting a reconsideration process, that cost will no longer be borne by small businesses and has been removed from this impact analysis.

SBA initially proposed to require HUBZone small business concerns to recertify annually to SBA that they continue to meet all the HUBZone eligibility requirements, instead of requiring them to undergo a recertification by SBA every three years. There are approximately 5,000 firms in the HUBZone program. Under SBA's current rules, firms must recertify every three years. Approximately 1,200 firms recertify each year based on HUBZone data, and we estimate it takes approximately 1 hour to recertify (OMB Control #3245–0320). Consequently, the proposed changes would have increased the annual hourly burden for HUBZone firms by 3,800 hours or an estimated annual cost of $167,428. Instead of 1,200 firms recertifying annually, all 5,000 would have to recertify annually. However, in response to comments, the final rule merely requires a recertification without a full document production and review every year and only requires a full document production and review recertification process every three years. Thus, the only additional burden in this final rule from the current process is to require certified HUBZone small business concerns to annually represent to SBA that they continue to meet all HUBZone eligibility criteria. As such, we estimate that the burden imposed by this change will be cut in half from that proposed. Instead of 3,800 hours, SBA estimates a burden of 1,900 hours with an estimated annual cost of $83,714.

The final rule also provides that HUBZone small business concerns will not have to represent or certify that they are eligible at the time of offer and award for every HUBZone contract, which are the current program requirements. Under current rules, a HUBZone small business concern must be eligible both at the time of offer and award of a HUBZone contract. Based on Federal Procurement Data System (FPDS) data, approximately 2,100 new HUBZone contracts are awarded each fiscal year. We estimate it takes approximately 1 hour for a firm to determine it is eligible at the time of offer and approximately 1 hour for a firm to determine it is eligible at the time of award. Thus, this proposed rule will reduce burden on HUBZone small business concerns by approximately 4,200 hours for an estimated annual savings of $185,052.

SBA has amended the definition of the term ''employee'' such that an employee who resides in a HUBZone at the time of a HUBZone concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is redesignated and no longer qualifies as a HUBZone. This will greatly reduce burden on certified HUBZone small business concerns, as they will not have to continuously track whether their employees still reside in a HUBZone or seek to employ new individuals if the location that one or more current employees reside loses its HUBZone status. We estimate that it takes 1 hour to determine eligibility and that this proposed change will save approximately 0.5 hours because once a HUBZone employee is hired, the firm will never again have to examine where that employee resides. Thus, this proposed rule should reduce the hourly burden on approximately 5,000 HUBZone small business concerns by 2,500 hours annually for an estimated annual savings of $110,150.

The largest benefit of this final rule for HUBZone entities is that the flexibility provided for the residency requirement will allow many HUBZone

entities to maintain their certification even if they do not meet the 35% residency rule. As long as an employee is a resident of a HUBZone when they begin their employment, they will count toward the requirement even if they move out of a HUBZone. The average annual value of federal prime contracting dollars awarded to HUBZone certified entities from 2012 to 2017 was $6.9 billion. There are approximately 5,000 HUBZone certified firms each year, resulting in approximately $1.4 million in federal prime contracting dollars per HUBZone certified firm annually. For the same years, 62 HUBZone firms, on average, decertified per year as they no longer met the 35% residency requirement. Assuming these entities would stay certified given the new rules, this would transfer $85,973,333 from HUBZone entities who would be decertified due to the residency requirement to a certified HUBZone entity or a non-HUBZone entity. The flexibilities in this rule create distributional effects in favor of HUBZone entities but do not affect total resources available to society. Given that the primary objectives of the HUBZone program are job creation and increased capital investment in distressed communities, these distributional effects are desired and should be noted although they are not included in the estimate of benefits for the purposes of this analysis.

This rule also clarifies SBA's position with respect to HUBZone status certifications on task orders under MACs. Currently, HUBZone status certifications at the order level are not required unless the contracting officer, in his or her discretion, requests a recertification in connection with a specific order. This rule requires that an offeror be identified as a certified HUBZone small business concern in SAM at the time it submits an offer for an order issued against a MAC where the order is set-aside for HUBZone small business concerns and the underlying MAC was not a HUBZone contract, except for orders or Blanket Purchase Agreements issued under any FSS contracts. Being identified as a HUBZone small business concern in SAM at the time of offer for the order will be considered a recertification of HUBZone status. Since a firm's HUBZone status in SAM is updated by SBA and not the firm, the firm will not need to submit an additional certification or any other additional documentation with its offer or take any other action. Thus, SBA believes that this requirement imposes no additional burden on a small business contract holder.

The added burden to ordering agencies includes the act of checking a firm's HUBZone status in SAM at the time of order award. Since ordering agencies are already familiar with checking SAM information, such as to ensure that an order awardee is not debarred, suspended, or proposed for debarment, this verification is de minimis. SBA recognizes, however, that an agency's market research for the order level may be impacted where the agency intends to issue a HUBZone set-aside order off an unrestricted vehicle. The ordering agency may need to identify MAC-eligible vendors and then find their status in SAM. This is particularly the case where the agency is applying the Rule of Two and verifying that there are at least two HUBZone small business concerns to set aside the order.

FPDS–NG indicates that, in Fiscal Years 2014 to 2018, agencies set aside for HUBZone small business concerns an average of about 11 orders per year off unrestricted MACs, excluding orders under FSS contracts. The annual cost of additional market research efforts for applicable set-aside orders under MACs, therefore, is calculated as 11 orders × 10 minutes (0.16 hours) per order × $44.06 cost per hour. This amounts to an annual government burden of about $78.

3. What are the alternatives to this final rule?

SBA considered alternatives to each of the significant changes made by this rule. Instead of requiring a one-time certification that would allow a concern to seek and be eligible for HUBZone contracts for a year, SBA considered the status quo, where a firm must be eligible at the time of offer and time of award, and requiring certifications at time of offer only, but eligibility would be fluid and could change from contract opportunity to contract opportunity (as is done for the other small business or socioeconomic set aside contract programs). SBA proposed a formal annual recertification process but has changed that in this final rule to merely require a recertification without a full document production and review. A formal annual recertification process could be unnecessarily burdensome on certified HUBZone small business concerns. This does not change the current requirement that a full document production and review recertification process is required every three years. SBA also considered whether eligibility or protest decisions should be appealed to the Office of Hearings and Appeals. SBA decided against pursuing this change because of the added cost to certified HUBZone small business concerns and the added delay to the procurement process that could dissuade procuring agencies from using the HUBZone program.

Summary of Costs and Cost Savings

Table 1: Summary of Incremental Costs and Cost Savings, below, sets out the estimated net incremental cost/(cost saving) associated with this final rule. Table 2: Detailed Breakdown of Incremental Costs and Cost Savings, below, provides a detailed explanation of the annual cost/(cost saving) estimates associated with this final rule.

TABLE 1—SUMMARY OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item	Annual cost/(cost saving) estimate
1	Annual representation of continued eligibility	$83,714
2	Removing requirement to present eligibility at award	(185,052)
3	Change to employee count eligibility	(110,150)
4	Change to residency requirements	* 85,973,333
5	Additional Government market research to identify qualified sources for set-aside orders	78
	Estimated Net Incremental Cost/(Cost Saving)	(211,410)

* (Transfer).

TABLE 2—DETAILED BREAKDOWN OF INCREMENTAL COSTS AND COST SAVINGS

Item No.	Regulatory action item details	Annual cost/(cost saving) estimate breakdown
1	*Regulatory change:* SBA will require certified HUBZone small business concerns to annually represent their continued eligibility. The rule would continue to require certified HUBZone small business concerns to undergo a full document recertification review by SBA every three years.	
	Estimated number of impacted entities: There are approximately 5,000 firms in the HUBZone program, and under the rule all these firms will need to represent their continued eligibility each year. However, since 1,200 firms recertify each year currently, the incremental increase in recertifications is 3,800 firms annually.	3,800 entities.
	Estimated average impact (labor hour):* SBA estimates that it takes the average participating firm about 0.5 hour to complete its annual representation of continued eligibility.	0.5 hour.
	*2018 Median Pay ** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	$83,714.
2	*Regulatory change:* Under current rules, a HUBZone firm must be eligible at the time of offer and award of a HUBZone contract. This rule provides that firms will not have to represent or certify that they are eligible at the time of offer and award for every contract, which are the current program requirements.	
	Estimated number of occurrences: Approximately 2,100 new HUBZone contracts are awarded each fiscal year and each firm will need to certify twice per each contract.	4,200 certifications.
	Estimated average impact (labor hour):* SBA estimates that it takes the average participating firm about 1 hour to complete the recertification process.	1 hour.
	*2018 Median Pay ** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	($185,052).
3	*Regulatory change:* SBA is changing the eligibility requirements to provide that an individual employee who resides in a HUBZone at the time of a HUBZone small business concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is redesignated and no longer qualifies as a HUBZone. This will greatly reduce burden on firms, as they will not have to continually track whether their employees still reside in a HUBZone.	
	Estimated number of impacted entities: SBA estimates that approximately 5,000 firms participate in the HUBZone program. All participating firms will be impacted by this change.	5,000 entities.
	Estimated average impact (labor hour):* SBA estimates that it would take 1 hour to determine eligibility but this proposed change will save 0.5 hours, because once a HUBZone employee is hired the firm will never have to check residency for that employee.	0.50 hours.
	*2018 Median Pay ** (per hour + 30% for benefits):* Most HUBZone firms use an accountant or someone with similar skills for this task.	$44.06.
	Estimated Cost/(Cost Saving)	($110,150).
4	*Regulatory change:* SBA is changing the eligibility requirements to provide that an individual employee who resides in a HUBZone at the time of a HUBZone small business concern's certification or recertification shall continue to count as a HUBZone employee as long as the individual remains an employee of the firm, even if the employee moves to a location that is not in a qualified HUBZone area or the area where the employee's residence is located is redesignated and no longer qualifies as a HUBZone. Further, the requirement to maintain certification is being lowered from 35% to 20%, which will provide HUBZone entities with greater flexibility to maintain their certification and stay in the program.	
	Estimated number of impacted entities: SBA estimates that approximately 62 firms are decertified from the HUBZone program annually due to no longer meeting the 35% residency requirement.	62 entities.
	Estimated average impact: HUBZone entities are awarded an average of $6.9 million per year. Assuming 5,000 entities, this is $1,386,667 per entity.*	$1,386,667.
	Estimated Transfer	$85,973,333.
5	*Regulatory change:* SBA is changing the HUBZone recertification requirements to provide a firm must be a certified HUBZone small business concern at the time of offer for set-aside orders and Blanket Purchase Agreements issued against unrestricted Multiple Award Contracts, except for Federal Supply Schedule contracts. This change impacts the market research required by ordering activities to determine if a set-aside order for HUBZone small business concerns may be pursued.	
	Estimated number of impact entities: Approximately 11 HUBZone set-aside orders are issued annually on Multiple Award Contracts that are not set aside in the same category, other than on the Federal Supply Schedule.	11 orders.
	Estimated average impact: SBA estimates that ordering activities applying the Rule of Two will spend an average of 10 additional minutes to locate contractors awarded MACs and looking up the current HUBZone status for each of the contractors in SAM to determine if a set-aside order can be pursued.	0.16 hours.
	2017 Median Pay (per hour): Contracting officers typically perform the market research for the acquisition plan	$44.06.
	Estimated Cost/(Cost Saving)	$78.
	Estimated Net Annual Impact	($211,410)

* This estimate is based on HUBZone and FPDS data, as well as best professional judgment.
** Source: Bureau of Labor Statistics, Accountants and Auditors.

Table 3 displays the savings and costs of the rules in effect during the first 3 years. Savings would be the same for all years and is the sum of Items 2 and 3 in Table 2 above. Additional costs will be incurred in year 2 and year 3 as HUBZone entities will now have to represent their continued eligibility in those years (Item 1 in Table 2) and there are no additional costs in year 1, since the requirement to certify eligibility into the program and undergo a full document recertification review by SBA every three years has not changed. This pattern would continue into perpetuity.

TABLE 3—SCHEDULE OF COSTS/(SAVINGS) OVER 3 YEAR HORIZON

	Savings	Costs
Year 1	($295,202)	$78
Year 2	(295,202)	83,792
Year 3	(295,202)	83,792

TABLE 4—ANNUALIZED SAVINGS IN PERPETUITY WITH 7% DISCOUNT RATE, 2016 DOLLARS

	Estimate
Annualized Savings	($283,306)
Annualized Costs	51,804
Annualized Net Savings	(231,502)

Executive Order 13563

This executive order directs agencies to, among other things: (a) Afford the public a meaningful opportunity to comment through the internet on proposed regulations, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; and (c) seek the views of those who are likely to be affected by the rulemaking, even before issuing a notice of proposed rulemaking. As far as practicable or relevant, SBA considered these requirements in developing this rule, as discussed below.

1. *Did the agency use the best available techniques to quantify anticipated present and future costs when responding to Executive Order 12866 (e.g., identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?*

To the extent possible, the agency utilized the most recent data available in the Federal Procurement Data System—Next Generation, DSBS and SAM.

2. *Public participation: Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on Regulations.gov; and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?*

SBA published a proposed rule with a 60-day comment period, and the proposed rulemaking was posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions. In addition, the proposed rule was discussed with the Small Business Procurement Advisory Council, which consists of the Directors of the Office of Small and Disadvantaged Business Utilization. SBA also submitted the rule to multiple agencies with representatives on the FAR Small Business Subcommittee prior to submitting the rule to the Office of Management and Budget for interagency review. SBA has also discussed some of the proposals in this rule with stakeholders at various small business procurement conferences, and received written comments on suggested changes to the HUBZone Program regulations generally in response to SBA's regulatory reform initiative implementing Executive Order 13771. SBA received extensive responses to the proposed rule from 98 commenters, which comprised about 370 specific comments.

3. *Flexibility: Did the agency identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public?*

The rule is intended to make it easier for firms to apply for, or participate in, the HUBZone program, as well as for procuring agencies to utilize the program.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This action does not have any retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Executive Order 13175

As part of the proposed rulemaking process, SBA held tribal consultations with tribal governments in Anchorage, Alaska, Albuquerque, New Mexico, and Oklahoma City, Oklahoma to provide interested tribal representatives with an opportunity to discuss their views on various HUBZone-related issues. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that these tribal consultation meetings allowed for constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and Alaska Native Corporation (ANC)-owned firms participating in the HUBZone program. SBA took these discussions into account in drafting the proposed rule.

Executive Order 13771

This rule is an Executive Order 13771 deregulatory action. Details on the estimated cost savings of this rule can be found in this rule's Regulatory Impact Analysis. By making eligibility requirements more flexible and by reducing the amount of recording keeping required for participation in the program, the rule will result in annualized savings of $231,502 discounted to perpetuity using a 7% discount rate in 2016 dollars and a net present value of $3,307,169.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For the purposes of the Paperwork Reduction Act, SBA has determined that this rule will impose new government-wide reporting requirements on HUBZone small business concerns. The rule requires that certified HUBZone small business concerns maintain records demonstrating the home address of employees who resided in a HUBZone at the time of the concern's certification or recertification, as well as records of the employee's continued employment with the firm. SBA believes allowing a HUBZone small business concern to continue employing individuals who once lived in HUBZones is consistent with the purpose of the HUBZone program of increasing employment and would provide greater opportunities for certified HUBZone small business concerns to be eligible for and receive HUBZone contracts. Further, this will reduce burden as the firm will not have to continually determine whether the employee that resided in a HUBZone at the time of certification continues to reside in a HUBZone in connection with the offer and offer of each contract or future recertifications. The requirement to maintain records is included in the existing information collection for the HUBZone program (OMB Control #3245–0320).

Regulatory Flexibility Act, 5 U.S.C. 601–612

According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not

expected to have a significant economic impact on a substantial number of small entities.

While this final rule is expected to impact a substantial number of small entities as all HUBZone entities are small, the impact is not expected to be significant. As detailed in the Regulatory Impact Analysis, there will be an annualized savings of $231,502 to all HUBZone entities, or approximately $33 per HUBZone entity, which qualifies as de minimis savings for each entity.

Accordingly, the Administrator of the SBA hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 115

Claims, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

13 CFR Part 121

Administrative practice and procedure, Government procurement, Government property, Grant programs—business, Individuals with disabilities, Loan programs—business, Small businesses.

13 CFR Part 125

Government contracts, Government procurement, Reporting and recordkeeping requirements, Small businesses, Technical assistance, Veterans.

13 CFR Part 126

Administrative practice and procedure, Government procurement, Penalties, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 127

Government contracts, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 115, 121, 125, 126, and 127 as set forth below:

PART 115—SURETY BOND GUARANTEE

■ 1. The authority citation for part 115 continues to read as follows:

Authority: 5 U.S.C. app 3; 15 U.S.C. 687b, 687c, 694a, 694b note; and Pub. L. 110–246, Sec. 12079, 122 Stat. 1651.

§ 115.31 [Amended]

■ 2. Amend § 115.31(a)(2) by removing the phrase ''qualified HUBZone small business concern'' and adding in its place the phrase ''certified HUBZone small business concern''.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 694a(9).

§ 121.404 [Amended]

■ 4. Amend § 121.404(g)(4) by removing the phrase ''HUBZone SBCs'' and adding in its place the phrase ''certified HUBZone small business concerns''.

§ 121.1001 [Amended]

■ 5. Amend § 121.1001 as follows:

■ a. In paragraph (a)(6)(ii), remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''; and

■ b. In paragraph (b)(8)(i), remove the phrase ''qualified HUBZone business concern'' and add in its place the phrase ''certified HUBZone small business concern''.

PART 125—GOVERNMENT CONTRACTING PROGRAMS

■ 6. The authority citation for part 125 is revised to read as follows:

Authority: 15 U.S.C. 632(p), (q); 634(b)(6); 637; 644; 657f; 657q; 657r; and 657s.

§ 125.1 [Amended]

■ 7. In § 125.1, amend the definition of ''Similarly situated entity'' by removing the phrase ''qualified HUBZone small business concern'' and adding in its place the phrase ''certified HUBZone small business concern''.

§ 125.2 [Amended]

■ 8. Amend § 125.2(c)(1)(i) by removing the phrase ''qualified HUBZone small business concerns'' and adding in its place the phrase ''certified HUBZone small business concerns''.

§ 125.3 [Amended]

■ 9. Amend § 125.3(c)(1)(xi) by removing the phrase ''qualified HUBZone small business concerns'' and adding in its place the phrase ''certified HUBZone small business concerns''.

§ 125.6 [Amended]

■ 10. Amend § 125.6 by removing paragraph (d) and redesignating paragraphs (e) through (h) as paragraphs (d) through (g), respectively.

■ 11. Revise § 125.28(b) to read as follows:

§ 125.28 How does one file a service disabled veteran-owned status protest?

* * * * *

(b) *Format and specificity.* (1) Protests must be in writing and must specify all the grounds upon which the protest is based. A protest merely asserting that the protested concern is not an eligible SDVO SBC, without setting forth specific facts or allegations, is insufficient.

(i) Example to paragraph (b)(1): A protester submits a protest stating that the apparent successful offeror is not owned by a service-disabled veteran. The protest does not state any basis for this assertion. The protest allegation is insufficient.

(ii) [Reserved]

(2) For a protest filed against a SDVO SBC joint venture, the protest must state all specific grounds for why—

(i) The SDVO SBC partner to the joint venture did not meet the SDVO SBC eligibility requirements set forth in subpart B of part 125; and/or

(ii) The protested SDVO SBC joint venture did not meet the requirements set forth in § 125.18.

* * * * *

PART 126—HUBZONE PROGRAM

■ 12. The authority citation for part 126 continues to read as follows:

Authority: 15 U.S.C. 632(a), 632(j), 632(p), 644 and 657a.

§ 126.101 [Amended]

■ 13. Amend § 126.101(b) by removing the phrase ''qualified HUBZone SBCs'' wherever it appears and adding in its place the phrase ''certified HUBZone small business concerns''.

■ 14. Amend § 126.103 as follows:

■ a. Revise the definition of ''Alaska Native Corporation (ANC)'';

■ b. Remove the definitions of ''Alaska Native Village'' and ''ANCSA'';

■ c. Revise the definitions of ''Attempt to maintain'' and ''Certify'';

■ d. Remove the definitions of ''County unemployment rate'' and ''De-certify'';

■ e. Revise the definition of ''D/HUB'';

■ f. Add a definition in alphabetical order for ''Decertify'';

■ g. Add a definition in alphabetical order for ''Dynamic Small Business Search (DSBS)'';

■ h. Revise the definition of ''Employee'';

■ i. Remove the definition of ''HUBZone small business concern (HUBZone SBC)'';

■ j. Add a definition in alphabetical order for ''HUBZone small business concern or certified HUBZone small business concern'';

■ k. Revise the definition of ''Interested party'';

■ l. Remove the definitions of ''List'', ''Medium household income'', and ''Metropolitan statistical area'';

■ m. Add in alphabetical order a definition for ''Primary industry classification or primary industry'';
■ n. Revise the definitions of ''Principal office'', ''Qualified base closure area'', ''Qualified census tract'', and ''Qualified disaster area'';
■ o. Remove the definition of ''Qualified HUBZone SBC'';
■ p. Revise the definitions of ''Qualified non-metropolitan county'', ''Redesignated area'', and ''Reside''; and
■ q. Remove the definitions of ''Small disadvantaged business (SDB)'' and ''Statewide average unemployment rate''.

The revisions and additions to read as follows:

§ 126.103 What definitions are important in the HUBZone Program?

* * * * *

Alaska Native Corporation (ANC) has the same meaning as the term ''Native Corporation'' in section 3 of the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C. 1602.

Attempt to maintain means making substantive and documented efforts, such as written offers of employment, published advertisements seeking employees, and attendance at job fairs and applies only to concerns during the performance of any HUBZone contract. A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement.

* * * * *

Certify means the process by which SBA determines that a concern is qualified for the HUBZone program and eligible to be designated by SBA as a certified HUBZone small business concern in the Dynamic Small Business Search (DSBS) system (or successor system).

* * * * *

D/HUB means the Director of SBA's Office of HUBZone.

Decertify means the process by which SBA determines that a concern no longer qualifies as a HUBZone small business concern and removes that concern as a certified HUBZone small business concern from DSBS (or successor system), or the process by which SBA removes a concern as a certified HUBZone small business concern from DSBS (or successor system) after receiving a request to voluntarily withdraw from the HUBZone program.

Dynamic Small Business Search (DSBS) means the database that government agencies use to find small business contractors for upcoming contracts. The information a business provides when registering in the System for Award Management (SAM) is used to populate DSBS. For HUBZone Program purposes, a concern's DSBS profile will indicate whether it is a certified HUBZone small business concern, and if so, the date it was certified or recertified.

Employee means all individuals employed on a full-time, part-time, or other basis, so long as that individual works a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, which is either the date the concern submits its HUBZone application to SBA or the date of recertification. SBA will review a concern's payroll records for the most recently completed pay periods that account for the four-week period immediately prior to the date of application or date of recertification in order to determine which individuals meet this definition. To determine if an individual is an employee, SBA reviews the totality of circumstances, including criteria used by the Internal Revenue Service (IRS) for Federal income tax purposes and the factors set forth in SBA's Size Policy Statement No. 1 (51 FR 6099, February 20, 1986).

(1) In general, the following are considered employees:

(i) Individuals obtained from a temporary employee agency, leasing concern, or through a union agreement, or co-employed pursuant to a professional employer organization agreement;

(ii) An individual who has an ownership interest in the concern and who works for the concern a minimum of 40 hours during the four-week period immediately prior to the relevant date of review, whether or not the individual receives compensation;

(iii) The sole owner of a concern who works less than 40 hours during the four-week period immediately prior to the relevant date of review, but who has not hired another individual to direct the actions of the concern's employees;

(iv) Individuals who receive in-kind compensation commensurate with work performed. Such compensation must provide a demonstrable financial value to the individual and must be compliant with all relevant federal and state laws.

(2) In general, the following are not considered employees:

(i) Individuals who are not owners and receive no compensation (including no in-kind compensation) for work performed;

(ii) Individuals who receive deferred compensation for work performed;

(iii) Independent contractors that receive payment via IRS Form 1099 and are not considered employees under SBA's Size Policy Statement No. 1; and

(iv) Subcontractors.

(3) Employees of an affiliate may be considered employees, if the totality of the circumstances shows that there is no clear line of fracture between the HUBZone applicant (or certified HUBZone small business concern) and its affiliate(s) (*see* § 126.204).

* * * * *

HUBZone small business concern or certified HUBZone small business concern means a small business concern that meets the requirements described in § 126.200 and that SBA has certified as eligible for federal contracting assistance under the HUBZone program. A concern that was a certified HUBZone small business concern as of December 12, 2017, and that had its principal office located in a redesignated area set to expire prior to January 1, 2020, shall remain a certified HUBZone small business concern until December 31, 2021, so long as all other HUBZone eligibility requirements are met.

* * * * *

Interested party means any concern that submits an offer for a specific HUBZone set-aside contract (including Multiple Award Contracts) or order, any concern that submitted an offer in full and open competition and its opportunity for award will be affected by a price evaluation preference given a qualified HUBZone small business concern, any concern that submitted an offer in a full and open competition and its opportunity for award will be affected by a reserve of an award given to a qualified HUBZone small business concern, the contracting activity's contracting officer, or SBA.

* * * * *

Primary industry classification or primary industry means the six-digit North American Industry Classification System (NAICS) code designation which best describes the primary business activity of the HUBZone applicant or certified HUBZone small business concern. SBA utilizes § 121.107 of this chapter in determining a concern's primary industry classification.

Principal office means the location where the greatest number of the concern's employees at any one location perform their work.

(1) If an employee works at multiple locations, then the employee will be deemed to work at the location where the employee spends more than 50% of his or her time. If an employee does not spend more than 50% of his or her time at any one location and at least one of

those locations is a non-HUBZone location, then the employee will be deemed to work at a non-HUBZone location.

(2) In order for a location to be considered the principal office, the concern must conduct business at this location.

(3) For those concerns whose ''primary industry classification'' is services or construction (*see* § 121.201 of this chapter), the determination of principal office excludes the concern's employees who perform more than 50% of their work at job-site locations to fulfill specific contract obligations. If all of a concern's employees perform more than 50% of their work at job sites, the concern does not comply with the principal office requirement.

(i) *Example 1:* A business concern whose primary industry is construction has a total of 78 employees, including the owners. The business concern has one office (Office A), which is located in a HUBZone, with 3 employees working at that location. The business concern also has a job-site for a current contract, where 75 employees perform more than 50% of their work. The 75 job-site employees are excluded for purposes of determining principal office. Since the remaining 3 employees all work at Office A, Office A is the concern's principal office. Since Office A is in a HUBZone, the business concern complies with the principal office requirement.

(ii) *Example 2:* A business concern whose primary industry is services has a total of 4 employees, including the owner. The business concern has one office located in a HUBZone (Office A), where 2 employees perform more than 50% of their work, and a second office not located in a HUBZone (Office B), where 2 employees perform more than 50% of their work. Since there is not one location where the greatest number of the concern's employees at any one location perform their work, the business concern would not have a principal office in a HUBZone.

(iii) *Example 3:* A business concern whose primary industry is services has a total of 6 employees, including the owner. Five of the employees perform all of their work at job-sites fulfilling specific contract obligations. The business concern's owner performs 45% of her work at job-sites, and 55% of her work at an office located in a HUBZone (Office A) conducting tasks such as writing proposals, generating payroll, and responding to emails. Office A would be considered the principal office of the concern since it is the only location where any employees of the concern work that is not a job site and the 1 individual working there spends more than 50% of her time at Office A. Since Office A is located in a HUBZone, the small business concern would meet the principal office requirement.

Qualified base closure area means a base closure area that is treated by SBA as a HUBZone for a period of at least 8 years, beginning on the date on which the Administrator designates the base closure area as a HUBZone and ending on the date on which the base closure area ceases to be a qualified census tract or a qualified nonmetropolitan county in accordance with the online tool prepared by the Administrator.

Qualified census tract. (1) Qualified census tract means a census tract which is designated by the Secretary of Housing and Urban Development, and for the most recent year for which census data are available on household income in such tract, either in which 50 percent or more of the households have an income which is less than 60 percent of the area median gross income for such year or which has a poverty rate of at least 25 percent. *See* 26 U.S.C. 42(d)(5)(B)(ii)(I).

(2) The portion of a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) which may be designated as ''qualified census tracts'' shall not exceed an area having 20 percent of the population of such metropolitan statistical area. *See* 26 U.S.C. 42(d)(5)(B)(ii)(II). This paragraph does not apply to any metropolitan statistical area in the Commonwealth of Puerto Rico until December 22, 2027, or the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA) (Pub. L. 114–187, June 30, 2016) ceases to exist, whichever event occurs first.

(3) Qualified census tracts are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Qualified disaster area. (1) Qualified disaster area means any census tract or nonmetropolitan county located in an area where a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) has occurred or an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be a qualified census tract or qualified nonmetropolitan county during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred.

(2) A census tract or nonmetropolitan county shall be considered to be a qualified disaster area only for the period of time ending on the date the area ceases to be a qualified census tract or a qualified nonmetropolitan county, in accordance with the publicly accessible online tool that depicts HUBZones, and beginning—

(i) In the case of a major disaster, on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; or

(ii) In the case of a catastrophic incident, on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

Qualified non-metropolitan county means any county that was not located in a metropolitan statistical area (as defined by the Bureau of the Census, United States Department of Commerce, in its publications on the Census of Population, Social and Economic Characteristics) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 26 U.S.C. 42(d)(5)(B)(ii), and in which:

(1) The median household income is less than 80% of the State median household income, based on a 5-year average of the available data from the Bureau of the Census of the Department of Commerce;

(2) The unemployment rate is not less than 140% of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on a 5-year average of the data available from the Local Area Unemployment Statistics report, produced by the Department of Labor's Bureau of Labor Statistics; or

(3) There is located a Difficult Development Area within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States. A Difficult Development Area (DDA) is an area designated by the Secretary of the Department of Housing and Urban Development, in accordance with section 26 U.S.C. 42(d)(5)(B)(iii), with high construction, land, and utility costs relative to its area median gross income.

(4) Qualified non-metropolitan counties are reflected in a publicly accessible online tool that depicts HUBZones and will be updated every 5 years.

Redesignated area means any census tract that ceases to be a ''qualified census tract'' or any non-metropolitan county that ceases to be a ''qualified non-metropolitan county.'' A redesignated area generally shall be treated as a HUBZone for a period of three years, starting from the date on which the area ceased to be a qualified census tract or a qualified non-

metropolitan county. The date on which the census tract or non-metropolitan county ceases to be qualified is the date on which the official government data affecting the eligibility of the HUBZone is released to the public. However, an area that was a redesignated area on or after December 12, 2017 shall remain a redesignated area until December 31, 2021.

Reside means to live at a location full-time and for at least 180 days immediately prior to the date of application (or date of recertification where the individual is being treated as a HUBZone resident for the first time).

(1) To determine residence, SBA will first look to an individual's address identified on his or her driver's license or voter's registration card. Where such documentation is not available, SBA will require other specific proof of residency, such as deeds, leases, or utility bills. Where the documentation provided does not demonstrate 180 days of residency, SBA will require a signed statement attesting to an individual's dates of residency.

(2) For HUBZone purposes, SBA will consider individuals temporarily residing overseas in connection with the performance of a contract to reside at their U.S. residence.

(i) *Example 1:* A person possesses the deed to a residential property and pays utilities and property taxes for that property. However, the person does not live at this property, but instead rents out this property to another individual. For HUBZone purposes, the person does not reside at the address listed on the deed.

(ii) *Example 2:* A person moves into an apartment under a month-to-month lease and lives in that apartment full-time. SBA would consider the person to reside at the address listed on the lease if the person can show that he or she has lived at that address for at least 180 days immediately prior to the date of application or date of recertification.

(iii) *Example 3:* A person is working overseas on a contract for the small business and is therefore temporarily living abroad. The employee can provide documents showing he is paying rent for an apartment located in a HUBZone. That person is deemed to reside in a HUBZone.

* * * * *

Subpart B—Requirements To Be a Certified HUBZone Small Business Concern

■ 15. Revise the heading for subpart B to read as set forth above.

■ 16. Revise § 126.200 to read as follows:

§ 126.200 What requirements must a concern meet to be eligible as a certified HUBZone small business concern?

(a) *Ownership.* In order to be eligible for HUBZone certification and to remain certified, a small business concern must be owned in accordance with this paragraph. The concern must be:

(1) At least 51% owned and controlled by one or more individuals who are United States citizens;

(2) An ANC or at least 51% owned by an ANC or a wholly-owned business entity of an ANC;

(3) At least 51% owned by one or more Indian Tribal Governments, or by a corporation that is wholly owned by one or more Indian Tribal Governments;

(4) At least 51% owned by one or more CDCs;

(5) A small agricultural cooperative organized or incorporated in the United States, or at least 51% owned by one or more small agricultural cooperatives organized or incorporated in the United States; or

(6) At least 51% owned by one or more NHOs, or by a corporation that is wholly owned by one or more NHOs.

(b) *Size.* (1) An applicant concern, together with its affiliates, must qualify as a small business concern under the size standard corresponding to its primary industry classification as defined in part 121 of this chapter.

(2) In order to remain eligible as a certified HUBZone small business concern, a concern must qualify as small under the size standard corresponding to one or more NAICS codes in which it does business.

(3) If the concern is a small agricultural cooperative, in determining size, the small agricultural cooperative is treated as a ''business concern'' and its member shareholders are not considered affiliated with the cooperative by virtue of their membership in the cooperative.

(c) *Principal office.* In order to be eligible for HUBZone certification, a concern's principal office must be located in a HUBZone, except for concerns owned in whole or in part by one or more Indian Tribal Governments.

(1) A concern that owns or makes a long-term investment (*i.e.,* a lease of at least 10 years) in a principal office in an area that qualifies as a HUBZone at the time of its initial certification will be deemed to have its principal office located in a HUBZone for at least 10 years from the date of that certification as long as the firm maintains the long-term lease or continues to own the property upon which the principal office designation was made. This does not apply to leases of office space that are shared with one or more other concerns or individuals.

(2) A concern that is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by Indian Tribal Governments) must either:

(i) Maintain a principal office located in a HUBZone and ensure that at least 35% of its employees reside in a HUBZone as provided in paragraph (d)(1) of this section; or

(ii) Certify that when performing a HUBZone contract, at least 35% of its employees engaged in performing that contract will reside within any Indian reservation governed by one or more of the Indian Tribal Government owners, or reside within any HUBZone adjacent to such Indian reservation.

(d) *Employees.* (1) In order to be eligible for HUBZone certification, at least 35% of a concern's employees must reside in a HUBZone. When determining the percentage of employees that reside in a HUBZone, if the percentage results in a fraction, SBA rounds to the nearest whole number.

(i) *Example 1 to paragraph (d)(1):* A concern has 25 employees; 35% of 25, or 8.75, employees must reside in a HUBZone. The number 8.75 rounded to the nearest whole number is 9. Thus, 9 employees must reside in a HUBZone.

(ii) *Example 2 to paragraph (d)(1):* A concern has 95 employees; 35% of 95, or 33.25, employees must reside in a HUBZone. The number 33.25 rounded to the nearest whole number is 33. Thus, 33 employees must reside in a HUBZone.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), *see* paragraph (c)(2) of this section.

(3) An employee who resides in a HUBZone at the time of certification (or time of recertification where the individual is being treated as a HUBZone resident for the first time) shall continue to count as a HUBZone resident employee if the individual continues to live in the HUBZone for at least 180 days immediately after certification (or recertification) and remains an employee of the concern, even if the employee subsequently moves to a location that is not in a HUBZone or the area in which the employee's residence is located no longer qualifies as a HUBZone. The certified HUBZone small business concern must maintain records of the employee's original HUBZone address, as well as records of the individual's continued and uninterrupted employment by the HUBZone small business concern, for the duration of the

concern's participation in the HUBZone program.

(i) *Example to paragraph (d)(3):* As part of its application for HUBZone certification, a concern provides documentation showing that 35% of its employees have lived in a HUBZone for more than 180 days. SBA certifies the concern as a certified HUBZone small business concern. Within 180 after being certified, an individual critical to the concern's meeting the 35% residency requirement moves out of the HUBZone area. That individual will continue to be treated as a HUBZone resident during the first year after the concern's certification; however, at the time of the firm's recertification, that individual will not be counted as a resident of a HUBZone.

(ii) [Reserved]

(e) *Attempt to maintain.* (1) At the time of application, a concern must certify that it will ''attempt to maintain'' (*see* § 126.103) having at least 35% of its employees reside in a HUBZone during the performance of any HUBZone contract it receives.

(2) If the concern is owned in whole or in part by one or more Indian Tribal Governments (or by a corporation that is wholly owned by one or more Indian Tribal Governments), the concern must certify that it will ''attempt to maintain'' (*see* § 126.103) the applicable employment percentage described in paragraph (c)(2) of this section during the performance of any HUBZone contract it receives.

(f) *Subcontracting.* At the time of application, an applicant concern must certify that it will comply with the applicable limitations on subcontracting requirements in connection with any procurement that it receives as a certified HUBZone small business concern (*see* §§ 126.5 and 126.700).

(g) *Suspension and Debarment.* In order to be eligible for HUBZone certification and to remain certified, the concern and any of its owners must not have an active exclusion in the System for Award Management, available at *www.SAM.gov,* at the time of application.

§ 126.202 [Amended]

■ 17. Amend § 126.202 by removing the phrase ''Many persons share control'' and adding in its place the phrase ''Many persons may share control''.

§ 126.203 [Amended]

■ 18. Amend § 126.203(a) by removing the phrase ''qualified HUBZone SBC'' and adding in its place the phrase ''certified HUBZone small business concern''.

■ 19. Revise § 126.204 to read as follows:

§ 126.204 May a HUBZone small business concern have affiliates?

(a) A HUBZone small business concern may have affiliates, provided that the aggregate size of the concern together with all of its affiliates is small as defined in part 121 of this title, except as otherwise provided for small agricultural cooperatives in § 126.103.

(b) Employees of affiliates are not automatically considered employees of a HUBZone applicant or HUBZone small business concern solely on the basis of affiliation.

(c) The employees of an affiliate may be counted as employees of a HUBZone applicant or HUBZone small business concern for purposes of determining compliance with the HUBZone program's principal office and 35% residency requirements in certain circumstances. In determining whether individuals should be counted as employees of a HUBZone applicant or HUBZone small business concern, SBA will consider all information, including criteria used by the IRS for Federal income tax purposes and those set forth in SBA's Size Policy Statement No. 1. Employees of the concern's affiliate will not be counted as the concern's employees if there is a clear line of fracture between the concern and its affiliate.

(1) SBA generally will find that there is a clear line of fracture where the concern demonstrates that it does not share employees, facilities, or equipment with the affiliate; has different customers or lines of business (or is distinctly segregated geographically); and does not receive significant contracts or financial assistance from the affiliate.

(2) The use of common administrative services between parent and/or sister concerns by itself will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(3) Minimal business activity between the concern and its affiliate will not result in an affiliate's employees being counted as employees of the HUBZone applicant or HUBZone small business concern.

(i) *Example to paragraph (c):* X owns 100% of Company A and 51% of Company B. Based on X's common ownership of A and B, the two companies are affiliated under SBA's size regulations. SBA will look at the totality of circumstances to determine whether it would be reasonable to treat the employees of B as employees of A for HUBZone program purposes. If both companies do construction work and share office space and equipment, then SBA would find that there is not a clear line of fracture between the two concerns and would treat the employees of B as employees of A for HUBZone program purposes. In order to be eligible for the HUBZone program, at least 35% of the combined employees of A and B must reside in a HUBZone.

(ii) [Reserved]

■ 20. Revise § 126.205 to read as follows:

§ 126.205 May participants in other SBA programs be certified as HUBZone small business concerns?

Participants in other SBA programs may be certified as HUBZone small business concerns if they meet all of the requirements set forth in this part.

■ 21. Revise § 126.206 to read as follows:

§ 126.206 May nonmanufacturers be certified as HUBZone small business concerns?

Nonmanufacturers (referred to in the HUBZone Act of 1997 as ''regular dealers'') may be certified as HUBZone small business concerns if they meet all of the requirements set forth in § 126.200. For purposes of this part, a ''nonmanufacturer'' is defined in § 121.406(b) of this chapter.

■ 22. Revise § 126.207 to read as follows:

§ 126.207 Do all of the offices or facilities of a certified HUBZone small business concern have to be located in a HUBZone?

A HUBZone small business concern may have offices or facilities in multiple HUBZones or even outside a HUBZone. However, in order to be certified as a HUBZone small business concern, the concern's principal office must be located in a HUBZone (except *see* § 126.200(c)(2) for concerns owned by Indian Tribal Governments).

■ 23. Revise § 126.300 to read as follows:

§ 126.300 How may a concern be certified as a HUBZone small business concern?

(a) A concern must apply to SBA for HUBZone certification. SBA will consider the information provided by the concern in order to determine whether the concern qualifies.

(b) SBA, at its discretion, may rely solely upon the information submitted, may request additional information, may conduct independent research, or may verify the information before making an eligibility determination.

(c) If SBA determines that a concern meets the eligibility requirements of a HUBZone small business concern, it will notify the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

■ 24. Revise § 126.303 to read as follows:

§ 126.303 Where must a concern submit its application for certification?

A concern seeking certification as a HUBZone small business concern must submit an electronic application to SBA's HUBZone Program Office via SBA's web page at *www.SBA.gov.* The application and any supporting documentation must be submitted by a person authorized to represent the concern.

■ 25. Revise § 126.304 to read as follows:

§ 126.304 What must a concern submit to SBA in order to be certified as a HUBZone small business concern?

(a) *General.* To be certified by SBA as a HUBZone small business concern, a concern must submit a completed application and all documents requested by SBA. The concern must also represent to SBA that it meets the requirements set forth in § 126.200 and that all of the information provided as of the date of the application (and any subsequent information provided) is complete, true and accurate. The representation must be signed by an owner or officer of the applicant.

(b) *Supporting documents.* (1) SBA may request documents to verify that the applicant meets the HUBZone program's eligibility requirements. The documents must show that the concern meets the program's requirements at the time it submits its application to SBA.

(2) The concern must document compliance with the requirements listed in § 126.200, including but not limited to employment records and documentation showing the address of each HUBZone resident employee. Records sufficient to demonstrate HUBZone residency include copies of driver's licenses and voter registration cards; only where such documentation is unavailable will SBA accept alternative documentation (such as copies of leases, deeds, and/or utility bills) accompanied by signed statements explaining why the alternative documentation is being provided.

(c) *Changes after submission of application.* After submitting an application, a concern applying for HUBZone certification must immediately notify SBA of any changes that could affect its eligibility and provide information and documents to verify the changes. If the changed information indicates that the concern is not eligible, the applicant will be given the option to withdraw its application, or SBA will decline certification and the concern must wait 90 days to reapply.

(d) *HUBZone areas.* Concerns applying for HUBZone status must use SBA's website (*e.g.,* maps or other tools showing qualified HUBZones) to verify that the location of the concern's principal office and the residences of at least 35% of the concern's employees are within HUBZones. If SBA's website indicates that a particular location is not within a HUBZone and the applicant disagrees, then the applicant must note this on the application and submit relevant documents showing why the applicant believes the area meets the statutory criteria of a HUBZone. SBA will determine whether the location is within a HUBZone using available methods (*e.g.,* by contacting Bureau of Indian Affairs for Indian reservations or Department of Defense for BRACs).

(e) *Record maintenance.* HUBZone small business concerns must retain documentation demonstrating satisfaction of all qualifying requirements for 6 years from date of submission of all initial and continuing eligibility actions as required by this part. In addition, HUBZone small business concerns must retain documentation as required in § 126.200(d)(3).

§ 126.305 [Removed and Reserved]

■ 26. Remove and reserve § 126.305.

■ 27. Revise § 126.306 to read as follows:

§ 126.306 How will SBA process an application for HUBZone certification?

(a) The D/HUB or designee is authorized to approve or decline applications for HUBZone certification. SBA will receive and review all applications and request supporting documents. SBA must receive all required information, supporting documents, and a completed HUBZone representation before it will begin processing a concern's application. SBA will not process incomplete packages. SBA will make its determination within 60 calendar days after receipt of a complete package.

(b) The burden of proof to demonstrate eligibility is on the applicant concern. If a concern does not provide requested information within the allotted time provided by SBA, or if it submits incomplete information, SBA may draw an adverse inference and presume that the information that the applicant failed to provide would demonstrate ineligibility and deny certification on this basis.

(c) SBA's decision will be based on the facts set forth in the application, any information received in response to SBA's request for clarification, any independent research conducted by SBA, and any changed circumstances.

(d) In order to be certified into the program, the applicant must be eligible as of the date it submitted its application and at the time the D/HUB issues a decision. An applicant must inform SBA of any changes to its circumstances that occur after its application and before its certification that may affect its eligibility. SBA will consider such changed circumstances in determining whether to certify the concern.

(e) If SBA approves the application, it will send a written notice to the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system) as described in § 126.307.

(f) If SBA denies the application, it will send a written notice to the concern and state the specific reasons for denial.

(g) SBA will presume that notice of its decision was provided to an applicant if SBA sends a communication to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (or successor system).

■ 28. Revise § 126.307 to read as follows:

§ 126.307 Where is there a list of certified HUBZone small business concerns?

SBA designates concerns as certified HUBZone small business concerns in DSBS (or successor system).

■ 29. Revise § 126.308 to read as follows:

§ 126.308 What happens if a HUBZone small business concern receives notice of its certification but it does not appear in DSBS as a certified HUBZone small business concern?

(a) A certified HUBZone small business concern that has received SBA's notice of certification, but does not appear in DSBS (or successor system) as a certified HUBZone small business concern within 10 business days, should immediately notify the D/HUB via email at *hubzone@sba.gov.*

(b) A certified HUBZone small business concern that has received SBA's notice of certification must appear as a certified HUBZone small business concern in DSBS (or successor system) in order to be eligible for HUBZone contracts (*i.e.,* it cannot ''opt out'' of a public display in the System for Award Management (*SAM.gov*) or DSBS (or successor systems)).

■ 30. Revise § 126.401 to read as follows:

§ 126.401 What is a program examination?

A program examination is an investigation by SBA officials, which verifies the accuracy of any certification made or information provided as part of

the HUBZone application or recertification process. Examiners may verify that the concern met the program's eligibility requirements at the time of its certification or, if applicable, at the time of its most recent recertification.

■ 31. Revise § 126.402 to read as follows:

§ 126.402 When will SBA conduct program examinations?

(a) SBA may conduct a program examination at any time after the concern submits its application, during the processing of the application, and at any time while the concern is a certified HUBZone small business concern.

(b) SBA will conduct program examinations periodically as part of the recertification process set forth in § 126.500.

(c) Upon receipt of specific and credible information alleging that a certified HUBZone small business concern no longer meets the eligibility requirements for continued program eligibility, SBA will examine the concern's eligibility for continued participation in the program.

■ 32. Revise § 126.403 to read as follows:

§ 126.403 What will SBA review during a program examination?

(a) SBA may conduct a program examination, or parts of an examination, at one or more of the concern's offices. SBA will determine the location and scope of the examination and may review any information related to the concern's HUBZone eligibility including, but not limited to, documentation related to the location and ownership of the concern, compliance with the 35% HUBZone residency requirement, and the concern's ''attempt to maintain'' (*see* § 126.103) this percentage.

(b) SBA may require that a HUBZone small business concern (or applicant) submit additional information as part of the program examination. If SBA requests additional information, SBA will presume that written notice of the request was provided when SBA sends such request to the concern at a mailing address, email address or fax number provided in the concern's profile in the Dynamic Small Business Search (DSBS) or the System for Award Management (SAM) (or successor systems). SBA may draw an adverse inference from a concern's failure to cooperate with a program examination or provide requested information and assume that the information that the HUBZone small business concern (or applicant) failed to provide would demonstrate ineligibility, and decertify (or deny certification) on this basis.

(c) The concern must retain documentation provided in the course of a program examination for 6 years from the date of submission.

■ 33. Add § 126.404 to subpart D to read as follows:

§ 126.404 What are the possible outcomes of a program examination and when will SBA make its determination?

(a) *Timing.* SBA will make its determination within 90 calendar days after SBA receives all requested information, when practicable.

(b) *Program examinations on certified HUBZone small business concerns.* If the program examination was conducted on a certified HUBZone small business concern—

(1) And the D/HUB (or designee) determines that the concern is eligible, SBA will send a written notice to the HUBZone small business concern and continue to designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the concern is not eligible, the concern will have 30 days to submit documentation showing that it is eligible. During the 30-day period, such concern may not compete for or be awarded a HUBZone contract. If such concern fails to demonstrate its eligibility by the last day of the 30-day period, the concern will be decertified.

(c) *Program examinations on applicants.* If the program examination was conducted on an applicant to the HUBZone program—

(1) And the D/HUB (or designee) determines that the concern is eligible, SBA will send a written certification notice to the concern and designate the concern as a certified HUBZone small business concern in DSBS (or successor system).

(2) And the D/HUB (or designee) determines that the concern is ineligible, SBA will send a written decline notice to the concern.

■ 34. Revise § 126.500 to read as follows:

§ 126.500 How does a concern maintain HUBZone certification?

(a) Any concern seeking to remain a certified HUBZone small business concern in DSBS (or successor system) must annually represent to SBA that it continues to meet all HUBZone eligibility criteria (*see* § 126.200).

(1) If at the time of its recertification the certified HUBZone small business concern is not currently performing a HUBZone contract, its representation means that at least 35% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(2) If at the time of its recertification the certified HUBZone small business concern is currently performing a HUBZone contract, its representation means that at least 20% of its employees continue to reside in a HUBZone and the principal office of the concern continues to be located in a HUBZone.

(3) Except as provided in paragraph (b) of this section, unless SBA has reason to question the concern's representation of its continued eligibility, SBA will accept the representation without requiring the certified HUBZone small business concern to submit any supporting information or documentation.

(4) The concern's recertification must be submitted within 30 days of the anniversary date of its original HUBZone certification. The date of HUBZone certification is the date specified in the concern's certification letter. If the business fails to recertify, SBA may propose the concern for decertification pursuant to § 126.503.

(b) SBA will conduct a program examination of each certified HUBZone small business concern pursuant to § 126.403 at least once every three years to ensure continued program eligibility. Specifically, SBA will conduct a program examination as part of the recertification process three years after the concern's initial HUBZone certification (whether by SBA or a third-party certifier) or three years after the date of the concern's last program examination, whichever date is later.

(1) *Example:* Concern A is certified by SBA to be eligible for the HUBZone program on September 27, 2020. During that year, Concern A does not receive a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2021 and September 26, 2021. Concern A must represent that at least 35% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2022. On June 28, 2022, Concern A is awarded a HUBZone contract. Concern A must recertify its eligibility to SBA between August 27, 2022 and September 26, 2022. Because Concern A is performing a HUBZone contract, Concern A must represent that at least 20% of its employees continue to reside in a HUBZone and that its principal office continues to be located in a HUBZone. Concern A will continue to be a certified HUBZone small business concern that is eligible to receive HUBZone contracts (as

long as it is small for the size standard corresponding to the NAICS code assigned to the contract) through September 26, 2023. Concern A must recertify its eligibility to SBA between August 27, 2023 and September 26, 2023. Because three years have elapsed since its application and original certification, SBA will conduct a program examination of Concern A at that time. In addition to its representation that it continues to be eligible as a certified HUBZone small business concern, Concern A must provide additional information as requested by SBA to demonstrate that it continues to meet all the eligibility requirements of the HUBZone Program.

(2) [Reserved]

■ 35. Revise § 126.501 to read as follows:

§ 126.501 How long does HUBZone certification last?

(a) *One-year certification.* Once SBA certifies a concern as eligible to participate in the HUBZone program, the concern will be treated as a certified HUBZone small business concern eligible for all HUBZone contracts for which the concern qualifies as small, for a period of one year from the date of its initial certification or recertification, unless the concern acquires, is acquired by, or merges with another firm during that one-year period, or the concern is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103).

(1) A certified HUBZone small business concern that acquires, is acquired by, or merges with another business entity must notify SBA within 30 days of the transaction becoming final. The concern must then demonstrate to SBA that it continues to meet the HUBZone eligibility requirements in order for it to remain eligible as a certified HUBZone small business concern.

(2) A certified HUBZone small business concern that is performing a HUBZone contract and fails to attempt to maintain the minimum employee HUBZone residency requirement (*see* § 126.103) must notify SBA within 30 days of such occurrence. A concern that cannot meet the requirement may voluntarily withdraw from the program, or it will be removed by SBA pursuant to program decertification procedures.

(b) *Annual recertification.* On the annual anniversary of a concern's certification or recertification, the concern must recertify that it is fully compliant with all HUBZone eligibility requirements (*see* § 126.200), or it can request to voluntarily withdraw from the HUBZone program.

(c) *Review of recertification.* SBA may review the concern's recertification through the program examination process when deemed appropriate and will do so every three years pursuant to § 126.500.

(1) If SBA determines that the concern is no longer eligible at the time of its recertification, SBA will propose the HUBZone small business concern for decertification pursuant to § 126.503.

(2) If SBA determines that the concern continues to be eligible, SBA will notify the concern of this determination. In such case, the concern will:

(i) Continue to be designated as a certified HUBZone small business concern in DSBS (or successor system); and

(ii) Be treated as an eligible HUBZone small business concern for all HUBZone contracts for which the concern qualifies as small for a period of one year from the date of the recertification.

(d) *Voluntary withdrawal.* A HUBZone small business concern may request to voluntarily withdraw from the HUBZone program at any time. Once SBA concurs, SBA will decertify the concern and no longer designate it as a certified HUBZone small business concern in DSBS (or successor system). The concern may apply again for certification at any point ninety (90) calendar days after the date of decertification. At that point, the concern would have to demonstrate that it meets all HUBZone eligibility requirements.

■ 36. Revise § 126.502 to read as follows:

§ 126.502 Is there a limit to the length of time a concern may be a certified HUBZone small business concern?

There is no limit to the length of time a concern may remain designated as a certified HUBZone small business concern in DSBS (or successor system) so long as it continues to comply with the provisions of §§ 126.200, 126.500, and 126.501.

■ 37. Revise § 126.503 to read as follows:

§ 126.503 What happens if SBA is unable to verify a HUBZone small business concern's eligibility or determines that a concern is no longer eligible for the program?

(a) *Proposed decertification*—(1) *General.* If SBA is unable to verify a certified HUBZone small business concern's eligibility or has information indicating that a concern was not eligible for the program at the time of certification or recertification, SBA may propose decertification of the concern. In addition, if during the one-year period of time after certification or recertification SBA believes that a HUBZone small business concern that is performing one or more HUBZone contracts no longer has at least 20% of its employees living in a HUBZone, SBA will propose the concern for decertification based on the concern's failure to attempt to maintain compliance with the HUBZone residency requirement.

(i) *Notice of proposed decertification.* SBA will notify the HUBZone small business concern in writing that SBA is proposing to decertify it and state the reasons for the proposed decertification. The notice of proposed decertification will notify the concern that it has 30 days from the date it receives the letter to submit a written response to SBA explaining why the proposed ground(s) should not justify decertification. SBA will consider that written notice was provided if SBA sends the notice of proposed decertification to the concern at a mailing address, email address, or fax number provided in the concern's profile in the System for Award Management (*SAM.gov*) or the Dynamic Small Business Search (DSBS) (or successor systems).

(ii) *Response to notice of proposed decertification.* The HUBZone small business concern must submit a written response to the notice of proposed decertification within the timeframe specified in the notice. In this response, the HUBZone small business concern must rebut each of the reasons set forth by SBA in the notice of proposed decertification, and where appropriate, the rebuttal must include documents showing that the concern is eligible for the HUBZone program as of the date specified in the notice.

(iii) *Adverse inference.* If a HUBZone small business concern fails to cooperate with SBA or fails to provide the information requested, the D/HUB may draw an adverse inference and assume that the information that the concern failed to provide would demonstrate ineligibility.

(2) *SBA's decision.* SBA will determine whether the HUBZone small business concern remains eligible for the program within 90 calendar days after receiving all requested information, when practicable. The D/HUB will provide written notice to the concern stating the basis for the determination. If SBA finds that the concern is not eligible, the D/HUB will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). If SBA finds that the concern is eligible, the concern will continue to be designated as a certified HUBZone small business concern in DSBS (or successor system).

(b) *Decertification pursuant to a protest.* The procedures described in paragraph (a) of this section do not apply to HUBZone status protests. If the D/HUB sustains a protest pursuant to § 126.803, SBA will decertify the HUBZone small business concern immediately and change the concern's status in DSBS (or successor system) to reflect that it no longer qualifies as a certified HUBZone small business concern without first proposing it for decertification.

■ 38. Revise § 126.504 to read as follows:

§ 126.504 When will SBA remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern?

(a) SBA will remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern if the concern has:

(1) Been decertified as a result of a HUBZone status protest pursuant to § 126.803;

(2) Been decertified as a result of the procedures set forth in § 126.503; or

(3) Voluntarily withdrawn from the HUBZone program pursuant to § 126.501(b).

(b) SBA will remove the designation of a concern in DSBS (or successor system) as a certified HUBZone small business concern as soon as the D/HUB issues a decision decertifying the concern from the program.

(c) After a concern has been removed as a certified HUBZone small business concern in DSBS (or successor system), it is ineligible for the HUBZone program and may not submit an offer for a HUBZone contract.

(1) As long as the concern was eligible at the time of its offer (and eligibility relates back to the date of its certification or recertification), it could be awarded a HUBZone contract even if it no longer appears as a certified HUBZone small business concern on DSBS on the date of award.

(2) If SBA determines that the concern's recertification was invalid (*i.e.,* based on a protest or program examination SBA determines that the concern did not qualify as a HUBZone small business concern on the date of its recertification), the concern will be ineligible for the award of any HUBZone contract for which it previously certified its HUBZone status.

Subpart F—Contracting With Certified HUBZone Small Business Concerns

■ 39. Revise the heading of subpart F to read as set forth above.

§ 126.600 [Amended]

■ 40. Amend § 126.600 as follows:

■ a. In the introductory text, remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';

■ b. In paragraph (a), (b), and (c), remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';

■ c. In paragraphs (d) and (e), remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''; and

■ d. In paragraph (e), remove the word ''against'' and add in its place the word ''under'' and remove the phrase '', which had been'' and add in its place the phrase ''that was''.

■ 41. Revise § 126.601 to read as follows:

§ 126.601 What additional requirements must a certified HUBZone small business concern meet to submit an offer on a HUBZone contract?

(a) Only certified HUBZone small business concerns are eligible to submit offers for a HUBZone contract or to receive a price evaluation preference under § 126.613.

(b) At the time a certified HUBZone small business concern submits its initial offer (including price) on a specific HUBZone contract, it must certify to the contracting officer that it:

(1) Is a certified HUBZone small business concern in DSBS (or successor system);

(2) Is small, together with its affiliates, at the time of its offer under the size standard corresponding to the NAICS code assigned to the procurement;

(3) Will ''attempt to maintain'' having at least 35% of its employees residing in a HUBZone during the performance of the contract, as set forth in § 126.200(e); and

(4) Will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f) and 126.700.

(c) A certified HUBZone small business concern may submit an offer on a HUBZone contract for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at § 121.406 of this chapter.

■ 42. Revise § 126.602 to read as follows:

§ 126.602 Must a certified HUBZone small business concern maintain the employee residency percentage during contract performance?

(a) A certified HUBZone small business concern that has not received a HUBZone contract must have at least 35% of its employees residing within a HUBZone at the time of certification and annual recertification. Such a concern need not meet the 35% HUBZone residency requirement at all times while certified in the program. A certified HUBZone small business concern that has received a HUBZone contract must ''attempt to maintain'' (*see* § 126.103) having 35% of its employees residing in a HUBZone during the performance of any HUBZone contract awarded to the concern on the basis of its HUBZone status. Such a concern must have at least 20% of its employees residing within a HUBZone at the time of its annual recertification.

(b) For orders under indefinite delivery, indefinite quantity contracts, including orders under multiple award contracts, a certified HUBZone small business concern must ''attempt to maintain'' the HUBZone residency requirement during the performance of each order that is set aside for HUBZone small business concerns.

(c) A certified HUBZone small business concern eligible for the program pursuant to § 126.200(a) must have at least 35% of its employees engaged in performing a HUBZone contract residing within any Indian reservation governed by one or more of the concern's Indian Tribal Government owners, or residing within any HUBZone adjoining any such Indian reservation.

(d) A certified HUBZone small business concern that has less than 20% of its total employees residing in a HUBZone during the performance of a HUBZone contract has failed to attempt to maintain the HUBZone residency requirement. Such failure will result in proposed decertification pursuant to § 126.503.

§ 126.603 [Amended]

■ 43. Amend § 126.603 as follows:

■ a. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''; and

■ b. Remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''.

■ 44. Amend § 126.607 as follows:

■ a. In the section heading, remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';

■ b. In paragraph (c) introductory text, remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns''; and

■ c. In paragraph (c)(1), remove the phrase ''SBA's list of qualified HUBZone SBCs'' and add in its place the phrase ''the list of certified HUBZone small business concerns contained in DSBS (or successor system)''.

§ 126.608 [Amended]

■ 45. Amend § 126.608 as follows:
■ a. Remove the phrase ''HUBZone set-aside'' and add in its place the phrase ''HUBZone set-aside or sole source award'';
■ b. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''.

§ 126.611 [Amended]

■ 46. Amend the § 126.611 heading by removing the phrase ''such an appeal'' and adding in its place the phrase ''an appeal of a contracting officer's decision not to issue a procurement as a HUBZone contract''.

§ 126.612 [Amended]

■ 47. Amend § 126.612 as follows:
■ a. In the introductory text, remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''HUBZone small business concern'';
■ b. In paragraph (c), remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''HUBZone small business concerns''; and
■ c. In paragraph (d), remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''HUBZone small business concern''

§ 126.613 [Amended]

■ 48. Amend § 126.613 as follows:
■ a. In the section heading, remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ b. In paragraph (a)(1):
■ i. Remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ ii. Remove the phrase ''another SBC'' and add in its place the phrase ''another small business concern'';
■ iii. In the final sentence, remove the phrase ''HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ iv. In the final sentence, remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''HUBZone small business concerns'';
■ c. In paragraph (a)(2):
■ i. Designate the paragraphs that are Examples 1 through 4 as paragraphs (a)(2)(i) through (iv), respectively;
■ ii. Remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ iii. Remove the phrase ''non-HUBZone SBC'' wherever it appears and add in its place the phrase ''non-HUBZone small business concern'';
■ iv. In newly designated paragraph (a)(2)(ii) (Example 2), remove the phrase ''non-HUBZone SBC's'' and add in its place the phrase ''non-HUBZone small business concern's'';
■ v. In the second and third sentences in newly designated paragraph (a)(2)(iv) (Example 4), remove the phrase ''HUBZone SBC'' wherever it appears and add in its place the phrase ''HUBZone small business concern'';
■ vi. In the third sentence in newly designated paragraph (a)(2)(iv) (Example 4), remove the phrase ''HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ d. In paragraph (b)(2):
■ i. Remove the phrase ''qualified HUBZone SBCs'' and add in its place the phrase ''certified HUBZone small business concerns'';
■ ii. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ iii. Designate the ''Example'' paragraph as paragraph (b)(2)(i) and add a reserved paragraph (b)(2)(ii); and
■ e. In paragraph (d):
■ i. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ ii. Remove the phrase ''SBCs'' and add in its place the phrase ''small business concerns''.

■ 49. Amend § 126.616 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a);
■ c. In paragraphs (b)(1), (d)(1), and (d)(2) introductory text, remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ e. In paragraph (c) introductory text, remove ''SBC'' and add in its place ''small business concern'';
■ f. In paragraphs (c)(2) through (4), (c)(9) and (10), (d)(2), (e), (g), and (i) remove the phrase ''HUBZone SBC'' wherever it appears'' and add in its place the phrase ''certified HUBZone small business concern'';
■ g. In paragraphs (c)(7), (i), (j)(2), and (k), remove the phrase ''performance of work'' wherever it appears and add in its place the phrase ''limitations on subcontracting''; and
■ h. Revise paragraph (e).

The revisions read as follows:

§ 126.616 What requirements must a joint venture satisfy to submit an offer and be eligible to perform on a HUBZone contract?

(a) *General.* A certified HUBZone small business concern may enter into a joint venture agreement with one or more other small business concerns, or with an approved mentor authorized by § 125.9 of this chapter (or, if also an 8(a) BD Participant, with an approved mentor authorized by § 124.520 of this chapter), for the purpose of submitting an offer for a HUBZone contract. The joint venture itself need not be a certified HUBZone small business concern.

* * * * *

(e) *Certification of compliance*—(1) *At time of offer.* If submitting an offer as a joint venture for a HUBZone contract, at the time of initial offer (and if applicable, final offer), each certified HUBZone small business concern joint venture partner must make the following certifications to the contracting officer separately under its own name:

(i) It is a certified HUBZone small business concern that appears in DSBS (or successor system) as a certified HUBZone small business concern and it met the eligibility requirements in § 126.200 at the time of its initial certification or, if applicable, at the time of its most recent recertification;

(ii) It, together with its affiliates, is small under the size standard corresponding to the NAICS code assigned to the procurement;

(iii) It will ''attempt to maintain'' having at least 35% of its employees residing in a HUBZone during performance of the contract; and

(iv) It will comply with the applicable limitations on subcontracting during performance of the contract, as set forth in § 125.6 of this chapter and §§ 126.200(f) and 126.700.

(2) *Prior to performance.* Prior to the performance of any HUBZone contract as a joint venture, the HUBZone small business concern partner to the joint venture must submit a written certification to the contracting officer and SBA, signed by an authorized official of each partner to the joint venture, stating the following:

(i) The parties have entered into a joint venture agreement that fully complies with paragraph (c) of this section; and

(ii) The parties will perform the contract in compliance with the joint venture agreement.

* * * * *

§ 126.617 [Amended]

■ 50. Amend § 126.617 as follows:
■ a. In the section heading, remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern'';
■ b. Remove the phrase ''qualified HUBZone SBC'' and add in its place the phrase ''certified HUBZone small business concern''.

§ 126.618 [Amended]

■ 51. Amend § 126.618 as follows:
■ a. In the section heading, remove the phrase ''HUBZone SBC's'' and add in its place the phrase ''certified HUBZone small business concern's'';
■ b. In paragraph (a), remove the phrase ''the underlying HUBZone requirements'' and add in its place the phrase ''the HUBZone requirements described in § 126.200'';
■ c. In paragraphs (a) through (c), remove the phrase ''qualified HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ d. In paragraphs (b) and (c)(1), remove the phrase ''HUBZone SBC'' wherever it appears and add in its place the phrase ''certified HUBZone small business concern'';
■ e. In paragraph (c)(1), remove the phrase ''performance of work'' and add in its place the phrase ''limitations on subcontracting''.
■ 52. Add § 126.619 to subpart F to read as follows:

§ 126.619 When must a certified HUBZone small business concern recertify its status for a HUBZone contract?

(a) A concern that is a certified HUBZone small business concern at the time of initial offer (including a Multiple Award Contract) is generally considered a HUBZone small business concern throughout the life of that contract.

(1) If a concern is a certified HUBZone small business concern at the time of initial offer for a HUBZone Multiple Award Contract, then it will be considered a certified HUBZone small business concern for each order issued against the contract, unless a contracting officer requests a new HUBZone certification in connection with a specific order (see paragraph (b)(4) of this section).

(2) Except for orders under Federal Supply Schedule contracts, where the underlying Multiple Award Contract is not a HUBZone contract and a procuring agency is setting aside an order for the HUBZone program, a concern must be a certified HUBZone small business concern and appear in DSBS (or successor system) as a certified HUBZone small business concern at the time it submits its offer for the order.

(3) Where a HUBZone contract is novated to another business concern, the concern that will continue performance on the contract must certify its status as a certified HUBZone small business concern to the procuring agency, or inform the procuring agency that it is not a certified HUBZone small business concern, within 30 days of the novation approval. If the concern is not a certified HUBZone small business concern, the agency can no longer count any work performed under the contract, including any options or orders issued pursuant to the contract, from that point forward towards its HUBZone goals.

(4) Where a concern that is performing a HUBZone contract acquires, is acquired by, or merges with another concern and contract novation is not required, the concern must, within 30 days of the transaction becoming final, recertify its status as a certified HUBZone small business concern to the procuring agency, or inform the procuring agency that it no longer qualifies as a HUBZone small business concern. If the contractor is unable to recertify its status as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. The agency must immediately revise all applicable Federal contract databases to reflect the new status.

(5) Where a concern is decertified after the award of a HUBZone contract, the procuring agency may exercise options and still count the award as an award to a HUBZone small business concern, except where recertification is required or requested under this section, or where the concern has been found to be ineligible for award pursuant to a HUBZone status protest pursuant to § 126.803.

(b) For the purposes of contracts (including Multiple Award Contracts) with durations of more than five years (including options), a contracting officer must request that a business concern recertify its status as a HUBZone small business concern no more than 120 days prior to the end of the fifth year of the contract, and no more than 120 days prior to exercising any option.

(1) If the concern cannot recertify that it qualifies as a HUBZone small business concern, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals. This means that if the concern either no longer meets the HUBZone eligibility requirements or no longer qualifies as small for the size standard corresponding to NAICS code assigned to the contract, the agency can no longer count the options or orders issued pursuant to the contract, from that point forward, towards its HUBZone goals.

(2) A concern that did not certify itself as a HUBZone small business concern, either initially or prior to an option being exercised, may recertify itself as a HUBZone small business concern for a subsequent option period if it meets the eligibility requirements at that time.

(3) Recertification does not change the terms and conditions of the contract. The limitations on subcontracting, nonmanufacturer and subcontracting plan requirements in effect at the time of contract award remain in effect throughout the life of the contract.

(4) Where the contracting officer explicitly requires concerns to recertify their status in response to a solicitation for an order, SBA will determine eligibility as of the date of the concern's initial certification or, if applicable, its most recent recertification.

(c) Except for Blanket Purchase Agreements under Federal Supply Schedule contracts, a concern's status will be determined at the time of submission of its initial response to a solicitation for an Agreement (including Blanket Purchase Agreements (BPAs), Basic Agreements, Basic Ordering Agreements, or any other Agreement that a contracting officer sets aside or reserves awards for certified HUBZone small business concerns) and each order issued pursuant to the Agreement.
■ 53. Revise § 126.700 to read as follows:

§ 126.700 What are the limitations on subcontracting requirements for HUBZone contracts?

(a) *Other than Multiple Award Contracts.* For other than a Multiple Award Contract, a prime contractor receiving an award as a certified HUBZone small business concern must meet the limitations on subcontracting requirements set forth in § 125.6 of this chapter.

(b) *Multiple Award Contracts*—(1) *Total Set-Aside Contracts.* For a Multiple Award Contract that is totally set aside for certified HUBZone small business concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (*see* § 126.5), or if applicable, the nonmanufacturer rule (*see* § 121.406 of this chapter), during the base term and during each subsequent option period. However, the contracting officer, at his or her discretion, may also require the concern

to comply with the limitations on subcontracting or the nonmanufacturer rule for each individual order awarded under the Multiple Award Contract.

(2) *Partial Set-Aside Contracts.* For Multiple Award Contracts that are partially set aside for certified HUBZone small business concerns, paragraph (b)(1) of this section applies to the set-aside portion of the contract. For orders awarded under the non-set-aside portion of a Multiple Award Contract, a certified HUBZone small business concern need not comply with any limitations on subcontracting or nonmanufacturer rule requirements.

(3) *Orders Set Aside for certified HUBZone small business concerns.* For each individual order that is set aside for certified HUBZone small business concerns under a Multiple Award Contract that is not itself set aside for certified HUBZone small business concerns, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (*see* § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (*see* § 121.406 of this chapter), in the performance of such order.

(4) *Reserves.* For an order that is set aside for certified HUBZone small business concerns against a Multiple Award Contract with a HUBZone reserve, a certified HUBZone small business concern must comply with the applicable limitations on subcontracting (*see* § 125.6 of this chapter), or if applicable, the nonmanufacturer rule (*see* § 121.406 of this chapter), in the performance of such order. However, the certified HUBZone small business concern does not have to comply with the limitations on subcontracting or the nonmanufacturer rule for any order issued against the Multiple Award Contract if the order is competed amongst certified HUBZone small business concerns and one or more other-than-small business concerns.

■ 54. Revise § 126.800 to read as follows:

§ 126.800 Who may protest the status of a certified HUBZone small business concern?

(a) *For sole source procurements.* SBA or the contracting officer may protest the proposed awardee's status as a certified HUBZone small business concern.

(b) *For all other procurements, including Multiple Award Contracts (see § 125.1 of this chapter).* SBA, the contracting officer, or any other interested party may protest the apparent successful offeror's status as a certified HUBZone small business concern.

■ 55. Amend § 126.801 by revising the section heading, paragraphs (a), (b), and (c)(3), and the second and third sentences in paragraph (e), and by adding paragraphs (e)(1) through (12) to read as follows:

§ 126.801 How does an interested party file a HUBZone status protest?

(a) *General.* (1) A HUBZone status protest is the process by which an interested party may challenge the HUBZone status of an apparent successful offeror on a HUBZone contract, including a HUBZone joint venture submitting an offer under § 126.616.

(2) The protest procedures described in this part are separate from those governing size protests and appeals. All protests relating to whether a certified HUBZone small business concern is other than small for purposes of any Federal program are subject to part 121 of this chapter and must be filed in accordance with that part. If a protester protests both the size of the HUBZone small business concern and whether the concern meets the HUBZone eligibility requirements set forth in § 126.200, SBA will process the protests concurrently, under the procedures set forth in part 121 of this chapter and this part.

(3) SBA does not review issues concerning the administration of a HUBZone contract.

(b) *Format and specificity.* (1) Protests must be in writing and must state all specific grounds for why the protested concern did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern. A protest merely asserting that the protested concern did not qualify as a HUBZone small business concern at the time of certification or recertification, without setting forth specific facts or allegations, is insufficient. A protest asserting that a concern was not in compliance with the HUBZone eligibility requirements at the time of offer or award will be dismissed.

(2) For a protest filed against a HUBZone joint venture, the protest must state all specific grounds for why—

(i) The HUBZone small business concern partner to the joint venture did not meet the HUBZone eligibility requirements set forth in § 126.200 at the time the concern applied for certification or at the time SBA last recertified the concern as a HUBZone small business concern; and/or

(ii) The protested HUBZone joint venture did not meet the requirements set forth in § 126.616 at the time the joint venture submitted an offer for a HUBZone contract.

(c) * * *

(3) Protestors may submit their protests by email to *hzprotests@sba.gov.*

* * * * *

(e) * * * The contracting officer must send the protest, along with a referral letter, to the D/HUB by email to *hzprotests@sba.gov.* The contracting officer's referral letter must include information pertaining to the solicitation that may be necessary for SBA to determine timeliness and standing, including the following:

(1) The solicitation number;

(2) The name, address, telephone number, email address, and facsimile number of the contracting officer;

(3) The type of HUBZone contract at issue (*i.e.,* HUBZone set-aside; HUBZone sole source; full and open competition with a HUBZone price evaluation preference applied; reserve for HUBZone small business concerns under a Multiple Award Contract; or order set-aside for HUBZone small business concerns against a Multiple Award Contract);

(4) If the procurement was conducted using full and open competition with a HUBZone price evaluation preference, whether the protester's opportunity for award was affected by the preference;

(5) If the procurement was a HUBZone set-aside, whether the protester submitted an offer;

(6) Whether the protested concern was the apparent successful offeror;

(7) Whether the procurement was conducted using sealed bid or negotiated procedures;

(8) The bid opening date, if applicable;

(9) The date the protester was notified of the apparent successful offeror;

(10) The date the protest was submitted to the contracting officer;

(11) The date the protested concern submitted its initial offer or bid to the contracting activity; and

(12) Whether a contract has been awarded, and if applicable, the date of contract award and contract number.

§ 126.802 [Amended]

■ 56. Amend § 126.802 by removing the phrase ''has qualified HUBZone status'' and adding in its place the phrase ''qualifies as a certified HUBZone small business concern''.

■ 57. Amend § 126.803 by:

■ a. Revising the section heading;

■ b. Redesignating paragraphs (a) through (d) as paragraphs (b) through (e), respectively;

■ c. Adding new paragraph (a); and

■ d. Revising newly redesignated paragraphs (b)(2), (c), and (e).

The revisions and addition read as follows:

§ 126.803 How will SBA process a HUBZone status protest and what are the possible outcomes?

(a) *Date at which eligibility determined.* SBA will determine the eligibility of a concern subject to a HUBZone status protest as of the date of its initial certification or, if applicable, its most recent recertification.

(b) * * *

(2) If SBA determines the protest is timely and sufficiently specific, SBA will notify the protested concern of the protest and the identity of the protestor. The protested concern must submit information responsive to the protest within 5 business days of the date of receipt of the protest.

(c) *Time period for determination.* (1) SBA will determine the HUBZone status of the protested concern within 15 business days after receipt of a complete protest referral.

(2) If SBA does not issue its determination within 15 business days (or request an extension that is granted), the contracting officer may award the contract if he or she determines in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. Notwithstanding such a determination, the provisions of paragraph (e) of this section apply to the procurement in question.

* * * * *

(e) *Effect of determination.* The determination is effective immediately and is final unless overturned on appeal by the AA/GC&BD, or designee, pursuant to § 126.805.

(1) *Protest sustained.* If the D/HUB finds the protested concern ineligible and sustains the protest, SBA will decertify the concern and remove its designation as a certified HUBZone small business concern in DSBS (or successor system). A contracting officer shall not award a contract to a protested concern that the D/HUB has determined is not an eligible HUBZone small business concern for the procurement in question.

(i) *No appeal filed.* If a contracting officer receives a determination sustaining a protest after contract award, and no appeal has been filed, the contracting officer shall terminate the award.

(ii) *Appeal filed.* (A) If a timely appeal is filed after contract award, the contracting officer must consider whether performance can be suspended until an appellate decision is rendered.

(B) If the AA/GCBD affirms the initial determination finding the protested concern ineligible, the contracting officer shall either terminate the contract or not exercise the next option.

(iii) *Update FPDS–NG.* Where the contract was awarded to a concern that is found not to qualify as a HUBZone small business concern, the contracting officer must update the Federal Procurement Data System-Next Generation (FPDS–NG) and other procurement reporting databases to reflect the final agency HUBZone decision (*i.e.,* the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed).

(2) *Protest dismissed or denied.* If the D/HUB denies or dismisses the protest, the contracting officer may award the contract to the protested concern.

(i) *No appeal filed.* If a contracting officer receives a determination dismissing or denying a protest and no appeal has been filed, the contracting officer may:

(A) Award the contract to the protested concern if it has not yet been awarded; or

(B) Authorize contract performance to proceed if the contract has been awarded.

(ii) *Appeal filed.* If the AA/GCBD overturns the initial determination or dismissal, the contracting officer may apply the appeal decision to the procurement in question.

(3) A concern found to be ineligible is precluded from applying for HUBZone certification for ninety (90) calendar days from the date of the final agency decision (the D/HUB's decision if no appeal is filed, or the decision of the AA/GCBD if the protest is appealed).

■ 58. Revise § 126.804 to read as follows:

§ 126.804 Will SBA decide all HUBZone status protests?

SBA will decide all protests not dismissed on the basis that they are premature, untimely, non-specific, moot, or not filed by an interested party.

PART 127—WOMEN-OWNED SMALL BUSINESS FEDERAL CONTRACT PROGRAM

■ 59. The authority citation for part 127 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 637(m), 644 and 657r.

■ 60. Amend § 127.602 by redesignating the text of § 127.602 as paragraph (a) and adding paragraph (b).

The addition reads as follows:

§ 127.602 What are the grounds for filing an EDWOSB or WOSB status protest?

* * * * *

(b) For a protest filed against an EDWOSB or WOSB joint venture, the protest must state all specific grounds for why—

(1) The EDOWSB or WOSB partner to the joint venture did not meet the EDWOSB or WOSB eligibility requirements set forth in § 127.200; and/or

(2) The protested EDWOSB or WOSB joint venture did not meet the requirements set forth in § 127.506.

Dated: November 12, 2019.

Christopher M. Pilkerton,

Acting Administrator.

[FR Doc. 2019–24915 Filed 11–25–19; 8:45 am]

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FEDERAL REGISTER

Vol. 84 Tuesday,

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Part III

The President

Notice of November 25, 2019—Continuation of the National Emergency With Respect to the Situation in Nicaragua

Federal Register
Vol. 84, No. 228
Tuesday, November 26, 2019

Presidential Documents

Title 3—

The President

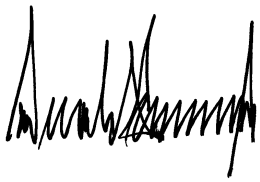
Notice of November 25, 2019

Continuation of the National Emergency With Respect to the Situation in Nicaragua

On November 27, 2018, by Executive Order 13851, I declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in Nicaragua.

The situation in Nicaragua, including the violent response by the Government of Nicaragua to the protests that began on April 18, 2018, and the Ortega regime's systematic dismantling and undermining of democratic institutions and the rule of law, its use of indiscriminate violence and repressive tactics against civilians, as well as its corruption leading to the destabilization of Nicaragua's economy, continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on November 27, 2018, must continue in effect beyond November 27, 2019. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13851 with respect to the situation in Nicaragua.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
November 25, 2019.

[FR Doc. 2019–25865
Filed 11–25–19; 11:15 am]
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